2026:DHC:5642-DB

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

% Judgment reserved on: *04.05.2026*
Judgment delivered on: *15.07.2026*
Judgment uploaded on: *As per Digital Signature*

\+ **FAO (COMM) 24/2022 & CM APPL. 6369/2022**

M/S BANSAL CONSTRUCTION CO. ..... APPELLANT

versus

UNION OF INDIA ..... RESPONDENT

Advocates who appeared in this case

For the Appellant	:	Mr. S W Haider and Ms Pooja Dua, Advocates.
For the Respondent	:	Ms. Pratima N Lakra, CGSC, Mr. Shailendra Kumar Mishra and Ms. Upanita Soumyadarshni, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

V. KAMESWAR RAO, J.

1. This appeal has been filed challenging the judgment dated 30.07.2021 passed by the learned District Judge/Commercial Court-03, Patiala House Court, New Delhi in O.M.P (COMM.) 19/2019, filed under Section 34 of Arbitration & Conciliation Act, 1996 ('the Act', for short) with the following prayers: -

> *"i. allow the present appeal and set aside the impugned*

Order dated 30.07.2021 passed by the Ld. Judge in O.M.P (COMM.) 19 of 2019 and restore the arbitration award dated 26.09.2018 passed by the Ld. Arbitral Tribunal.
ii. call for the complete records for the adjudication of the present appeal."

2. The facts as noted from the record are that the work pertaining to "*CTR(S) of 15.75 km of non circulated yard lines in the section of DSE-III/NDLS"* was awarded to appellant vide an acceptance letter dated 04.08.2004 by a competent authority of the respondent and the date of completion of work was 6 months i.e., by 03.02.2005.

3. The case of the appellant is that the appellant made all the arrangements for execution of the work but work could not be completed by 03.02.2005 due to failure on the part of the respondent. Consequently, the time period was extended upto 30.09.2007 and admittedly all extensions were given without penalty under Clause 17 A of General Conditions of Contract, 1999, (GCC). However, even then, the work could not be completed because for the reason solely attributable to the respondent as the P-Way materials required for execution of work were not provided by the respondent. Being severely beset with the situation, the appellant requested for closure of contract on administrative ground and to save itself from further loss. The respondent upon receipt of the said letter, issued a letter dated 07.08.2009 after 5 months, asking the appellant to re-start the work. The appellant *vide* its letter dated 19.09.2009, stated its incapability to execute the work as the agreed rates then had become unworkable.

4. The respondent issued notice dated 30.09.2009, which was opposed by the appellant. The respondent did not take any action either by

terminating the contract or by foreclosing the contract, despite the appellant again furnishing 'no claim' and requesting for foreclosure vide letter dated 04.01.2012. Despite lapse of considerable time, the respondent did not pay the dues of the appellant.

5. The appellant vide letter dated 17.03.2015 invoked the arbitration clause under the GCC by writing a letter to Northern Railway, whereby the claimant claimed total of six claims to the tune of ₹9,50,000/-. The said invocation letter was also followed by reminder letter dated 22.08.2016, however the claimant enhanced its claims for previous six claims to eight claims for an amount of ₹32,77,600/- and again another letter dated 07.02.2017 sent to the railways by the claimant, wherein the claimant again claimed total of six claims amounting to ₹13,92,083/-. The respondent appointed an arbitrator to adjudicate the disputes between the parties.

6. The Arbitral Tribunal ('Tribunal') passed the Arbitral Award ('Award') on 26.09.2018. The learned Tribunal in the Award allowed 7 out of 8 claims of the appellant and directed the respondent to pay the appellant to the tune of ₹22,44,464/- within six weeks failing which interest at 18% per annum will be applicable. The claims of the appellant before the learned Tribunal and the amount awarded by the learned Tribunal are reproduced in a tabular format:-

Claim No.	Description of claim	Amount claimed (₹)	Amount Awarded (₹)
1	Towards since forced to seek the arbitration because of inability of the department to take a rationale and a practical decision entitled for	1,00,000/-	1,00,000/-

	cost		
2	Towards the amount of final bill prepared, but not paid	4,08,561/-	3,66,596/-
3	Towards EMD/SD money deducted in running account bills, but not paid	1,00,000/-	35,600/-
4	Towards extra expenditure incurred on maintaining regular staff, T & P machinery etc during the prolongation of contract on account of the inability of the department to provide P-way material	10,54,454/-	7,02,000/-
5	Towards interest on payment held up for amounting to₹2,92,000/- held up due to not sanctioning corrigendum / addendum and holding of ₹1,00,000/- on account of security money for 47.5 months @ 18% pa on total amount ₹3,92,000/-	3,92,000/-	3,35,160/-
6	Towards legal expenses	1,00,000/-	Nil
7	Towards execution of work for ₹11,25,000/- only against the contract value for ₹22,09,080/- hence this claim 10% of remaining value of left over work, i.e., on ₹10,84,080/- not executed due to administrative reasons	1,08,408/-	1,08,408/-
8	Claim interest @24% per annum @12% per annum on the amount awarded against claim no.4	7,04,130/-	5,96,700/-
	Tota amount awarded		22,44,464/-

7. Against the Award, the respondent filed a petition under Section 34 of the Act. The learned District Judge vides the impugned judgment partially allowed the petition by setting aside the claim Nos.1, 4,5,7 & 8

and modified the post award interest from 18 % to 12 % per annum.

8. Aggrieved by the same, the appellant has filed the present appeal.

SUBMISSIONS OF THE APPELLANT

9. Mr. S W Haider, the learned counsel appearing for the appellant submitted that the learned District Judge erred in modifying the interest from 18% to 12%. He submitted that, it is settled law as rendered by Supreme Court in ***Larsen Air Conditioning and Refrigeration Company v. Union of India (UOI) and Ors.: MANU/SC/0876/2023***, wherein, the Supreme Court has set aside the order passed by the High Court interfering and modifying the rate of interest as awarded and restoring the same. He also submitted that the Supreme Court has reiterated the scope of interference by Court under Section 34 of the Act, holding that the court has no power to modify an arbitral award. He has also relied on the judgment of this Court in the case of ***M/s Pradeep Vinod Construction Co. v. Union of India, 2022:DHC:3616-DB***, to contend that modification is impermissible.

10. He submitted that the learned District Judge failed to appreciate the settled legal position in the case titled ***Himachal Joint Venture v. Panilpina World Transport India P Ltd, 2008:DHC:2304-DB*** of this Court, wherein, it is held that 10% profit is a reasonable basis, to be granted, and could not have been set aside by the learned District Judge.

11. He submitted that this Court in ***Himachal Joint Venture v. Panilpina World Transport (India) (supra)***, has held that, in a case where

a party is successful in establishing the breach then the party who suffered on account of the said breach must be compensated for the business loss it suffered. He also submitted that the learned Tribunal has indeed examined the case in detail before rendering the award and thus, the same ought not to have been interfered by the learned District Judge.

12. According to him, the impugned judgment despite mentioning the judgment passed by this Court in the case of the ***Simplex Concrete Piles (India) Ltd. v. Union of India: MANU/DE/4538/2010***, failed to appreciate and apply the same. In the said case, this Court held that, contractual clauses even if restrictive cannot prevent an arbitrator from awarding damages or losses, that a party is otherwise entitled to. He also submitted that the scope of Section 34 of the Act is limited and that the learned District Judge has re-appreciated the evidence and the terms of the contract between the parties, which is beyond the scope of Section 34 of the Act.

13. According to Mr. Haider, to the best of the knowledge of the appellant, "*Special Tender Conditions and Instructions to tenderer*" were not part of the arbitral record. Despite this, in paragraph 20 of the impugned judgment, the learned District Judge reproduced a clause of "*Special Tender Conditions and Instructions to tenderer*" without indicating from where they were taken from. The appellant objected to the filing of new documents in a petition under Section 34 of the Act, as noted by the learned District Judge in paragraph 11 of the impugned judgment. Hence, the learned District Judge went beyond its authority by considering documents that were not part of the arbitral record.

14. He submitted that the learned Tribunal has correctly relied upon Clause 36(2) of the GCC to allow Claim No.4, whereas, the learned District Judge erred in not appreciating the effect of the said clause. He also submitted that, despite the learned District Judge noting the fact that the respondent had failed to provide the required P-Way materials resulting in the delay in executing the work, attributable to the respondent, has erroneously set aside the award on certain claims.

15. He has relied upon the following judgments in support of his submissions: -

a) ***Canara Nidhi Limited v. M. Shashikala and Ors., MANU/SC/1304/2019,***

b) ***Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India (NHAI): MANU/SC/0705/2019,***

c) ***National Highways Authority of India v. M. Hakeem and Ors., MANU/SC/0461/2021,***

d) ***Renusagar Power Co. Ltd. v. General Electric Co., MANU/SC/0195/199,***

e) ***Venture Global Engineering LLC and Ors. v. Tech Mahindra Ltd. and Ors., MANU/SC/1373/2017***

f) ***Union of India (Ministry of Railways) & Others v. M/s. J. Sons Engineering Corporation Limited & Another, 2015:DHC:3350.***

16. He sought prayers as made in the appeal.

SUBMISSIONS OF THE RESPONDENT

17. Ms. Pratima N Lakra, Central Government Standing Counsel would submit that, an appeal under Section 37 of the Act has a very limited scope

and this appeal clearly falls outside the purview of Section 37 of the Act.

18. She submitted that this Court in ***UBV Infrastructure Ltd. v. National Highways Authority of India, 2020:DHC:92-DB,*** has held that; -

> *"11. It has been opined by this Court that when it comes to setting aside of an award under the public policy ground, it would mean that the award should shock the conscience of the Court and would not include what the Court thinks is unjust on the facts of the case seeking to substitute its view for that of the arbitrator to do what it considers to be justice (Associate Builders v. DDA, (2015) 3 SCC 49)"*
>
> *"An arbitrator is a chosen Judge by the parties and it is on limited parameters can the award be interfered with". (Sudarsan Trading Co. v. State of Kerala, (1989) 2 SCC 38)*

19. She has also relied on the judgment in the case of ***Indian Oil Corporation Ltd v. Institute of Geo Informatics Pvt Ltd, FAO OS (COMM) 189/2017***, wherein this Court has held that; -

> "*Thus a scrutiny conducted under Section 37 of the Act is more in the nature of a judicial review, only to consider as to whether the learned Single Judge, in exercise of the powers under Section 34 of the Act has overlooked any patent error that may have crept in the Award or has taken a glaringly preposterous and legally unsustainable view, which would call for interference."*

20. She submitted that the Award passed by the learned Tribunal does not fall in the above categories.

21. She submitted that the appellant has also challenged the said judgment on the ground that the court does not have power to reduce the interest as granted by the learned Tribunal. Whereas, the Supreme Court in

Executive Engineer (R And B) v. Gokul Chandra Kanungo (Dead), has held that¸ it is a settled position of law that it is the discretion of the Arbitral Tribunal to award interest at a rate that it deems reasonable, and that the Court can exercise power under Article 142 of the Constitution of India to reduce the rate of interest. Further, an Arbitral Tribunal is duty bound to give cogent reasons when it determine the rate of interest as reasonable. It is also required to apply its mind to the facts of the case and decide whether the interest is payable on the whole or any part of the money.

22. She submitted that, similarly, in ***V4 Infrastructure Pvt Ltd v. Jindal Biochem Pvt Ltd***, ***2020:DHC:1866-DB*** this Court held that, "*In our opinion, the award of interest @ 18% p.a. is wholly unjustified and the same shocks our conscience and prompts us to intervene for the reasons discussed hereinafter"*. Therefore, the learned District Judge had the power to reduce the interest rate if it deemed fit and the analysis of the learned Tribunal that the 18% interest rate is exorbitant and is untenable in eyes of law and modified the said interest rate to 12%.

23. Ms Lakra submitted that, Clause 63 of the of GCC clearly state that the special conditions of the contract shall be deemed as "*Excepted Matters*" and decision of the Railway Authority shall be final. She also submitted that '*Excepted Matters*' shall stand specifically excluded from the purview of arbitration clause. She stated that the appellant had admitted in this appeal that the respondent had duly informed the learned Tribunal about the claims falling in the category of '*Excepted Matters*' and yet the learned Tribunal erroneously proceeded to award those claims. Therefore, the learned Tribunal erred in granting those claims that fell within the

category of '*Excepted Matter*' and learned District Judge has rightly set aside those claims.

24. She also submitted that the learned Tribunal is bound by the terms & conditions of the contract as well as GCC. Regrettably, the claims granted were beyond the provisions of the GCC & STC of contract.

25. In support of her submission, she has relied upon the judgments *viz* (i) ***DDA v. R. S. Sharma & Co. VII (2008) SLT 306,*** (ii) ***New India Civil Erectors Pvt Ltd v. Oil & Natural Gas Corporation, (1997) 11 SCC 75***.

26. She sought the dismissal of the appeal.

ANALYSIS AND FINDINGS

27. Having heard the learned counsel for the parties and perused the record, the short issue, which arises for consideration is whether the learned District Judge is justified in setting aside the award passed by the learned Tribunal in respect of Claim Nos.1,4,5,7 & 8 as well as in modifying the rate of future interest.

28. In so far as the Claim No.1 is concerned, the same was primarily for grant of cost of ₹1,00,000/- in favour of the appellant. The learned Tribunal, while dealing Claim No.1 has granted cost of ₹1,00,000/- for the following reasons:-

> *"Reasons of award: The claimant stated that from the very beginning the progress of the work was effected badly due to non availability of P-way material & site of work. There was mis planning of work, no required material was arranged before the execution of the work nor the work was*

short closed even after Aden/ Delhi accepted that there is no material and no scope of work left in the section and recommended to fore-close the work. But the respondent have 'adopted' unfair trade practice being a supra position and never close the work. And due to intermittent suspension/ abandonment of the work for a long period, the claimant had faced heavy losses of salaries to the staff etc., They further submitted that contract agreement was signed by both parties considering that both have equal rights but actually while dealing with this particular contract the respondent behaved in biased manner and took totally one-sided biased decision to cover up their misdeeds which seemed to be full hatred and with expressing their superior position.

The respondent miserably failed to provide essential P.way material & site of work and this is a breach of contract on the part of the respondent which resulted suspension of work for a pretty long period. The delay was totally attributable to the respondent. So they were dragged to the Arbitration forcefully which was not their destiny hence reasons given above are considered and an amount of 100000/- is awarded."

29. The learned District Judge disagreed with the said finding of the learned Tribunal by stating in paragraph no.26, as under:-

"26.Although, the Arbitrator has awarded Rs.1,00,000/- to the respondent holding that the respondent was forced to seek arbitration because of inability of the petitioner to take a rational and practical decision but the award of said sum is against clause 17-A and 61 (3) of GCC, which clearly provide that if the progress of work has been delayed by the act of Railways, it will grant the extension to the contractor and no compensation shall be payable to the contractor and the contractor shall have no claim to any payment of compensation or otherwise, howsoever, on account of any profit and advantage, which he might have derived from the execution of work. In the instant case, all the extensions were

> *granted under clause 17 A of GCC 1999 without any penalty and without PVC, which were duly accepted by the respondent / contractor. Clause 64 (6) of GCC 1999, which forms part of the contract also provides that cost of the arbitration shall be borne by the respective parties, which includes the fee of the Arbitrator. So, in view of specific bar under clause 64 (6) of GCC 1999, the respondent is not entitled to cost / compensation of Rs.1,00,000/- as awarded under claim no.1."*

30. The conclusion drawn by the learned Tribunal for granting ₹1,00,000/- is primarily on the ground that the appellant was forced to seek arbitration because of the inability of the respondent to provide P-way material, which delayed the execution of the contract. In fact, this resulted in the suspension of work for a long period. Whereas, the reasoning given by the learned District Judge is primarily that, in terms of Clauses 17A and 61(3) of the GCC, even if the progress of the work has been delayed by the acts of the respondent/Railway, the Engineer will grant extension of the contract and no other compensation shall be payable to the contractor. Also, the contractor shall not claim any payment of compensation or otherwise. The learned District Judge has also referred to the Clause 64(6) of the GCC, which according to the Court, forms part of the contract and also provides that the cost of arbitration shall be borne by the respective parties. The cost shall include the fee of the arbitrator.

31. In substance, the conclusion drawn by the learned District Judge was in view of the specific bar under Clause 64(6) of the GCC, the appellant /contractor is not entitled to the cost/compensation of ₹1,00,000/- as granted under the Claim no.1.

32. We are of the view that the learned District Judge is justified in holding so, in view of Clause 64(6) of the GCC, which is reproduced as under:-

> *"Clause 64.6: The cost of arbitration shall be borne by the respective parties. The cost shall inter alia include fee of the arbitrator (s) as per the rates fixed by the Railway Administration from time to time."*

33. Suffice to state when the contractual clause states that the cost of the arbitration shall be borne by the respective parties, which *inter alia,* include the fee of the learned Tribunal, the learned Tribunal could not have awarded the same contrary to the said provision.

34. In this regard, we may refer to the recent judgment of the Supreme Court in the case of ***Union of India & Ors. v. Larsen & Tubro Limited (L&T); 2026 INSC 203*** wherein though the Supreme Court was considering an issue whether the pre-award or *pendente* interest could have been granted as compensation when a contract expressly prohibits payment of such interest, the Court has held as under:-

> *"45. The provisions of the Act of 1996, including provisions contained in Section 31(7)(a) give paramount importance to the contract entered into between the parties and categorically restrict the power of an arbitrator to award pre-award/pendente lite interest when the parties have themselves agreed to the contrary. Thus, the AT cannot award pre-award/pendente lite interest,* ***even in the form of compensation,*** *in view of specific Clause 16(3) of GCC read with Clause 64(5) of GCC."*

35. The only submission of Mr. Haider in respect of this clause is that the interpretation of terms of contract lies within the domain of the learned

Tribunal and as such, the learned District Judge could not have interfered with the same. This submission of Mr. Haider is not appealing to us, as it is a settled position of law that, when it is clearly stipulated in the contract that the parties shall bear the cost of the arbitration, granting of cost as compensation is clearly impermissible. Hence, the challenge to Claim No.1 is rejected.

36. In so far as the conclusion drawn by the learned District Judge in respect of Claim No.4 is concerned, the same is towards '*expenditure incurred on maintaining the staff, T & P machinery etc. during the prolongation of the contract on account of the inability of the department to provide P-way material*.' The reasons given by the learned Tribunal can be summed up as under: -

> *"Reasons of award: The work was allotted to the claimant on 09.08.2004 but the work was suspended/abandoned for a pretty long period due to reasons totally attributable to the respondent. The respondent failed to provide required P.Way material and site of work. As such, in face of principles of equality and justice the claimant is entitled for recoupment of the extra expenditure incurred by them for overhead charges ie by salaries to staff and other overhead charges during the abandoned/suspension of contract. As explained above this is a breach of contract on the part of the respondent, as it would have been the case had the claimant delayed the work for such long period of time for reasons attributable to the claimant. Therefore without providing details of loss on account extra expenditure incurred by salaries to staff and other overhead charges and other resources, the claimant is entitled for compensation. There is nothing in the excepted matters which may come in the way of adjudication of the claim for salary and wages of the staff & machinery as claimed by the*

claimant during the suspension period. The excepted clauses 36 (1) and 61 (3) are not applicable to the instant dispute, because the suspension of contract exceeded 14 days for which clause 36(2) & clause 36(3) of GCC are applicable.

The contract under question remained suspended for a long time. As such contractor under clause 36(3) of GCC could have elected to treat the suspension as an abandonment of the contract by the Railway.

It is not in dispute that the respondent has extended time of completion for the reason attributable to the Railway Department. The respondent never imposed the condition that the claimant would not be entitled for the losses that they may suffer on account of abandonment/suspension of the work of the contract. It is also not disputed that during the extended period claimant deployed staff and machinery at site. With the strength of above averments, the claimant deserves to be compensated for the recoupment of the salary/wages paid to the employees deputed by the claimant & machinery deployed and had remained unutilised during the period of suspension /abandonment.

After hearing the arguments of both claimant & respondent and going through the documents produced before me, the claim is partly allowed as the respondents failed to provide the requisite P. Way materials to the claimant in time and there was delay on account of the respondent in this respect. The claimant had executed the work in time as per the availability of material and had to incur additional expenditure due to suspension of work for a long time. In view of this work was suspended/abandoned for a very long period from 03.02.2005 (initial date of completion) to 03.08.2011 (as reported by respondent vide letter dated 03.08.2011 that 41% work since have been completed & recommended for closure of work on administrative grounds). in view of above, it has been tentatively quantified as a Lamp sum amount of Rs. 9000/- per month as recoupment for the damages of the salary/wages paid to the employees deputed by the claimant *is considered an adequate compensation which comes to Rs.702000/- and therefore, Rs.702,000/- is awarded against this claim."*

37. The learned District Judge, on the above finding as held that: -

"31. In my view, the Arbitrator went beyond the terms & conditions of the agreement and GCC 1999 and awarded the said amount. In the instant case, the respondent vide letter dated 10.02.2006 had requested the petitioner to foreclose the contract and process the final addendum / corrigendum. Again vide letter dated 23.09.2008, it had requested for foreclosure of contract. It had even given no objection vide letter dated 13.03.2009 stating that it has no objection, if the contract be closed on administrative ground. It is not the case that after the period of extension, the respondent executed any work or deployed any labour. Its letter dated 10.02.2006 shows that it had requested the petitioner to foreclose the contract and process the final addendum I corrigendum. Admittedly, the petitioner did not foreclose the contract nor prepared the final bill but clause 33.00 of the Special Tender Conditions provides that no claim for idle labour, idle machinery and business losses is payable to the contractor. Clause 63 of GCC 1999 provides that the matters for which provision has been made in clauses B(a), 18, 22(5), 39, 43(2), 45 (a), 55, 55 A (5), 57, 57 A, 61 (1), 61 (2) and 62 (1) (b) of GCC or in any clause of the Special Conditions of Contract shall be deemed as 'excepted matters' and decisions of the Railway Authority thereon shall be final and binding on the contractor, provided further that 'excepted matters' shall stand specifically excluded from the purview of the arbitration clause and not be referred to arbitration. In the case of General Manager Northern Railway (GMNR) Vs. Sarvesh Chopra, 2002 (4) SCC 45 and Harsha Construction Vs. UOI (supra), it was held that in case a particular claim falls in the category of 'excepted matters', the same cannot be decided by the Tribunal. Arbitrator is a creature of

agreement and has to decide the disputes as per the terms & conditions of the contract and he cannot go beyond the same. Thus, in case any of the claims of the respondent is found to be in the category of 'excepted matters' under clause 63 of GCC 1999, it will be liable to be rejected being not maintainable / arbitrable. In the present case, admittedly the work remained suspended for more than three months, but the respondent is not entitled to extra cost, if any, incurred by it during the period of suspension of work since, the respondent failed to provide any record as to the payment of salaries / wages by it to its employees during the period of such suspension. Further, it is not understood why the respondent continued to hire the equipment / staff, when it had requested to foreclose the contract. I am of the view that if the respondent had hired / deployed any equipment / staff, it did it on its own peril and it is not entitled to any compensation. Further, this claims falls in the category of 'excepted matters', which are not arbitrable as provided under clause 63 of GCC.

32. As regards the contention that the Special Tender Conditions were not placed before the arbitrator and the court at the stage of entertaining the objections under Section 34 of the Act cannot call for the Special Tender Conditions, perusal of the arbitral record shows that the Special Tender Conditions and GCC 1999 were referred by the parties during the proceedings, judicial notice of which was taken by the arbitrator. The agreement specifically provides that the Special Tender Conditions and the GCC shall form part of the contract. Admittedly, Section 34 application would not ordinary require anything beyond the record as held in the case of Canara Nidhi Limited (supra) but if there is any matter which is relevant to determination of the issues arising under Section 34 (2) (a) of the Act, it may be brought to the notice of the court Clause 33.00 of Special Tender Conditions clearly provides that no claim for idle labour, ideal machinery and business loss is payable to the contractor/respondent. In the instant case, the said record was relevant for determination of the issue *arising out of this petition.*

33. As regards the contention that the respondent is entitled to damages on account of breach of contract and its right under Section 73 and Section 55 of the Indian Contract Act cannot be waived and that the contracted clauses which disentitle aggrieved party to the benefits of the above sections would be void being violative of Section 23 of the Contract Act as held in the case of Simplex Concrete Piles (India) Ltd (supra), in the case (supra), two judgments of the Supreme Court were referred i.e. Ramnath International Construction P. ltd vis Union of India, (2007) 2 SCC 453 where it was held that even if the employer/Union of India is at fault yet Clauses 11A to 11C bar the entitlement of the contractor to damages and Asian Tech Limited vis Union of India and Ors, (2009) 10 SCC 354 where it was held that the clauses 11A to 11C, prevent only the department from granting damages but it does not prevent the arbitrator from awarding damages which are otherwise payable by the employer on account of its breach of contract. It was observed in Simplex Concrete Piles (India) Ltd (supra) as under:

> *"In my opinion, if I look at the issue from both the micro and macro positions, keeping in focus the intendment of legislation called the Contract Act, then the judgment in the case of Asian Techs ltd can be said to laying down a law which would further the object and purpose of the Contract Act. I must hasten to add that I am still doubtful whether I am entitled to decide, the aspect that out of the two decisions of Supreme Court, which one is to prevail, therefore, my observations are strictly in terms of the limited parameters of the facts of the present case required to decide the aspect of the entitlement or the disentitlement to damages in view of the provisions of Section 55 and 73 of the Contract Act. I would with all due respect to the learned Senior counsel for the petitioner, would not venture further and would leave it finally for a larger Bench of this court or the Supreme*

> *Court itself to consider whether at all there is any conflict between the judgments of Ram Nath International and Asian Techs Ltd and if there is a conflict, the ratio of which of the two judgments ought to prevail."*
>
> *34. In the light of above observations in Simplex Concrete Piles (India) Ltd (supra) and the subsequent judgment of the Supreme Court in the case of Harsha Constructions vis Union of India, AIR 2015 SC 270, where it was held that if a nonarbitrable dispute is referred to an Arbitrator and even if an issue is framed by the Arbitrator in relation to such a dispute, in our opinion, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to the Arbitrator. In the instant case, the respondent authorities had raised an objection relating to the arbitrability of the aforestated issue before the Arbitrator and yet the Arbitrator had rendered his decision on the said "excepted" dispute. In our opinion, the Arbitrator could not have decided the said "excepted dispute", it is dear that what is to be seen is whether a particular claim falls in the category of excepted matter or not. In case, it falls in that category, same cannot be decided by the arbitrator who is a creature of the agreement and has to decide the dispute as per the terms and conditions of the contract."*

38. It may be stated here that the plea that the claim is '*Excepted Matters*', (under Clause 63 of the GCC) and hence, shall not be arbitrable was also urged before the learned Tribunal. The learned Tribunal overlooking the said objection has allowed the claim in favour of the respondent by awarding the sum of ₹7,02,000/-. The plea of Mr.Haider is also that the learned District Judge could not have rejected the claim, as awarded by the learned Tribunal, for the reason stated by us, that such a conclusion is beyond the scope of the judicial review under Section 34 of

the Act.

39. We must state here that Clause 63 of the GCC had come up for interpretation in the case of ***M/s. J. Sons Engineering Corporation Limited & Another (supra)*** which judgment has been relied upon by Mr. Haider, wherein one of us (V. Kameswar Rao, J) has held as under:-

> *"22. As noted above, the claims made by the respondent and allowed by the Arbitrator are primarily; the rescinding of the contract is illegal (claim No 1); expenditure on additional deployment of resources for completion of the work (claim No. 2); loss of profit (claim No. 3); refund of security amount (claim No. 5); interest (claim No. 8b); arbitration cost (claim No. 9). The clause 61 of the General Conditions of Contract relates to the termination effected for the reasons attributable to the Railways. Clause 62 relates to determination of contract owing to the default of the contractor. It is an undisputed fact that in the notice dated April 26, 2004, the reasons given for the proposed action was that the respondent had failed to abide by the instructions issued to commence the work/to show adequate progress of work. The reasons are found mentioned in clause 62(vii) of the General Conditions of Contract. The reply to the notice was given by the respondent on May 4, 2004. Vide letter dated May 7, 2004, the petitioners issued another notice of 48 hours under clause 62 of the G.C.C. on expiry of which period, the contract was to stand rescinded. The notice dated May 7, 2004, according to the respondent, was received on May 11, 2004, after the petitioners had rescinded the contract on May 10, 2004. The respondent made a representation dated May 21, 2004 against the letter dated May 10, 2004. As noted from the petition, the petitioner No. 2 addressed a letter dated September 10, 2004 suggesting a panel of Arbitrators seeking consent of the respondent for constitution of an Arbitral Tribunal. The demand for arbitration and the constitution of an Arbitral Tribunal was under clause 64 of the G.C.C. There is*

nothing on record to suggest that the petitioners had considered the respondent's representation and notified the decision in terms of clause 63 of the G.C.C. In the absence of a decision under clause 63, the bar under clause 63 would not apply. In other words, all matters related to the clauses mentioned in clause 63 would be treated as "excepted matters" if a decision is taken by the Railways. The necessary corollary is the claims made by the respondent cannot be deemed as „excepted matters". I note, the petitioners had taken a Ground (A) in the petition as the claims being "excepted matters". The petitioners have not averred nor placed on record any notification, notifying their decision on the respondent's representation as contemplated in clause 63 of the G.C.C. The decision dated May 10, 2004 would be a decision under clause 62 and not under clause 63 Suffice to state, after a decision under clause 62, the petitioners had taken a decision under clause 64 without resorting to clause 63. Suffice to state, the claims are not "excepted matters". Insofar as the judgments relied upon by the learned counsel for the petitioners are concerned, in NTPC Ltd. (supra), the Division Bench has held, if the Arbitrator allows a claim covered by an "excepted matters", the award would not be legal merely because the claim was referred to by the Court to Arbitration and the award would be liable to be set aside on the ground of error apparent on the face of the award or as vitiated by the legal misconduct of Arbitrator. Insofar as the judgment in Videsh Sanchar Nigam Ld. (supra) is concerned, therein also, this Court has held that the adjudication of and ignorance of various crucial and material documents by the Arbitrator in proper award on items was barred being "excepted matters", therefore, made beyond jurisdiction and contrary to contractual terms. Award, therefore, was directed to be set aside. In view of the facts of this case and my conclusion above, the judgments referred to by the learned counsel for the petitioners would have no applicability."

40. The above clearly reveals that the plea of '*Excepted Matters*' shall be sustainable only if the decision is taken by the Railways in respect of those matters. The necessary corollary is that, in the absence of a decision by Railways, Clause 63 of the GCC, would not be applicable. Nothing has been placed before us that the Railways had taken a decision in respect of the claims, which became the subject matter of the arbitration. If the same had been rejected by the Railways, to that extent, they having attained finality, were not arbitrable in view of the Clause 63 of the GCC. It is not such a position here as no decision has been taken by the Railways. In any case, the Supreme Court in respect of '*Excepted Matters*' has held that, even if certain matters are excluded from arbitration, they could not be excluded from judicial review as vacuum of remedy is oppose to rule of law.

41. Having noted the aforesaid position, we now proceed to decide whether the claim as granted by the learned Tribunal, has been rightly rejected by the learned District Judge.

42. Suffice to state that Clause 17A and 61(3) of the GCC being relevant, are reproduced as under: -

> *"17–A **Extension of Time in Contracts**: Subject to any requirement in the contract as to completion of any portion or portions of the works before completion of the whole, the Contractor shall fully and finally complete the whole of the works comprised in the contract (with such modifications as may be directed under conditions of this contract) by the date entered in the contract or extended date in terms of the following clauses:*
> *(i) Extension due to Modification: If any modifications have been ordered which in the opinion of the Engineer have*

materially increased the magnitude of the work, then such extension of the contracted date of completion may be granted as shall appear to the Engineer to be reasonable in the circumstances, provided moreover that the Contractor shall be responsible for requesting such extension of the date as may be considered necessary as soon as the cause thereof shall arise and in any case not less than one month before the expiry of the date fixed for completion of the works.

(ii) Extension for Delay not due to Railway or Contractor: If in the opinion of the Engineer, the progress of work has any time been delayed by any act or neglect of Railway's employees or by other Contractor employed by the Railway under Sub-Clause (4) of Clause 20 of these Conditions or in executing the work not forming part of the contract but on which Contractor's performance necessarily depends or by reason of proceeding taken or threatened by or dispute with adjoining or to neighbouring owners or public authority arising otherwise through the Contractor's own default etc. or by the delay authorized by the Engineer pending arbitration or in consequences of the Contractor not having received in due time necessary instructions from the Railway for which he shall have specially applied in writing to the Engineer or his authorized representative then upon happening of any such event causing delay, the Contractor shall immediately give notice thereof in writing to the Engineer within 15 days of such happening, but shall nevertheless make constantly his best endeavours to bring down or make good the delay and shall do all that may be reasonably required of him to the satisfaction of the Engineer to proceed with the works. The Contractor may also indicate the period for which the work is likely to be delayed and shall be bound to ask for necessary extension of time. The Engineer on receipt of such request from the Contractor shall consider the same and shall grant such extension of time as in his opinion is reasonable having regard to the nature and period of delay and the type and quantum of work affected thereby. No other compensation

shall be payable for works so carried forward to the extended period of time; the same rates, terms and conditions of contract being applicable as if such extended period of time was originally provided in the original contract itself.

(iii) Extension for Delay due to Railways: In the event of any failure or delay by the Railway to hand over the Contractor possession of the lands necessary for the execution of the works or to give the necessary notice to commence the works or to provide the necessary drawings or instructions or any other delay caused by the Railway due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the contract or alter the character thereof or entitle the Contractor to damages or compensation therefor, but in any such case, the Railway may grant such extension or extensions of the completion date as may be considered reasonable.

xxx xxx xxx xxx

Clause 61 (3): The contractor shall have no claim to any payment of compensation or otherwise, howsoever on account of any profit or advantage, which he might have derived from the execution of the work in full but which he did not derive in consequence of determination of contract."

43. The above clearly provides that, if the progress of the work has been delayed by the act of the Railways, the engineer will grant extension to the contractor, and no compensation shall be payable to the contractor. The contractor shall have no right to claim any payment of compensation or otherwise, on account of any profit or advantage, which he might have derived from the execution of the work. There is no dispute that, extensions of the work were granted, but because of the Clause 17A of the GCC, the same was without any penalty or without any price variation, which extensions were duly accepted by the appellant.

44. It may also be necessary to refer to Clause 33 of the Special Tender Conditions of Instructions to Tenderer/s, which has a bearing on the issue, as under:-

> *"Clause 33: No claim for idle labour and / or idle machinery etc or any account will be entertained. Similarly, no claim shall be entertained for business loss or any such loss."*

45. A plain reading of the above clauses would clearly reveal that, even if the progress of work was delayed by the act of the Railways, the appellant is only entitled to extension of contract, but no compensation shall be payable to the appellant, which also includes the claim for idle labour and / or idle machinery or on any account. The learned Tribunal has not considered the above Clause while allowing the said claim. To that extent, the finding is perverse. If the above clauses, bar the grant of cost on account of idle labour and/ or idle machinery, the learned Tribunal could not have granted the claim contrary to the contract.

46. Hence, the challenge to the conclusion drawn by the learned District Judge in respect of Claim No. 4 is liable to be rejected, as the learned Tribunal in view of clear bar under the contract, could not have granted the claim. As such, the conclusion drawn by the District Judge is covered by the ratio of the judgment of the Supreme Court in the case of ***Larsen & Tubro Limited (supra)***.

47. In so far as the Claim No.5 is concerned, it is for the interest on payment held up of ₹2,92,000/- due to not sanctioning corrigendum / addendum and holding of ₹1,00,000/- on account of security money for

47.5 months, which has been awarded by the learned Tribunal with simple interest @ 12% pa and quantified as ₹3,35,160/-.

48. The learned Tribunal has given the following reasoning for awarding this sum:-

> *"Reasons of award: The Respondent had to make all payments due in time as per the contract agreement le by the time of expiry of six months from date of completion of work which has been considered as 30.09.2017. It is prime obligation of respondent but the respondent failed to do the payment in time. It is a breach of contract part of respondent. As such pre interest up to the declaration of award is awarded of final bill after six months of completion i.e. Rs 366596/. Therefore, interest on payments held up due to not sanctioning of final corrigendum/addendum for period of 10 year 5 months w.e.f. 01.04.2008 to 30.08.2018 a simple interest @12% PA is considered, which comes to Rs.458245/- but Rs.335160/ is awarded against this claim"*

49. The learned District Judge has given following reasoning in respect of claim no.5, to set aside the award of this claim by the learned Tribunal:-

> *"35. Qua claim no. 5 i.e. interest on the payments held up due to non sanctioning / issuing addendum / corrigendum and withholding the security deposit and earnest money, it was held by the Arbitrator that the petitioner had to make all payments as per the agreement i.e. after the expiry of six months from the date of completion of work (in this case, the Arbitrator considered the date of completion as 30.09.2017) but it failed to make the payment in time and committed the breach. As such it is entitled to pre interest upto the declaration of award on the final bill after six months of completion and thus, entitled to interest for a period of 10 years and 5 months w.e.f. 01.04.2008 to 30.08.2018 @ 12% per annum.*
>
> *36. Section 31 (7) (a) of the Act provides that interest is payable to the other party at such rate as it deems*

reasonable on whole or any part of the money. If there is prohibitory clause in the agreement barring awarding of interest, the interest cannot be awarded on the amount claimed. Clause 16 (3) of GCC 1999 forming part of the contract provides that no interest will be payable on the earnest money and security deposit and the amounts payable to the contractor under the contract. Clause 64 (5) of GCC 1999 provides that where the arbitral award is for payment of money, no interest shall be payable on whole or part of the money for any period till the date on which, the award is made. In the case of Union of India Vs. Pradeep Vinod Construction Co., Appeal No. 2099/2014, decided on 03.08.2017 it was held that non payment of interest contemplated between the parties under clause 16 is exclusively limited to the component of earnest money and the security deposit and nothing else. On a plain reading of clause 16 (3) of GCC, it is clear that the respondent is not entitled to interest on the amount of earnest money and the security deposit and the amount payable to be calculated under the contract. In the case of Chitranjan Maity Vs. UOI (supra), it was held that if the agreement prohibits award of interest, the Arbitrator cannot award interest for the said period. Similar view was expressed in the case of Sayeed Ahmed & Co. Vs. State of UP (2009) 12 SCC 26. In the case of Ashi Limited Vs. UIO, 124 (2005) DLT 329, it was held that in regard to pre-award period, interest has to be awarded as specified in the contract and in the absence thereof, then as per the discretion of the Arbitral TribunaL In regard to post-award period, interest is payable as per the discretion of the Arbitral Tribunal.

37. Although the reasoning given by the Arbitrator qua allowing the interest for the pre-award period has logic but since in the instant case, there is not only the clause 16 (3) of GCC 1999 but also the clause 64 (5) of GCC, which clearly prohibit grant of interest, so in view of specific bar as provided under the above clauses of GCC 1999 forming part of the contract and the case laws supra, the respondent would not be entitled to interest."

50. While granting the amount under Claim No.5, the learned Tribunal has also granted interest for the period from 01.04.2008 and 30.08.2018; whereas the date of the award is 26.09.2018. In that sense, the Tribunal has granted pre arbitration as well as *pendente* interest. The Clause 64(5) of the GCC, which state, '*where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which, the award is made*', clearly bars the grant of interest on whole or any part of the money for any period till the date on which, the award is made. This Clause specifically deals with the grant of interest by the learned Tribunal till the date of award. The payment of interest is the discretion of the learned Tribunal, but is only payable for the period post award.

51. The Supreme Court in the case of ***Garg Builders v. Bharat Heavy Electricals Limited, 2021 INSC 606,*** has held as under:-

> *"10. We have carefully considered the submissions of the learned counsel for both the parties made at the Bar. The law relating to award of pendente lite interest by Arbitrator under the 1996 Act is no longer res integra. The provisions of the 1996 Act give paramount importance to the contract entered into between the parties and categorically restricts the power of an arbitrator to award pre-reference and pendente lite interest when the parties themselves have agreed to the contrary. Section 31(7)(a) of the 1996 Act which deals with the payment of interest is as under :*
> *"31(7)(a) Unless otherwise agreed by the parties, where and insofar 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."

11. It is clear from the above provision that if the contract prohibits pre-reference and pendente lite interest, the arbitrator cannot award interest for the said period. In the present case, clause barring interest is very clear and categorical. It uses the expression "any moneys due to the contractor" by the employer which includes the amount awarded by the arbitrator.

12. In Sayeed Ahmed and Company v. State of Uttar Pradesh & Ors.(2009) 12 SCC 26 this Court has held that a provision has been made under Section 31(7)(a) of the 1996 Act in relation to the power of the arbitrator to award interest. As per this section, if the contract bars payment of interest, the arbitrator cannot award interest from the date of cause of action till the date of award.

13. In Sree Kamatchi Amman Constructions v. Divisional Railway Manager (Works), Palghat & Ors.(2010) 8 SCC 767 it was held by this Court that where the parties had agreed that the interest shall not be payable, the Arbitral Tribunal cannot award interest between the date on which the cause of action arose to the date of the award.

14. Bharat Heavy Electricals Limited v. Globe Hi-Fabs Limited (2015) 5 SCC 718 is an identical case where this Court has held as under :

> *"16. In the present case we noticed that the clause barring interest is very widely worded. It uses the words "any amount due to the contractor by the employer". In our opinion, these words cannot be read as ejusdem generis along with the earlier words "earnest money" or "security deposit"."*

15. In Sri Chittaranjan Maity v. Union of India (2017) 9 SCC 611 it was categorically held that if a contract prohibits award of interest for pre-award period, the arbitrator cannot award interest for the said period.

16. <u>Therefore, if the contract contains a specific clause which expressly bars payment of interest, then it is not open for the arbitrator to grant pendente lite interest. The judgment on which reliance was placed by the learned counsel for the appellant in Ambica Construction (supra) has no application to the instant case because Ambica Construction was decided under the Arbitration Act 1940 whereas the instant case falls under the 1996 Act</u>. This has been clarified in Sri Chittaranjan Maity (supra) as under :

> *"16. Relying on a decision of this Court in Ambica Construction v. Union of India, (2017) 14 SCC 323, the learned Senior Counsel for the appellant submits that mere bar to award interest on the amounts payable under the contract would not be sufficient to deny payment on pendente lite interest. Therefore, the arbitrator was justified in awarding the pendente lite interest. However, it is not clear from Ambica Construction (supra) as to whether it was decided under the Arbitration Act, 1940 (for short "the 1940 Act") or under the 1996 Act. It has relied on a judgment of Constitution Bench in State of Orissa v. G.C. Roy, (1992) 1 SCC 508. This judgment was with reference to the 1940 Act. In the 1940 Act, there was no provision which prohibited the arbitrator from awarding interest for the prereference, pendente lite or post-award period, whereas the 1996 Act contains a specific provision which says that if the agreement prohibits award of interest for the pre-award period, the arbitrator cannot award interest for the said period. Therefore, the decision in Ambica Construction (supra) cannot be made applicable to the instant case."*

17. The decision in Raveechee and Company (supra) relied on by the learned counsel for the appellant is again under the Arbitration Act 1940 which has no application to the facts of the present case.

18. Having regard to the above, we are of the view that the

High Court was justified in rejecting the claim of the appellant seeking pendente lite interest on the award amount."

(emphasis supplied)

52. Even in the recent judgment of the Supreme Court in the case of ***Larsen & Tubro Limited (supra)***, the Court has dealt with the same position of law, which we have reproduced in paragraph no.34 above.

53. The Supreme Court in the case of ***Union of India v. Bright Power Projects (India) (P) Limited, (2015) 9 SCC 695,*** has similarly held as under:-

> *"11. This Court also considered Section 31(7)(a) of the 1996 Act. It is specifically observed and held that Section 31(7) of the 1996 Act, by using the words "unless otherwise agreed by the parties" categorically specifies that the arbitrator is bound by the terms of the contract insofar as award of interest from the date of cause of action to date of the award is concerned. It is further observed and held that where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest. Thus, the aforesaid decision of a three-Judge Bench of this Court is the answer to the submission made on behalf of the respondent that despite the bar under Clause 16(2) which is applicable to the parties, the Arbitral Tribunal is not bound by the same. Therefore, the contention raised on behalf of the respondent that dehors the bar under Clause 16(2), the Arbitral Tribunal independently and on equitable ground and/or to do justice can award interest pendente lite or future interest has no substance and cannot be accepted. Once the contractor agrees that he shall not be entitled to interest on the amounts payable under the contract, including the interest upon the earnest money and the security deposit as mentioned in Clause 16(2) of the agreement/contract between the parties herein, the*

arbitrator in the arbitration proceedings being the creature of the contract has no power to award interest, contrary to the terms of the agreement/contract between the parties and contrary to Clause 16(2) of the agreement/contract in question in this case."

(emphasis supplied)

54. Hence, the challenge to the order of the learned District Judge on Claim No.5, is clearly unsustainable and is rejected.

55. In so far as the order on Claim No.7 is concerned, the same is setting aside the Claim of grant of 10% loss of profit on the remaining value of the work left over work, i.e., on ₹10,84,080/- not executed due reasons attributable to the Railways.

56. Suffice to state that the learned Tribunal has awarded ₹1,08,408/-. The learned District Judge has set aside the award on the ground that it is "*Excepted Matter*". The reasoning by us with regard to the Claim No.4 wherein we have held that the Clause 63 of the GCC, which related to "*Excepted Matter*" shall not be applicable as no decision was taken by the Railways, [In ***M/s. J. Sons Engineering Corporation Limited & Another (supra)***]. Even assuming for a moment that the Claim is arbitrable, Clause 61(3) of the GCC, which has already been reproduced above, clearly stipulates that the contractor shall have no claim on any payment or compensation or otherwise, howsoever, on account of any profit or advantage, which he might have derived from the execution of the work in full, but which he did not derive in consequence of the determination of the contract, will be a bar for the learned Tribunal to grant the same. The conclusion drawn by the learned District Judge is justified, and hence, the

challenge to the order of the learned District Judge on Claim No.7, is rejected.

57. In so far as the Claim No.8 is concerned, the same is relatable to interest @ 24% PA and @ 12% PA on the amount awarded against Claim No.4. The learned Tribunal has granted ₹5,96,700/- by giving the following reasoning:-

> *"Reasons of award: After hearing the arguments of both claimant and respondent and going through the documents provided before the tribunal, the arbitrator is of the opinion that simple interest @ 12% per annum becomes due to the claimant from the date 03.08.2011 (when the respondent reported that 41% work has been completed and recommended for foreclosure of work) to 30.08.2018. Hence, simple interest @ 12% p.a. on Rs. 702000/- ie the amount of claim no.4, which becomes to Rs.596700/-is genuine and considered. Hence the amount of Rs.5,96,700/- is awarded against this claim."*

58. The learned District Judge has set aside the same, while giving following reasoning:-

> *"40. It has already been held in paras 36 and 37 that if the agreement prohibits award of interest, the Arbitrator cannot award pendente lite interest as held in the case of Chitranjan Maity Vs. UOI (supra), Sayeed Ahmed & Co. Vs. State of UP (supra) and Ashi Limited Vs. UOI (supra), which inter alia provide that in regard to pre-award period, interest has to be awarded as specified in the contract and in the absence thereof then as per the discretion of the Arbitral Tribunal. In the instant case, the contract does not provide the award of interest on pre-award period. So, the interest pendente lite is not payable to the respondent."*

59. We agree with the said conclusion of the learned District Judge,

moreso, in view of our finding with regard to Claim No.5 above, as the interest has been granted for the period 03.08.2011 to 30.08.2018, for the same reason as stated by us, in paragraph 50 above, while dealing with the Claim No.5, in as much as, the learned Tribunal could not have granted pre-arbitration and *pendente* interest in view of the express bar in the contract.

60. Mr.Haider, has relied upon the decisions in the case of ***Larsen Air Conditioning and Refrigeration Company (Supra)***; ***Himachal Joint Venture (Supra); Simplex Concrete Piles (India) Ltd. (Supra)***; ***Canara Nidhi Limited (Supra); Ssangyong Engineering and Construction Co. Ltd. (Supra); Venture Global Engineering LLC and Ors. (Supra); Renusagar Power Co. Ltd. (Supra)*** and ***M/s Pradeep Vinod Construction Co. (Supra)*** in support of his contentions. Most of the decisions are on the scope of the judicial review in a challenge to the arbitral award under Section 34 of the Act. We are of the view that these decisions have no applicability in the facts and in view of our findings above.

61. In view of aforesaid discussion, present appeal being devoid of merits, is liable to be dismissed. It is ordered so. The pending application is also dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

JULY 15, 2026
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