2026:DHC:6902-DB

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

\# **CNR No.DLHC010159242024**

% Judgment reserved on*: 23.07.2026*

Judgment delivered on*: 20.08.2026*

Judgment uploaded on*: As per Digital Signature~*

\+ **FAO(OS)(COMM) 65/2024**

AXIS BANK LTD .....APPELLANT

versus

UV ASSETS RECONSTRUCTION CO .....RESPONDENT

Advocates who appeared in this case

For the Appellant : Mr. Amit Anand Tiwari, Sr Advocate with Mr. Arjun Garg, Ms. Devyani Gupta, Mr. Saaransh Shukla, Advocates.

For the Respondent : Mr. Dhruv Dewan and Mr. Yajur Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO, J.

1. The appellant has filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (the Act) challenging an order dated 13.02.2024 passed by the learned Single Judge in OMP(COMM) No. 89/2023 impugning an arbitral award dated 19.12.2022.

FACUTAL BACKGROUND

2. The appellant is a bank that had assigned the accounts of Agro Dutch Industries Limited (hereinafter referred to as 'ADIL' and 'the borrower' interchangeably) to the respondent by way of an agreement dated 26.09.2014 (Assignment Agreement). As per the said agreement, the appellant assigned *inter alia*, all its rights, title, interest in financing documents, and all agreements, deeds, and documents related to the borrower, in favour of the respondent.

3. Credit facilities were provided by the appellant to the borrower, which underwent Corporate Debt Restructuring in September 2009. The facilities included packing credit facilities, in respect of which the appellant availed a Whole Turnover Packing Credit Guarantee (Pre-Shipment) and Whole Turnover Packing Credit Guarantee (Pre-Shipment) from the Export Credit Guarantee Corporation of India Limited (ECGC). Under the facilities, in the event of non-receipt of export proceeds by the borrower, the appellant would be entitled to file a claim with ECGC. On 31.07.2011, the account of the borrower was classified as a non-performing asset by the appellant bank. On 29.06.2012, a claim was filed by the appellant with ECGC, pursuant to which, a sum of Rs. 4,55,05,457/- was received by the appellant from ECGC. Through subsequent communications, it was discovered by the respondent that although the said amount had been received by the appellant from ECGC on 28.09.2013, an amount of Rs. 3,89,05,457/- was appropriated towards the dues of the borrower on 30.09.2014.

4. The respondent sought the payment of the ECGC claim amount from the appellant under the Assignment Agreement and the same was refused by

the appellant, leading to the commencement of arbitration proceedings between the parties.

5. The learned Arbitrator decided the claims by way of the award dated 19.12.2022 and granted the respondent an amount of Rs.3,89,05,457/- with interest at the rate of 12% *per annum* from the date of the award till the date of payment/realisation. It is the challenge to this award that was rejected by the learned Single Judge by way of the impugned judgment.

SUBMISSIONS ON BEHALF OF THE APPELLANT

6. Mr. Amit Anand Tiwari, the learned senior counsel for the appellant submitted at the outset that the learned Single Judge erred in not appreciating that the award is in contravention of the public policy of India inasmuch as the learned Arbitrator has ignored the terms and conditions of the Assignment Agreement and other material facts.

7. He stated that the Assignment Agreement whereby the appellant had assigned the financial assets to the respondent specifically provided for a cut-off date in terms of Clause 1.1(f), which reads as under:-

> *"Clause 1.1(f)*
> *Cut-off Date means the date of offer i.e., 18.09.2014, being the date with effect from which (including that day), all economic benefits pertaining to the Loans including all realizations and recoveries, If any, made on and after said date shall be for the benefit of the Assignee and shall be passed on to the Assignee""*

8. The case of the appellant is that no dues were received in the loan account after the cut-off date of 18.04.2014. The entries in the accounts are merely entries / adjustments in books and are not an indication of money

being received after the cut-off date. He stated that the flow of money can be understood in the following manner:-

(1) The proceeds of ECGC claim were remitted by the ECGC on 28.09.2013 and was initially parked in a transit account of the appellant bank being "*SL-FUNDS IN TRANSIT*";

(2) The money was then transferred to partition type account being "*SL-ECGC CLAIMS SETTLED*" on 30.09.2013, in view of the circular dated 27.02.2008;

(3) The Assignment Agreement was executed between the parties on 26.09.2014 whereby the account of the borrower was assigned in favour of the respondent *in lieu* of payment of aggregate consideration of Rs. 4 crore;

(4) On 30.09.2014, various entries were made in the accounts maintained by the appellant for the purpose of effecting closure. The loan account was already assigned to the respondent. The adjustment of the amount received from ECGC i.e. Rs. 3.86 crore is also towards the said book entries and is not an actual remittance/ recovery of the loan after the cutoff date. As such, there is no receipt after 18.09.2014.

9. It is submitted that in the present case, as there is no recovery or realisation towards the loan account after cut-off date, i.e. 18.09.2014, the finding of the learned Arbitrator in this regard is contrary to the terms 'recovery' and 'realisation'. The book entries are for account purposes and can neither be realisation nor recovery. As such, the award is perverse and contrary to the provisions of the contract.

10. Mr. Tiwari stated that it is an undisputed fact that entitlement to receive any recoveries and realisations is only after 18.09.2014.

Accordingly, only the amounts recoverable after 18.09.2014 are relevant to the present dispute. As the respondent has not fulfilled this condition, it is not entitled to claim the ECGC amount as admittedly the said amount was remitted to the bank by ECGC much prior to the cut-off date.

11. It is also contended that the ECGC amount was not received on account of loan. On the date of assignment, the loan account was transferred to the respondent and all entries become internal account adjustments. The terms and conditions of ECGC as reflected in its letters dated 26.09.2013 also support the stand of the appellant regarding the flow of money and also that there will not be any change in the outstanding amounts. It is for this reason, that the assignment value was not reduced. In fact, there is no change in the outstanding dues, as the money received from ECGC is in the nature of insurance.

12. He submitted that the award is perverse in holding that the money that was received was for and on behalf of the borrower. This finding is not only erroneous, but also contrary to the regime governing the scheme and as such, against the public policy of India. He reiterated that the money received from the ECGC was merely an insurance to mitigate the losses suffered by the bank and not for the benefit of the assignee at all. The learned Arbitrator, despite recording the submission of the appellant that the ECGC money is meant for the benefit of the bank, and not for the borrower in paragraph (xv) and (xvi) of the award, went on to hold that it is an admitted fact that the receipt of money is for the benefit of borrower. Such a finding contrary to the specific submission recorded, is perverse and untenable.

13. It is stated that this finding is also contrary to the RBI Master Circular dated 02.07.2012, wherein paragraphs 2.6.2 and 2.6.3 contemplate that the ECGC schemes are to the benefit of banks alone, to the extent that banks are able to recover their outstanding amounts from the borrower, and it is in fact required to be paid back proportionately on recovery. This is also evident from the following terms of the ECGC letters dated 26.09.2013:

i. Clause 1(i) which requires the money not to be credited to the account of the exporter unless the amount due is fully recovered or written off.

ii. Clause 1(ii) which provides that the recoveries made after the filing of the claim but prior to the remittance should be sent to ECGC immediately.

iii. Clause 1(iii) which provides that all recoveries made by the bank under this account should be shared with it in the same proportions in which the claim is being settled.

iv. Clause 4 which provides that ECGC's share of recovery should be sent immediately after the realisation of the proceeds.

14. He has submitted that Section 28 of the Act warrants that the Tribunal must decide the dispute in accordance with substantive laws in force in India and in accordance with the terms of the contract, taking into account the usage of trade applicable to the transactions. Taking a post assignment book entry, as post cut-off date recovery, in disregard of Clause 1.1 of the Assignment Agreement, the RBI Master Circular and letters of ECGC, are not in conformity with Section 28 of the Act and makes the award patently illegal.

15. He stated that the learned Arbitrator has also failed to deal with Clause 1 (g) and Clause 5(f) of the Assignment Agreement which makes due diligence a sacrosanct contractual obligation of the respondent. In fact, the finding in the award that due diligence cannot be a defence is contrary to the specific terms of the agreement between the parties and also to the settled position of law that due diligence means reasonable diligence. In fact, the learned Arbitrator has reversed the burden to disclose on the appellants; whereas as per Clause 5(f) of the Assignment Agreement, it was the duty of the respondent to do their diligence. It is apparent that when financial institutions examine any proposal for loan, advance or a similar facility, it is incumbent on them to perform due diligence so as to study the viability of the proposed enterprise. He contended that thus, the learned Arbitrator could not have given weight to the respondent's averments regarding ignorance about the actual state of financial position of ADIL with regards to ECGC claims. In this regard he has referred to the judgment in ***Anuj Jain (Jaypee Infratech) v. Axis Bank Ltd. (2020) 8 SCC 401;*** *[Para 29.1]*.

16. Additionally, he stated that the learned Arbitrator failed to appreciate that the basic notions of due diligence, which is the idea of constructive knowledge and to do more than what passes as enquiry, emanates from the facts which are disclosed. Reliance in this regard has been placed on the judgments in the cases of ***Chander Kanta Bansal v. Rajinder Singh Anand, (2008) 5 SCC 117; Mohd. Nurul Hooda v. Bibi Raifunnisa, (1996) 7 SCC 767; Dilboo v. Dhanraji, (2000) 7 SCC 702;*** and ***J.Samuel v. Gattu Mahesh, (2012) 2 SCC 300***. He has contended that the lack of due diligence in the present case can be gathered from the following:-

(1) All documents and accounts were given for inspection;

(2) Deduction of ECGC premium is evident from the bank statement;

(3) Original loan documents and other related documents were handed over in the year 2014 itself to the respondent;

(4) Preliminary Information Memorandum (PIM) provided by the appellant to the respondent contains a categorical statement that '*Overdues in current account of due to charging ECGC premium*'.

17. That apart, he stated that the definition of '*loan*' under Clause 1(i) of the Assignment Agreement excludes only such amounts as have actually been paid by the borrower prior to the cut-off date. It is an admitted fact that the amount received by the bank from ECGC was not actually paid by the borrower and hence, could not have been excluded from the definition of '*loan*'.

18. He stated that the learned Arbitrator having held that the conditions imposed by the ECGC do not bind the respondent, which is an asset reconstruction company, could not have allowed the claim of the respondent since it was not a party to the contractual agreement between the appellant and the ECGC. Admittedly, the respondent has no privity of contract with the ECGC. Thus, cannot claim any right over the money received by the bank from ECGC, as the same is not a part of any financial assets of the borrower.

19. That apart, it is his averment that despite the learned Arbitrator himself recording that respondent having been paid Rs. 4 crore for assignment and having recovered only Rs. 3.89 crore as ECGC money, the appellant's consideration for the loan exceeded by about Rs. 11 lakh, did not reconcile or solve the issue.

20. It is also contended that the learned Single Judge has failed to appreciate that the learned Arbitrator has not properly dealt with the issues framed and has rendered contradictory findings in relation to the closing of accounts upon assignment and settlement of claims with ECGC. The accounting method explained by the appellant reveals that the loan account never ceased to exist in the books of the appellant and the transfer of monies on 30.09.2014 was merely a book entry and the bank has shared the recovery accordingly with ECGC as required.

21. According to Mr. Tiwari, it is evident from the aforesaid that the ECGC money is not meant at all for the borrower, and merely because the money is received would not mean that the bank would halt or slow down the recovery of the money which is evident not only from the aforesaid clauses but also from paragraph 2.6.3 of the RBI Master Circular dated 02.07.2012. In the present case, assuming that the appellant bank had not decided to provide the loan to the respondent, but initiated proceedings for recovery and was successful in recovering the dues, ECGC would require return of the entire amount paid by them. Though this submission was specifically raised before the learned Arbitrator, it has not been considered at all, which, according to him, makes the award run contrary to the basic notions of justice.

22. He has also submitted that paragraph (xxii) of the award holds that after the Assignment Agreement, the loan account ceased to exist in the books of respondent. Though he has disagreed with this finding, stating that it is not in accordance with the accounting methods as explained during the course of the submissions, Mr. Tiwari stated that on the other hand, in paragraph (xxiv) of the award, the learner Arbitrator holds that the money

though received in the General Ledger Account on 28.09.2013, was credited to the loan account on 30.09.2014, i.e., after the cut-off date. If the loan account ceased to exist as held in paragraph (xxii) of the award, there was no occasion or possibility for the money to be credited in the said account on 30.9.2014. The learned Arbitrator did not appreciate that accounting methods revealed that the loan account did not cease to exist in the books as various book entries were still required to be made even after the assignment. Further, transfer of money in the account on 30.09.2014 is only a book entry and the actual amount already received by the appellant on 28.09.2013. In any event, he stated that the findings are contradictory and mutually destructive.

23. Mr. Tiwari also submitted that the arbitral proceedings were not maintainable in view of pendency of the proceedings with respect to the same subject matter before the National Company Law Tribunal (NCLT), Chandigarh. However, the learned Arbitrator has completely overlooked specific arguments raised by the appellant on Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (IBC). On one hand, the submission is noted in the respondent's arguments by the learned Arbitrator, but on the other hand the same is not discussed at all in the Findings/Reasons part. It was the argument of the appellant that the language of Section 60(5(c) is very wide and would encompass any question of law or fact which arises in relation to the insolvency proceedings. The question with regard to the ECGC money is a question of law as well as facts, and was squarely raised before the NCLT. Hence the arbitration proceedings could not have continued. He submitted that the award is therefore perverse and in violation of the principles of natural justice as specific submissions raised have not

been considered. The learned Arbitrator came to a completely incorrect conclusion that the counsel for the appellant did not press the point further with regard to maintainability. However, the issue was never given up by the appellant and a specific submission with regard to Section 60(5)(c) was raised. Thus, to arrive at such a finding is erroneous. Even otherwise, such non-consideration of relevant law and submissions is in conflict with the most basic notions of justice. The learned Arbitrator has only dealt with Section 63 of the IBC, and has concluded that the present arbitration cannot be kept at abeyance and any award passed would not bind the said party, when evidently the said remedy sought by the respondent would eventually affect and prejudice the rights of the appellant against whom the same recovery is sought by the Committee of Creditors in IBC proceedings. As such, the conclusion drawn by the learned Arbitrator on the issue of maintainability is patently illegal in view of the wide language of Section 60 (5) (c) of IBC.

24. Mr. Tiwari has also submitted that the learned Arbitrator also erred in deciding the issue of limitation against the appellant, as the cause of action had accrued to the respondent on 26.09.2014 when the Assignment Agreement was executed, and on 30.09.2014 when the monies were appropriated to the loan account of the borrower. The respondent having invoked arbitration on 07.09.2021, the claim was barred by limitation.

25. In view of the above submissions, he has prayed the present appeal be allowed and the arbitral award be set aside.

<u>SUBMISSIONS ON BEHALF OF THE RESPONDENT</u>

26. Mr. Dhruv Dewan, learned counsel for the respondent stated at the outset that the learned Single Judge had rightly arrived at the conclusion that the award does not suffer from any infirmity, and as such, there is no occasion for this court to interfere with the same. He has contested the submissions made by Mr. Tiwari.

27. He stated that the learned Arbitrator has rightly rejected the stand of the appellant that the arbitration could not have continued in view of the proceedings before the NCLT and held that Section 63 of the IBC will have no impact insofar as adjudication of *inter se* disputes between the appellant and the respondent are concerned. Further, he stated that the learned Arbitrator has returned an immaculate finding that the determination of the *lis* between the appellant and the respondent will not bind any third party, and any proceedings initiated by any such third party/parties will remain unaffected by the award.

28. He submitted that the contention of the appellant that its submissions have been incorrectly recorded in the award and that the appellant pressed its arguments with respect to the issue of maintainability is factually incorrect. The issue was heard at length, during which time the learned Arbitrator posed certain questions to the counsel for the appellant, at which point the counsel chose not to press its arguments any further. In this context, the learned Arbitrator has observed in paragraph A (iii) of its Findings/Reasons that "*To be fair to the counsel for the respondent, upon my, during the hearing observing so, he did not press the said argument further.*" In any case, the appellant did not file any application under Section 33 of the Act in order to redress its alleged grievance with respect to the said issue.

29. Insofar as the issue of limitation raised by the appellant is concerned, he stated that the learned Arbitrator has rightly held that Article 113 of the Limitation Act, 1963 would apply in respect of the dispute and therefore limitation would start to run from the date when the right to sue accrued, which as per the learned Arbitrator accrued to the respondent on learning of the same during the tenth meeting of the Committee of Creditors (COC) and on the appellant denying payment thereof to the respondent, i.e., on 27.11.2020. As per the award, the claim was filed on 03.06.2022, which was well within time.

30. He stated that the learned Arbitrator had rightly held that the respondent exercising due diligence, could not have fathomed any claim made against ECGC by the appellant or the same having been allowed by ECGC, merely from the factum of premium having been paid to ECGC from the borrower's account. Due diligence carried out by a party to a contract can *estop* only such claims which are shown to be evident from the material placed at the disposal of that party.

31. Mr. Dewan has vehemently contested the stand of Mr. Tiwari that the ECGC claim amount was received by the appellant prior to the cut-off date and therefore, the same was not liable to be remitted to the respondent. He stated that the submission that the credit of the said amount into the account of the borrower on 30.09.2014 was a mere book entry was never advanced by the appellant in its Statement of Defence and/or in its oral arguments made before the learned Arbitrator. This argument was made for the first time in the petition under Section 34 of the Act. In any case, upon a review of the terms of the Assignment Agreement and taking into account the other facts and circumstances, the learned Arbitrator rightly held that the receipt

of ECGC monies in the General Ledger Account of the appellant cannot be treated as receipt of monies in the loan account of the borrower and thus cannot be said to have been received in the loan account of the borrower prior to the cut-off date of 18.09.2014 agreed in the Assignment Agreement. He has highlighted the findings of the learned Arbitrator in this respect as under:

(a) the appellant could have specified in the Assignment Agreement that the ECGC monies parked in the General Ledger Account would be deemed to have been received in the loan account of the borrower at the moment of the assignment and/or be deemed to have been received prior to the cut-off date, but the appellant failed to do so.

(b) Clause 8 of the Assignment Agreement which provided for 'Exclusion of Liability' did not exclude the liability of the appellant to the respondent for monies received from ECGC and lying in the General Ledger Account of the appellant and to be credited to the account of borrower after the execution of the Assignment Agreement.

(c) It is not in dispute that the amount received from ECGC was to be credited to the loan account of the borrower. It is also not in dispute that the appellant while representing to the respondent in the Assignment Agreement that Rs. 40,71,62,662.16/- was outstanding from ADIL, did not deduct therefrom monies received from ECGC and lying in the General Ledger Account of the appellant. What follows therefrom, is that as on the date of the Assignment Agreement, the appellant was not treating the monies received from

ECGC as having been recovered and received in the loan account of the borrower.

32. He has also stated that reliance is misplaced by the appellant on paragraph 2.6.3 of the RBI Master Circular dated 02.07.2012, to contend that showing lesser amount in the schedule would have led to lesser recovery from the respondent. According to him, the stipulation that the bank shall not slacken in its efforts to effect recoveries does not mean that it can show the full amount outstanding from the borrower without any disclosure of the amounts received by it from ECGC.

33. Further, he stated that on the issue whether there were "realisations" and "recoveries" after the cut-off date, i.e., 18.09.2014, the appellant has made the following contradictory pleas:

(a) In Ground XVII of the appeal, the appellant has contended that "... *there is no realization or recovery after the Cut-off Date as the money had in fact come on 28.09.2013 but it is only appropriation by virtue of various accounting entries*."

(b) In the Rejoinder filed by the appellant, it is contended at paragraph 15 that "…*after the ECGC money is received the same did not amount to recovery.*". In the same vein at paragraph 16, it is contended that "*...the averment that amount received from ECGC would mean that said amount was recovery against dues of the borrower/ADIL is absolutely fallacious and misconceived*".

34. According to Mr. Dewan, the above makes it clear that the appellant itself does not have any clear answer to when the realisation/recovery happened in the account of the borrower, and has been taking completely inconsistent positions with regard to the same. The fact of the matter is that

the ECGC claim amount was a real corpus of money which the appellant had received towards settlement of the claim it had filed with ECGC in respect of the monies due from the borrower. These monies were parked in the General Ledger Account of the appellant from 28.09.2013 till 30.09.2014, on which date they were credited in account of the borrower and adjusted against the debt of the borrower to the appellant.

35. He also stated that the argument of this being a mere accounting entry is untenable in view of the fact that an amount of Rs. 66 lakh was paid by the appellant to ECGC in proportionate settlement of its claim on 29.01.2015. An actual payout made to ECGC in settlement of its claim cannot be regarded as having been done in pursuance of a mere accounting entry as claimed. The learned Arbitrator has also pertinently noted that the loan account of the borrower ceased to exist in the books of the appellant on 26.09.2014, i.e., on the date of execution of the Assignment Agreement; and thus, there is no question of the amount received from ECGC and kept in the General Ledger Account to be credited into the said loan account.

36. He submitted that this Court had stayed the operation of the award primarily on the basis that the question whether the amount recovered from ECGC was required to be adjusted against the amount due from borrower to the appellant was a subject matter of dispute and not an admitted fact. In this respect, he stated that the appellant has not challenged the award, either in its petition under Section 34 of the Act, or in the instant appeal, on the basis that the learned Arbitrator proceeded on the basis that it was admitted fact that the amount recovered from ECGC was to be adjusted against the amount owed by the borrower to the appellant. On the contrary, it is the appellant's own case in paragraph 7 of the Rejoinder that the amount

recovered from ECGC was to be adjusted against the amount due from the borrower to the appellant. The appellant has itself stated in paragraph 7 that '*… aggregate outstanding amount as on 26.09.2014 as per the Assignment Agreement was of Rs. 28.39 Crores. Thus, after adjusting amount received from ECGC i.e., 3.86 Crores, an amount of Rs. 24.52 Crores approx. was to be written off by the appellant Bank.*"

37. He has also drawn our attention to the following averments made by the respondent in the Statement of Claims:

(a) In paragraph 16(ix), the respondent had adverted to the representation and warranty provided by the appellant in Clause 4.1(r) of the Assignment Agreement that there are no other agreements, deeds and/or documents which would affect the ability of the respondent to realise the amounts due in terms of the financing documents.

(b) In paragraph 25, the respondent referred to its letter dated 10.12.2020 addressed to the appellant where it was stated that the ECGC claim amount was eventually appropriated only on 30.09.2014 towards the recovery or realisation of the loan amounts disbursed to the borrower and as such the same rightfully belonged to the respondent.

(c) In paragraph 36, it was averred that the appropriation of the ECGC claim amount by the appellant on 30.09.2014 constituted realisation and recovery by the appellant against the dues of the borrower.

(d) In paragraph 38, it was averred that the right to receive and appropriate ECGC claim amount towards the indebtedness of the borrower stood assigned to the respondent.

38. He stated that the appellant had not challenged the aforesaid contentions in its Statement of Defence. In fact, the appellant in its

Statement of Defence had admitted the contents of paragraphs 16(ix) and 25 of the Statement of Claims as being a matter of record.

39. Mr. Dewan has submitted that as per the email of the appellant dated 29.10.2020, the account number of the borrower in which the amount was credited by the appellant was '909030033366158' which was one of the accounts of the borrower which had been assigned to the respondent under the Assignment Agreement. Thus, on the pleadings before the learned Arbitrator, it was an undisputed position that the appellant had credited the account of the borrower being '909030033366158' with a sum of Rs. 3,89,05,457/- (the ECGC claim amount) on 30.09.2014, four days after the assignment of the borrower's entire account in favour of the respondent. He stated that thus, there is no infirmity in the award to the extent that the same holds that the ECGC claim amount, which was credited into the borrower's account by the appellant and appropriated therefrom, after the assignment of the borrower's account, belonged to the respondent.

40. The learned Arbitrator had provided an illustration with respect to the amount received, as noted by this Court in the order dated 27.03.2024, drawing a comparison with deposit of monies by a judgment debtor with the Registry of the Court, which do not belong to any party until an order is passed, to observe that such a treatment should be accorded to the amount recovered from ECGC. According to Mr. Dewan, this illustration was not resorted to by the learned Arbitrator for demonstrating that *"…book entry made by a person in his books in respect of an amount received"* changes the nature of the receipt, as noted by this Court in order dated 27.03.2024, but for the purpose of illustrating the fact that the monies received by the appellant from ECGC prior to the cut-off date were not treated as being "…

in satisfaction of the packing credit limit advance to ADIL…." The learned Arbitrator held that if the same was treated by the appellant as being in satisfaction thereof, it "… *would not have levied interest thereon from 28.09.2013 till assignment of loan to the claimant…*". It is submitted that accordingly, the illustration provided in the award should be viewed contextually in light of the clarification provided as well as the other cogent reasons in the award to support the view that Clause 1.1(f) of the Assignment Agreement will not come in way of recovery of ECGC claim amount by the respondent.

41. Insofar as the submission of Mr. Tiwari that the award failed to consider that the respondent, despite being aware of the factual position regarding the ECGC monies, was of the view that the money received from ECGC belongs to the financial creditors, is concerned, Mr. Dewan stated that, at the time of the 11th COC meeting of the borrower on 21.10.2020, the respondent did not have full information regarding the receipt of the ECGC claim amount by the appellant and its subsequent appropriation by the appellant. The said information was only subsequently provided by the appellant on 29.10.2020 when it clarified that an amount of Rs. 3,89,05,457/- had been appropriated by it on 30.09.2014. Thus, the initial statement of the respondent in the said COC meeting (even while it sought reasonable time from the Resolution Professional to share its views) was based on inadequate disclosures made to it by the appellant at that point of time.

42. Mr. Dewan submitted that findings in the award, with respect to the contentions as aforesaid, are absolutely in consonance with law, well-reasoned and do warrant interference from this Court under Section 37 of

the Act. He stated that it is well settled that the narrow jurisdiction under Section 34 of the Act gets further circumscribed in respect of a court exercising jurisdiction under Section 37 of the Act when the award has been upheld or substantially upheld under Section 34 of the Act. In this regard, he has relied upon the decisions in ***Somdatt Builders NCC-NEC (JV) v. National Highways Authority of India & Ors., Civil Appeal No. 2058 of 2012; Punjab State Civil Supplies Corporation Limited & Anr. v. M/s Sanman Rice Mills & Ors., AIR 2024 SC 4856; Larsen Air Conditioning and Refrigeration Company v. Union of India and Ors., AIR 2023 SC 4452;*** and ***UHL Power Company Limited v. State of Himachal Pradesh, (2022) 4 SCC 116.***

ANALYSIS AND CONCLUSION

43. Having heard the learned counsel for the parties and perused the record, it is noted that during the years 2009-2011, credit facilities were disbursed to the borrower/ADIL by the appellant bank. The same was restructured under CDR mechanism in September 2009. On 31.07.2011, the borrower/ADIL was classified as Non-Performing Asset. In June 2012, claims were filed by the appellant bank with ECGC under the Packing Credit Guarantee Claim Form and Post Shipment Guarantee Claim Form. An amount of Rs. 4,55,05,457/- was remitted by the ECGC into the account of the appellant bank on 28.09.2013. It is the case of the appellant bank that the said amount was parked in a General Ledger Account. Later, on 30.09.2014, an amount of Rs. 3,89,05,457/- was credited to the loan account of the borrower by the appellant bank.

44. On 26.09.2014, the Assignment Agreement was executed between the appellant and the respondent whereby the account of ADIL was assigned in favour of the respondent *in lieu* of an aggregate consideration of Rs. 4 crore. As per Clause 1.1(f) of the Assignment Agreement, the cut-off date was 18.09.2014.

45. As the respondent made a claim for the said amount, disputes arose between the parties, which were referred to arbitration.

46. The learned Arbitrator on the merits of the claim of the respondent, which was framed as issue no. B, has come to a conclusion that the respondent is entitled to recover an amount of Rs. 3,89,05,457/- from the appellant with interest @ 12% per annum from the date of the award till the date of realisation.

47. The learned Arbitrator in paragraph 8-B of the award has considered in detail, various provisions of the Assignment Agreement executed between the parties, including Clauses 1.1(f), 1.1(i), 2.1.1, 2.1.2, 4.1(f), 6.2 and 8. In paragraph 8 (B) xvi, xvii, xviii and xix of the award, it was held as under:

> *"08. Findings/Reasons*
>
> *xxx xxx xxx*
>
> *B. Whether the claimant. in terms of its contract with the respondent and/or in accordance with the provisions of the SARFAESI Act, is entitled to the ECGC monies in hands of the respondent.*
>
> *xxx xxx xxx*
>
> *xvi. The relevant clauses of the Assignment Agreement in this regard are,*
>
> *a) clause 1.1 (f) provides that all economic benefits pertaining1 to the loans including all realizations and recoveries made after the cut-off date of 18.9.2014 were to be for the benefit of the claimant and to be passed on by the respondent to the*

claimant; in my opinion, from use of the words 'pertaining to the loans', the parties referred to the realizations and recoveries in the loan account of ADIL and not realizations and recoveries though made by the respondent but not credited to the loan account of ADIL.

b) clause 1.1 (i) which defines 'loan' as the amount due and all other monies payable under or to be received by the respondent under the financing documents, including the proceeds of any enforcement of the financing documents to secure repayment of the financial assistance under the financing documents and/or any guarantee issued in relation thereto; the second proviso to the said clause provides "that any amount actually paid by the borrower prior to the cut-off date to the assignor and acknowledged/accounted by the assignor shall not be included as part of loans"; in my opinion, the monies received from ECGC qualify as monies received under the financing documents and/or in enforcement of the financing documents and/or any guarantee issued in relation thereto; the ECGC cover taken by the respondent with respect to the packing credit limit advanced to ADIL, was in the nature of a guarantee for repayment of the packing credit advanced by the respondent; in my further opinion, the second proviso aforesaid makes it clear that only such monies which had been accounted for by the respondent i.e. accounted for in the loan account of ADIL, were to be excluded from loan; it thus follows that the monies received by the respondent from ECGC and retained by the respondent in its general ledger account and not accounted for in the loan account of ADIL, whatever may be the reason therefor, were to remain part of the loan.

c) clause 2.1.1, whereunder the claimant became entitled to recover and receive all amounts due and *which amount due, in Schedule-1 to the Assignment Agreement was shown as Rs. 40,71,62,662.16 paise; it is not in dispute, that if the amount received by the respondent from ECGC and kept by the respondent in the general ledger account had been credited to the loan account of ADIL, the said sum of Rs. 40,71,62,662.16 paise would have been reduced to the same extent; it is also not in dispute that the amount received by the respondent from ECGC was ultimately, on 30.9.2014 credited to the loan account of ADIL.*

d) clause 2.1.2, whereunder the respondent assigned to the claimant all its rights, title and interest in the financing documents including all collateral and underlying security interest created and guarantees issued in respect of repayment of loans and to which the respondent was entitled; under the said clause, in my opinion, the claimant became entitled to the benefit of the ECGC cover taken with respect to the fact packaging credit advanced by the respondent to ADIL.

e) clause 4.1(f), whereunder the respondent represented to the claimant that ADIL had not exercised any right of set off in respect of its loans accept as disclosed in Schedule II to the agreement; in Schedule II, the ECGC amount is not mentioned; this clause, in my opinion is indictive of the respondent representing the amount aforesaid of Rs. 40,71,62,662.16 paise as recoverable and nothing being deductible therefrom.

f) clause 6.2, whereunder the claimant was conferred the sole right of collecting any monies pertaining to the loan including any guarantees; under the said clause, in my opinion, the respondent lost the right to credit of the ECGC amount lying in its general ledger account, to the loan account of ADIL with itself.

g) clause 8 titled "Exclusion of Liability" provides for the liabilities which would have otherwise flowed from the Assignment Agreement but were excluded; the respondent, thereunder though in my opinion could have, but did not exclude the liability of the respondent to the claimant for monies received from ECGC and lying in the general ledger account of the respondent and to be credited to the account of ADIL after the execution of the Assignment Agreement.

xvii. The ECGC cover, obtained by the respondent with respect to the Packing Credit Financial Assistance granted to ADIL, was a part and parcel of the financing documents between respondent and ADIL and in the nature of a guarantee for repayment of loan i.e. that if the packing credit advance was not repaid by receipt of proceeds of export from the foreign buyer or by ADIL, ECGC, in consideration of the premium paid from the account of ADIL, would repay the same to the respondent. It is not in dispute that the amount received from ECGC was to be credited to the loan account of ADIL with the respondent. It is also not in dispute that the respondent, while representing to the claimant in the Assignment Agreement that Rs. 40,71,62,662.16 paise was outstanding from ADIL, did not deduct therefrom the monies received from ECGC and lying in the general ledger account of the respondent. What follows therefrom is, that as on the date of the Assignment Agreement, the respondent also was not treating the monies received from ECGC as having been recovered and received in the loan account of ADIL.

xviii. In my opinion unless the money received for the benefit of the debtor are debited to the account of the debtor, they cannot be said to have been received in the account of the debtor. A parity can be drawn from monies deposited by a judgment debtor in the Court as a condition for obtaining stay of execution of a money *decree. It is the settled position in law, that deposit of such monies in the Court, though may result in stay of execution but does not stop the meter of interest payable under the decree from running. Similarly, it is not the case of the respondent here that on receipt by the respondent from ECGC of the monies aforesaid, interest payable by ADIL to the respondent thereon stopped running. The respondent cannot on the one hand continue to charge ADIL interest on the packaging credit limit for which claims were made to and sanctioned by ECGC and on the other hand claim that the monies aforesaid had been received by it on the date of payment by ECGC. Had the respondent treated the monies received by it from ECGC on 28.9.2013, in satisfaction of the packing credit limit advance to ADIL, the respondent would not have levied interest thereon from 28.9.2013 till assignment of the loan to the claimant.*

xix. The Assignment Agreement between the claimant and the respondent was concerned with the loan account of ADIL with ECGC and was not concerned with the general ledger account of the respondent. Thus, receipt of monies from ECGC in the general ledger account of the respondent cannot be treated as receipt of monies in the loan account of ADIL. Clause 1.1 (f) of the Assignment Agreement dealing with cut-off date pertains to the loan account and the realisation and the recoveries thereunder and not of general ledger account or the realisation and recoveries therein."

48. Further in paragraph 8 (B) xxii, xxiii, xxiv, xxv, xxvi and xxvii, he has held as under:-

"...xxii. Merit is also found in the argument of the counsel for the claimant, that once the respondent on execution of the Assignment Agreement on 26.09.2014 had assigned the loan account of ADIL to the claimant,

the loan account of ADIL ceased to exist in the books of the respondent for the respondent to credit the amount received from ECGC and kept in the general ledger account into the said loan account. The respondent, under its agreement with the claimant was bound to pay to the claimant the said monies, for crediting to the loan account of ADIL with the claimant. It cannot be lost sight of that in an action by the claimant for recovery of dues against ADIL, the claimant as the assignee of the respondent cannot recover the amount received from ECGC and admittedly for the benefit of the loan account of ADIL. Though the respondent, if so desired could have in the Assignment Agreement provided that the ECGC monies parked in the general ledger account would be deemed to have been received in the loan account of ADIL at the moment of the assignment and/or be deemed to have been received prior to the cut-off date, but the respondent did not do so.

xxiii. The aforesaid is the interpretation derived by me from the clauses aforesaid of the Assignment Agreement between the parties. However, holding so disturbs me. Though the Assignment Agreement, as aforesaid is of assignment by the respondent of three loan accounts to the claimant, i.e. of ADIL and two others and does not give separate consideration agreed to be paid and paid by the claimant for each of the three loan accounts and mentions only the consolidated consideration paid by the claimant to the respondent for all the 3 loan accounts, but the respondent in its letter dated 22.09.2014 to ECGC, while informing ECGC of assignment of the loan account of ADIL to the claimant, stated the said assignment to be for a consideration of Rs. 4 crores. What troubles me is, that the claimant has paid a consideration of Rs.4 crores only for acquiring the loan account of ADIL and is now seeking to recover 3.89 crores, reducing the consideration paid by the *claimant for acquiring the loan account of ADIL to Rs.11 lakhs only. If the claim of the claimant for interest were also to be allowed, the claimant would end up recovering more than has paid for acquiring the loan account and would end up acquiring the loan account of ADIL for free. I am conscious that an ARC may end up recovering more from the borrower than the consideration paid to the bank for acquiring the loan account. However the present is not a case of ARC recovering from the securities of the borrower and which the bank for various reasons did not desire to. The present is a case of the claimant as ARC recovering from the respondent i.e. the bank what was already with the bank prior to the assignment but which the bank had not credited to the loan account.*

xxiv. I have wondered whether the said consideration/ factor should lead me to a different finding. However I am acting as an arbitrator and an arbitrator, it has recently been reiterated in Indian Oil Corporation Vs. Shri Ganesh Petroleum Rajgurunagar (2022) 4 SCC 463, has to act in terms of the contract and cannot act contrary to the contract. Once I have held that according to the contract the monies belong to the claimant, for consideration aforesaid I cannot hold otherwise. In State of MP Vs. Sew Construction Ltd. 2022 sec Online SC 1606, Supreme Court held that in administration of contract there is no place for discretion and any argument of discretion is to be rejected. In view thereof, notwithstanding my aforesaid conundrum, I hold that the claimant, in accordance with the Assignment Agreement is entitled to recover from the respondent, the ECGC monies though received by the respondent on 28.09.2013 prior to the cut-off date but admittedly credited by the respondent to the account of ADIL on 30.09.2014 i.e. after the cut-off date.

xxv. It thus follows that money though received by the respondent from ECGC on 28.09.2013 cannot be said *to have been received in the loan account of ADIL with the respondent and thus cannot be said to have been received prior to the cut-off date of 18.09.2014 agreed in the Assignment Agreement between the respondent and the claimant.*

xxvi. Once it is so, it has but to be held that the entitlement to the said monies is not of the claimant but of the respondent.

xxvii. I thus answer issues A & B, holding, that the factum that ECGC required the respondent not to credit the amount reimbursed by ECGC to the borrower's account till the amount due from the borrower was realised or written off did not concern the claimant and cannot have any effect on the Assignment Agreement between the respondent and the claimant and that as per the agreement between the claimant and the respondent, the respondent is liable to pay to the claimant the net amount received by the respondent from ECGC and which was not credited by the respondent to the account of the borrower till assignment, by the respondent of the debt owed by the borrower ADIL to the respondent, in favour of the claimant."

49. Before proceeding to examine the merits of the submissions advanced on behalf of the parties, we may state here that the learned Single Judge has rightly culled out the scope of judicial review in a petition filed under Section 34 of the Act in paragraphs 16 to 21 of the impugned judgment. It is settled law that interpretation of the provisions of contract is primarily within the realm of the Arbitrator and an interpretation given, which is plausible and not palpably erroneous interpretation, requires no interference from courts. The Supreme Court in ***UHL Power Company Ltd. v. State of Himachal Pradesh, Civil Appeal No. 10341 of 2011,*** has held that the scope of judicial review in an appeal under Section 37 of the Act is even more

circumscribed than the already narrow power of the Court to set aside an award under Section 34 of the Act. Courts cannot re-evaluate evidence, review the merits of a dispute, or substitute their own interpretation of a contract for that of the Arbitral Tribunal. Interference is warranted only when the award or order is palpably erroneous, patently illegal or opposed to the public policy of India.

50. The submission of Mr. Tiwari, the learned senior counsel for the appellant that as the amount has been received before the cut-off date of 18.09.2014 and was parked in the General Ledger Account. No amount was received in the loan account after the cut-off date and the entries dated 30.09.2014 are merely book entries/adjustment in books and are not an indication of money being received after the cut-off date, and as such the amount received is not payable to the respondent.

51. On the other hand, Mr. Dewan, the learned counsel for the respondent submitted that the argument that the transfer of the ECGC amount to the borrower's account on 30.09.2014 is merely a book entry, was never advanced before the Arbitrator, and was made for the first time in the petition under Section 34 of the Act.

52. The findings of the learned Arbitrator can be summed up in the following manner:-

(i) It is an admitted fact that the amount received from ECGC was to be credited to loan account of the borrower/ADIL with the appellant bank.

(ii) The appellant, while representing to the respondent in the Assignment Agreement that Rs. 40,71,62,662.16 was outstanding from ADIL, did not deduct therefrom the money received from ECGC lying in the General Ledger Account. This would mean that as on date of the Assignment Agreement, the appellant was not treating the ECGC money as having been recovered and received in the loan account of ADIL.

(iii) The receipt of the amount in the General Ledger Account of the appellant cannot be treated as receipt in the loan account of ADIL and as such, it cannot be said that the same was received in the loan account of ADIL prior to the cut-off date of 18.09.2014.

(iv) Clause 8 of the Assignment Agreement which provided for exclusion of liability did not exclude the liability of the appellant to the respondent for the money received from ECGC which was lying in the General Ledger Account of the appellant and to be credited to the account of borrower after the execution of the Assignment Agreement. The appellant could have provided in the Agreement that the ECGC money would be deemed to have been received in the loan account of ADIL at the time of assignment, or prior to the cut-off date, but it did not do so.

(v) In conclusion, the amount received by the appellant on 28.09.2013 was not received in the loan account of the borrower, and as such, it cannot be said to have been received prior to the cut-off date of 18.09.2014.

53. The finding of the learned Arbitrator is that the ECGC amount received in the General Ledger Account of the appellant on 28.09.2013, but later credited to the loan account of the borrower on 30.09.2014 cannot be said to have been received in the loan account of the borrower prior to the cutoff date. As such, the respondent was held to be entitled to receive the

said amount. The submission of Mr. Tiwari that the entries dated 30.09.2014 are mere book entries, do not appeal to us, in view of the detailed reasoning given by the learned Arbitrator as discussed above. Further, we find that such a submission was not raised before the learned Arbitrator and was raised for the first time in the petition under Section 34 of the Act.

54. We find no infirmity in the conclusion drawn by the learned Arbitrator.

55. Much reliance has been placed by the learned senior counsel for the appellant on the RBI Master Circular dated 02.09.2012 to contend that the ECGC Scheme is intended to benefit the bank, and not the borrower. Though, it is contended that such a submission was raised before the learned Arbitrator, such a situation is not borne out from the record. We have perused the statement of defence filed by the appellant and note that there is no mention of the circular or policy. Be that as it may, the circular does not in any way negate the effect and operation of the Assignment Agreement between the parties herein. As such, we are not inclined to accept this plea on behalf of the appellant.

56. Another submission of Mr. Tiwari is that the respondent while conducting due diligence, should have taken constructive knowledge of the ECGC claim, as the payment of ECGC premium was evident from the bank statements. On this, the conclusion drawn by the learned Arbitrator can be found in paragraph 8-C, the relevant part whereof is reproduced as under:

> *"(x) Though the respondent has contended that the claimant, from the debits in the account of ADIL of ECGC premium should have been put to enquiry but has not*

pleaded having shown the documents of claim made by the respondent with ECGC and of the settlement thereof by ECGC to the claimant during the process of due diligence exercise. In terms of the Assignment Agreement between the parties, the respondent was required to handover to the claimant all documents relating to the ADIL account. The said documents, as already observed by me, related to the ADIL account and ought to have been handed over. There is no mention of the same in the schedule to the Assignment Agreement. The respondent bank obviously did not give inspection to ADIL of all the said documents and I am of the view that the claimant in its due diligence, merely from the factum of premium to ECGC having been paid could not have fathomed any claim having been made against the ECGC or having been allowed by ECGC. Due diligence required to be carried out and carried out by a party to the contract can estop only such claims which are shown to be evident from the material placed at the disposal of the party carrying out due diligence. Due diligence carried out cannot be a defence to claims which could not have been detected from the material made available. The respondent, save for pleading and contending that the claimant ought to have been put to enquiry from the premium paid to ECGC and which argument has not found favour with me, has not shown any other material from which the respondent could have known of monies received from ECGC for the benefit of the loan account of ADIL. The respondent as a bank owed a duty of disclosure to ADIL and in which the bank is found to be wanting. The respondent, though required in terms of the Assignment Agreement to hand over all documents pertaining to the loan account of ADIL to the claimant did not handover the documents pertaining to claim made to and allowed by ECGC and there is no reference thereto in the schedule to the Assignment Agreement either. The respondent bank, as observed in Leelamma supra, has not been fair.

…

(xii) Having held so, the law laid down in K.M. Talyarkhan, and Shaktl Bhog Food Industries Ltd. supra would squarely apply and the cause of action for recovery of ECGC monies credited by respondent to the account of ADIL on 30.09.2014 would accrue to the claimant on learning of the same during the meeting of CoC and on the respondent denying payment thereof to the claimant. Counted therefrom, the claim is admittedly within time. One of the pleas of Mr. Tiwari is in respect of an application filed by the SBI before the NCLT, Chandigarh seeking a direction for bringing the ECGC money in Corporate Insolvency Resolution Process. The said issue has been dealt with by the learned Single Judge in paragraph 8(a). It is important to be noted in paragraph (iii), the learned Arbitrator did say that the counsel for the respondent i.e. appellant herein during the hearing had not pressed the argument further."

57. The learned Arbitrator, after much discussion on the law with regard to due diligence, held that the appellant, other than stating that the respondent ought to have taken constructive notice of the claim from the fact that premium was paid to ECGC, has not shown any other material from which the respondent could have known of the money received from ECGC. Thus, the cause of action for recovery of ECGC money credited by the appellant to the loan account of the borrower on 30.09.2014 would accrue to the respondent only on learning of the same during the tenth meeting of the CoC and on the appellant denying payment thereof to the respondent. As such, the claim was held to be within limitation.

58. We find no perversity in the conclusion drawn by the learned Arbitrator and the reasoning provided thereof. As stated in paragraph 8-C of the award after much discussion of the position of law, due diligence carried out cannot be a defence to claims which could not have been detected from

the material made available. We are in agreement with the view expressed by the learned Arbitrator and upheld by the learned Single Judge.

59. Another submission of Mr. Tiwari is that the arbitral proceedings were without jurisdiction in view of proceedings initiated by the SBI before the NCLT, Chandigarh seeking a direction to bring the ECGC money within the Corporate Insolvency Resolution Process. The said issue has been dealt with by the learned Arbitrator in paragraph 8A of the Award. It was held that since the arbitration proceedings was regard to the *inter-se* disputes between the appellant and the respondent, the application filed by the SBI before the NCLT would have no effect on the same. Additionally, it is important to note that in paragraph 8A(iii), the learned Arbitrator specifically mentions that the counsel for the respondent therein i.e. the present appellant bank, during the hearing of the arbitral proceedings, had not pressed the argument further. If that be so, the said issue does not really fall for consideration and could not have been urged by Mr. Tiwari. Hence, the plea is liable to be rejected.

60. Yet another contention on behalf of the appellant is that, the learned Arbitrator erred in drawing a parallel between the ECGC money and monies deposited by a judgment debtor before the Registry of a Court. We are of the opinion that such an observation made by the learned Arbitrator is only illustrative, as contended by Mr. Dewan, for substantiating the finding that the amount received prior to the cutoff date was not in satisfaction of the packing credit limit advanced to ADIL. In any case, the conclusion drawn by the learned Arbitrator was not in any way based on the said analogy; rather it was based on cogent reasoning as discussed above, which we have already held to be justified.

61. In view of the above discussion, we are of the view that there is no perversity or illegality in the findings of the learned Arbitrator. Keeping in mind the limited scope of judicial review under Section 37 of the Act, no interference is called for with the Award of the learned Arbitrator and the judgment of the learned Single Judge.

62. The appeal is bereft of merit, and is dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

AUGUST 20, 2026/sr