IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 322 OF 2018
WITH
INTERIM APPLICATION NO. 3410 OF 2026
IN
ARBITRATION PETITION NO. 322 OF 2018

Themis Medicare Ltd.,
A Company incorporated under the
Companies Act, 1956, having its office at
11/12, Udyog Nagar, S. V. Road,
Goregaon (West), Mumbai 400 104 ...Petitioner/ Orig. Respondent No.1

Versus

1. Mohinder Pal Singh Anand
   Age 46 years, Occupation: Business
   Having its address at 736, Bhasin House,
   2nd Floor, Khar (West), Mumbai

2. M/s. ABIL Chempharma Pvt. Ltd.
   A Company incorporated under the
   Companies Act, 1956, having its office at
   A-301, Kailash Tower, N. S. Phadke Marg,
   Behind S.T.C. Colony,
   Off Western Express Highway,
   Andheri (East), Mumbai 400 069 ...Respondents Orig. Claimant & Orig. Respondent No.2

Mr. Zal Andhyarujina, Senior Advocate a/w Mr. Aurup Dasgupta, Adv. Serena Jethmalani, Adv. Drshika Hemnani and Adv. Rishad Mehta i/b Jhangiani Narula and Associates for the Petitioner/Applicant

Mr. Sahil Mahajan a/w Mr. Saurabh Godbole for the Respondents

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : JULY 21, 2026

PRONOUNCED ON : AUGUST 24, 2026

JUDGMENT :

1. The present Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**'Arbitration Act'**), impugning the Arbitral Award dated 10th August 2017 passed by the learned Sole Arbitrator, awarding a sum of Rs. 63,17,703/- along with further interest on the principal sum of Rs. 67,17,703/- at the rate of 18% per annum from 1st June 2012 to 13th December 2013 and thereafter on the principal sum of Rs. 67,17,703/- at the rate of 9% per annum from 1st January 2014 till payment towards the price of 9360 shares acquired by the Petitioner herein and Rs. 13,93,781/- at the rate of 18% per annum from 1st June 2012 to 13th December 2013 and thereafter on the principal sum of Rs. 13,93,781/- at the rate of 9% per annum from 1st January 2014 till payment or realization towards 1440 shares acquired by the Respondent No. 2 herein.

2. The Respondent No. 2 herein has chosen not to challenge the Award and therefore the present Petition is confined only to the extent of the amount awarded against the present Petitioner.

3. For the sake of clarity, the parties are referred by their status in the arbitration proceedings.

4. The facts as set out in the Statement of Claim are that the Claimant is the Director and Shareholder of one "Long Island Nutritionals Private Limited (**'Long Island'**)" and the erstwhile name was "Long Island Leasing and Finance Private Limited", which was incorporated on 18th April 1995. The Claimant was a shareholder holding 3,600 shares out of 14,400 shares of Long Island. In the year 2011-2012, the Claimant along with his family members were holding 100% shares of Long Island with the present Claimant holding 9,400 shares. Under the MOU dated 2nd February, 2012 executed with the Claimant and his family members, it was agreed that the Respondents would purchase 75% share holding of Long Island by paying a sum of Rs. 3 crores plus additional sums based on adjustment of current assets minus current liabilities, which was evaluated at approximately Rs. 60 lakhs. On 27th March 2012, a written payment schedule was entered into towards Rs. 3 crores for their shareholding, wherein it was agreed that the Claimant and his family members will transfer 65% of shareholding in favour of Respondent No. 1 and/or their affiliated companies and 10% shareholding in favour of Respondent No. 2. The Respondent No. 1 was to pay Rs. 2 crores 60 lakhs and Respondent No. 2 was to pay the amount of Rs. 40 lakhs to the Claimant and his family members (`**Anand family'**) for their respective portion of shareholding. Subsequently, Share Transfer Certificate was signed in favour of the Respondents, which resulted in Anand family transferring 9360 shares to Respondent No. 1 and its associated companies and 1440 shares to Respondent No. 2. A sum of Rs. 13,41,872/- was paid by the

Respondent No. 1 to the Claimant and no amount was paid by the Respondent No. 2.

5. The Respondent No. 1 organized a term loan of a sum of Rs. 1,95,46,644/- for Long Island from Bank of Maharashtra by mortgaging the assets of Long Island. The Anand family was asked to consider this loan amount of Rs. 195,46,654/- plus Rs. 13,41,872/- plus Rs. 10,00,000/-, which was also paid by Respondent No. 1 to Long Island as part payment towards Rs. 3 crores due towards the 75% shareholding in the Company. The Anand family was informed that it was decided between the Respondents that they would share the bank loan, wherein Respondent No. 1's share was Rs. 1,69,40,425/- and Respondent No. 2's share is Rs. 26,06,291/-.

6. Respondent No. 1 issued a letter dated 24th May, 2012, signed by its Chief Financial Officer, informing the Claimant that they are taking possession of 1326 shares out of 3744 shares, and stating that they had not yet paid for the remaining 2418 shares, and that the transfer form and balance share certificates will be released once the Managing Director of Respondent No. 1 and Claimant meet to resolve the issues and about the balance payment of Rs. 67 lakhs settled between Respondent No. 1 and the Claimant.

7. It is claimed that the Respondents neglected to pay the balance amount of Rs. 1,41,11,484/-, comprising of Rs. 81,11,484/- computed by deducting a sum of Rs. 2,18,88,000/- from Rs. 3 crores being the balance amount of shares, plus additional amount of Rs. 60 lakhs due on current account minus current liabilities.

8. It was claimed that under Clause 8 of the MOU, the Respondent No 1 had agreed to purchase 25% share of Claimant for sum of Rs 3 Crores and the said amount was claimed alongwith interest.

9. The Claimant sought a decree against the Respondent No 1 in the sum of Rs. 1,63,42,248/-, comprising of Rs. 61,17,703/- being the balance amount towards the shares, plus Rs. 60 lakhs being the additional amount, and the amount of Rs. 36,24,545/- as interest at the rate of 18% per annum from 1st June, 2012 to 31st December, 2014. The Claimant also sought a decree against the Respondent No 1 for a sum of Rs. 3 crore 63 lakhs, comprising of Rs. 3 crores being the amount of shares of Claimant, which the Respondent No. 1 agreed to purchase, and the amount of Rs. 63 lakhs as interest at the rate of 18% per annum from 1st November, 2012 to 31st December, 2013, and a sum of Rs. 17,91,008/- from Respondent No. 2, being a sum comprising of Rs. 13,93,781/- towards amount for the shares, and amount of Rs. 3,97,227/- being interest at the rate of 18% per annum from 1st June, 2012 to 31st December, 2013.

10. In the written statement of Respondent No. 1, it was admitted that the MOU was executed on 2nd February, 2012, for acquisition of

75% shareholding of Long Island by paying a sum of Rs. 3 crores, and it was claimed that there was no agreement to pay any additional sum of Rs. 60 lakhs. It was admitted that the Respondent No. 1 had organized term loan of Rs. 1,95,46,644/-, which was paid by Bank directly to the Claimant's family, which was to be adjusted against the liability of Rs. 3 crores, and therefore, only Rs. 39 lakhs was payable by the Respondent No. 1 to the Claimant. Under Clause 8 of the MOU, the Claimants were supposed to exercise their right on or before 31st January 2014, which they did not do and did not call upon the Respondents to buy out their shares within prescribed period, and therefore, the claim under Clause 8 of the MOU is not maintainable. The Respondent No 1 also filed counter claim for sum of Rs 7,42,92,720/-.

11. The following issues were framed by the Arbitral Tribunal :

> "I) Whether the Respondent No.1 is liable to pay to the Claimant a sum of Rs.67,17,703/- (Rupees Sixty Seven Lakhs Seventeen Thousand Seven Hundred Three only) alongwith the interest thereon at the rate of 18% per annum towards the 9360 Shares acquired by the Respondent No.1?
>
> II) Whether the Claimant is entitled to a sum of Rs. 13,93,781/- (Rupees Lakhs Ninety Three Thousand Seven Hundred Eighty One Only) alongwith interest in the sum of Rs.3,97,227/- (Rupees Three Lakhs Ninety Seven Thousand Two Hundred Twenty Seven only) (as on 31-12-2013) towards the 1440 Shares acquired by Respondent No.2?

III) Whether the Claimant is entitled to a sum of Rs.60 Lakhs alongwith interest @ 18% per annum being the difference between the current assets and the current liabilities?

IV) Whether the Claimant is entitled to a sum of Rs.3 Crores plus interest thereon @ 18% per annum towards the sale of the balance shares to the extent of 25% of the said Company by the Claimant to Respondent No. 1?

V) Whether Respondent No.1 proves that it is entitled to claim (Counter Claim) in the sum of Rs.7,42,92,720/-(Rupees Seven Crores Forty Two Lakhs Ninety two Thousand Seven Hundred Twenty only) as per the Counter Claim dated 7th March, 2014?"

12. Evidence was led by the parties and the impugned Award came to be passed. The Issue No I and II came to be answered in favour of the Claimant, the Issue No III and IV came to be answered against the Claimant and the Issue No V was answered against the Respondent No 1.

13. Mr. Andhyarujina, learned Senior Advocate appearing for the Respondent No. 1 has drawn attention of this Court to the arrangement between the parties as per the MOU entered on 2nd February, 2012. He would point out Clause 20 of the MOU which records that the Respondent No. 1 has already given to Long Island advance of Rs. 5 lakhs and Rs. 10 lakhs to the Claimant through its associate concerns which were to be adjusted against equity shares to be acquired by the Respondent No. 1. He would submit that on 27th March, 2012, the written payment schedule was entered into and would point out that the value of 75% shares of Long Island was valued at Rs. 3 crores. He points out Clause III of the written payment schedule, which values 65% shareholding to be acquired by the Respondent No. 1 of 9360 shares at an enterprise value of Rs. 416.67 at Rs. 39 lakhs. He further points out that the share of loan from the Respondent No. 1 was Rs. 2,21,00,000/- which was to be paid by the Respondent No. 1 not later than two years in agreed installments between the Company and Anand family. He would further point out Clause 4 of the written schedule which provided for adjustment of Rs. 10 lakhs paid by the Respondent No. 1 to the Claimant for 2400 equity shares.

14. He submits that the learned Arbitrator has laid undue emphasis on the letter of 24th May 2012, confirming that the balance payment has not been made for the remaining 2418 shares, and that possession of 1326 shares has been taken. He would further point out that the letter makes it clear that there were certain issues which were to be resolved, and a meeting was scheduled as regards the balance payment of approximately Rs. 67 lakhs. He submits that the letter makes it clear that there was no crystallization of amount. He would further point out that the interest was calculated for the period from 1st June 2012 to 31st December 2012 without any relevance of the said dates, and the same has been accepted by the Arbitrator without any reasoning.

15. He would further point out that in the evidence affidavit, it was specifically deposed that the Claimant has to pay a sum of Rs. 30,13,000/- to the Respondent No. 1 towards goods sold to the sister concern of the Claimant, and that there is a loan of 35,000 US dollars which the Claimant was liable to pay off, which is approximately Rs. 21,70,000/-.

16. He has taken this Court in detail through the impugned Award and would submit that the learned Arbitrator has accepted that towards the consideration of Rs. 3 crores, the Respondent No. 1 had agreed to repay the loan of Anand family in the sum of Rs. 221 lakhs, out of which about Rs. 1 crore 95 lakhs was raised. He submits that a sum of Rs. 10 lakhs was already paid by the Respondent No. 1 in February, 2012, and despite the case of the Claimant that the Respondent No. 1 was liable to pay Rs. 2.60 crores, the learned Arbitrator has awarded a sum of Rs. 67,17,702/-, whereas the balance amount would be in the range of about Rs. 40 lakhs. He would further point out that the interest has been granted at the rate of 18% per annum for a period for which there is no basis and different rate of interest is awarded for a different period. He submits that the MOU did not provide for payment of any interest for the delayed payment. He would further submit that there is no basis for the calculation, and the findings of the learned Arbitrator suffer from perversity, and liable to be set aside on the ground of patent illegality. He would submit that the claim ought to have been dismissed as when the claim was filed, nothing was due and payable by the Respondent No. 1 to the Claimant. In support, he relies upon the following decisions:

i. T.N. Electricity Board v. Bridge Tunnel Constructions & Ors.[1],

ii. Goralal v. Union of India[2],

iii. Som Datt Builders Ltd. v. State of Kerala[3],

iv. Anand Brothers Pvt. Ltd. v. Union of India & Ors.[4],

v. Iqbal Trading Company v. Union of India & Ors.[5].

17. *Per contra*, Mr. Mahajan, learned counsel appearing for the Claimant, would submit that there was an admission in the communication of 24th March, 2012 about the balance payment of approximately Rs. 67 lakhs. He would further point out that in

1 (1997) 4 S.C.C. 121
2 (2003) 12 SCC 459
3 (2009) 10 SCC 259
4 (2014) 9 SCC 212
5 Arbitration Appeal No.27/2012 dtd. 10/11/2025

paragraph 13 of the Statement of Claim, the Claimant had referred to the letter of 24th May 2012, which in paragraph 16 of the written statement, has been accepted as correct. He submits that the same constitutes a judicial admission of the liability of sum of Rs. 67 lakhs, which has been awarded by the learned Arbitrator. He would submit that the submission canvassed by Mr. Andhyarujina is not the pleaded ground in the Arbitration Petition and there is no ground as to the rate of interest awarded. He would further submit that in Ground (K), it is pleaded that nothing is due and payable by the Petitioner, whereas during the argument, it is admitted that the balance amount of about Rs. 40 lakhs is to be paid. He would further point out to the affidavit of evidence of the Respondent No. 1 deposing that the Claimant is not entitled to receive the sum of Rs. 67,17,103/- from the Respondent No.1 on the basis of certain transactions with the subsidiary company. He submits that the Issue No. 1 framed by the learned Arbitrator was in respect of the amount payable by the Respondent No. 1 to the Claimant and the interest at the rate of 18% per annum, and there were no submissions advanced on the aspect of interest. He submits that the learned Arbitrator has awarded interest from 1st June 2012 on the basis of the letter of the Respondent No. 1 dated 24th May 2012. In support, he relies upon the following decisions:

i. **Dyna Technologies Pvt. Ltd. v. Crompton Greaves**

Ltd.[6]**,**

ii. Rajasthan State Mines & Minerals Ltd. v. Eastern Engineering Enterprises & Anr.[7]

iii. Mahaonline Ltd. v. Aksentt Tech Services Ltd.[8]

iv. Patel Engineering Co. Ltd. v. Konkan Railway Corporation Ltd.[9]

v. Ashesh Busa v. Atul Gandhi[10]

18. In rejoinder, Mr. Andhyarujina would submit that in the impugned Award, there is no support to finding on interest on the basis of letter of 24th May, 2012. He submits that the absence of reasons is a submission on law which does not require any specific ground to be pleaded. He would further point out the ground in the Petition that the learned Arbitrator ought not to have awarded interest as there is no contractual interest agreed between the parties, and that there is a misinterpretation of the letter dated 24th May 2012. He would submit that the learned Arbitrator has noted that as per the letter, the issue was to be resolved. He would further point out that there is no issue framed of the letter dated 24th May 2012 constituting judicial admission. He submits that under Section 31(3) of Arbitration Act, the Arbitrator is required to give reasons. He submits that the

6 (2019) 20 SCC 1
7 (1999) 9 SCC 283
8 (2025) SCC OnLine Bom. 5111
9 2009 SCC OnLine Bom 657 : (2009) 5 Bom CR 256
10 2019 SCC OnLine Bom 1102

findings and the reasons do not match, and therefore, the interim Award is patently illegal.

19. I have considered the submissions canvassed by the learned counsel appearing for the parties. I have gone through the findings recorded by the Arbitral Tribunal in the impugned Award and have also perused the documents filed along with the Petition.

20. The dispute between the parties relate to acquisition of shares in the Company-Long Island by Respondent Nos. 1 and 2. The shares in the Company were earlier owned by the Anand Family comprising of the Claimant, his mother and his wife. The issued and paid-up share capital of the Company was 14,40,000 comprising of 14,400 shares of the value Rs. 100 each.

21. Respondent Nos. 1 and 2 decided to acquire 75% shares in the Company and towards this end, a Memorandum of Understanding dated 2nd February 2012 (**MoU**) was executed between the parties, under which the value of 75% shares of the Company payable by Respondent Nos. 1 and 2 to the Anand family was determined as Rs. 3,00,00,000/-. Respondent No. 1 was to pay Rs. 2,60,00,000/- towards 65% shareholding whereas the Respondent No. 2 was to pay Rs. 40,00,000/- towards acquisition of 10% shareholding. According to Claimant, an additional amount of Rs. 60,00,000/- was agreed to be paid towards consideration for acquisition of 75% shareholding of the Company.

22. There is no dispute to the position that 65% shareholding in the Company has been transferred to Respondent No. 1, and 10% shareholding is transferred to Respondent No. 2. The Claimant alleged that he did not receive the agreed consideration from Respondent Nos. 1 and 2 as per the MoU. After the dispute was referred to arbitration, the Claimant filed Statement of Claim, in which he claimed following amounts:

Rs. 1,63,62,248/-	comprising Rs. 67,17,703/- being balance amount of shares + Rs. 60,00,000/- towards additional amount due under current asset minus current liabilities as per MOU payable by Respondent No. 1 and Rs. 36,24,545/- towards 18% interest from 01-06-2012 to 31-12-2013.
Rs. 3,63,00,000/-	Comprising Rs. 3,00,00,000/- towards shares which Petitioner had agreed to purchase and Rs. 63,00,000/- towards 18% interest from 01-11-2012 to 31-12-2013.
17,91,008/-	Comprising Rs. 13,93,781/- towards balance amount of shares payable by Respondent No. 2 and Rs. 3,97,227 towards 18% interest from 01-06-2012 to 31-12-2013.

23. On the other hand, Respondent No. 1-Petitioner filed counterclaim in the sum of Rs.7,42,92,720/- against the Claimant.

24. In the impugned Arbitral Award, the Tribunal has awarded only the claim towards balance amount in respect of 75% acquisition of shares of Rs. 63,17,703/- with 18% interest (*on Rs. 67,17,703/-*) from 01-06-2012 onwards till realization. This amount is directed to be payable by the Petitioner. The Tribunal has also awarded the claim towards balance amount towards share acquisition of Rs. 13,93,781/- with 18% interest from 01-06-2012 onwards till realization. This amount is directed to be payable by Respondent No. 2. Rest of the claims of the Respondent No.1-Claimant have been rejected. Thus, out of the three claims as enumerated in the preceding paragraph, the Tribunal has awarded part of the first claim in the sum of Rs. 63,17,703/-. The second claim enumerated above is fully rejected. The third claim is partly allowed in the sum of Rs. 13,93,781/-. The counterclaim filed by the Respondent No. 1-Petitioner has been rejected.

25. Only Respondent No. 1-Petitioner is aggrieved by the Award and has filed the present Petition. Respondent No. 2 apparently did not appear in the arbitral proceedings and has not questioned award of sum of Rs. 13,93,791/-. The Claimant has accepted the Award and has not challenged the same to the extent of rejection of his balance claims.

26. It must be observed that though the counterclaim of Respondent No. 1 is rejected, in the grounds raised in the Petition, there is no ground challenging the rejection of counterclaim. Even in the submissions canvassed by Mr. Andhyarujina, there is no challenge to the rejection of counterclaim. Therefore, the limited issue that needs to be decided in the present Petition is whether the Petitioner-Respondent No. 1 has made out any valid ground of challenge under Section 34 of the Arbitration Act in respect of award of claim against it in the sum of Rs. 63,17,703/- with 18% interest (*on Rs. 67,17,703*) from 01-06-2012 onwards. Towards this determination, only partial findings recorded by the Arbitral Tribunal *qua* Issue No. 1 need to be examined. For the ease of convenience, Issue No. 1 is reproduced once again as under:

> I) Whether the Respondent No.1 is liable to pay to the Claimant a sum of Rs.67,17,703/- (Rupees Sixty Seven Lakhs Seventeen Thousand Seven Hundred Three only) alongwith the interest thereon at the rate of 18% per annum towards the 9360 Shares acquired by the Respondent No.1?

27. As observed above, though sum of Rs. 67,17,703/ was involved in Issue No. 1, the Tribunal has ultimately awarded only sum of Rs. 63,17,703/- in the operative part of the Award. It is not known as to whether there is a typographical error in the operative Paragraph No. 19 of the Award while sanctioning the claim in the sum of only Rs. 63,17,703/- and not Rs. 67,17,703/-. Be that as it may. The Clamant has not questioned reduction of amount of Rs. 4,00,000/- by the Arbitral

Tribunal in the operative directions. Therefore the limited inquiry in the Petition is to the extent of correctness of findings recorded by the Arbitral Tribunal *qua* issue No. 1 while awarding claim in the sum of Rs. 63,17,703/- along with interest.

28. While answering Issue No. 1, the Arbitral Tribunal has taken into consideration, the covenants of the MoU and the written Payment Schedule. The Tripartite MoU between Claimant and Respondent Nos. 1 and 2 was executed for the purpose of acquisition of 75% shareholding in the Company by Respondent Nos. 1 and 2. Under clause 4 of the MoU, Claimant was to retain 25% shareholding while Respondent Nos. 1 and 2 were to acquire together 75% shareholding. It was agreed that Respondent No. 2 shall own 10% of the shareholding. This would effectively mean that the Respondent No. 1 was to acquire 65% shareholding in the company and Respondent No. 2 was to acquire 10% shareholding. Under clause 5 of the MoU, two options were made available to parties for division of shares into 25% and 75%. Under Option-1, the unissued/unsubscribed shares were to be allotted to Respondent No. 1 and 2 at determined price/value to as to make shareholding in 25% and 75% respectively. Under Option-2, the existing shareholders (Anand family) was to sell out their shareholding of 14,400 equity shares so as to make shareholding of Respondent Nos. 1 and 2 as 75% and that of the Claimant as 25%.

Clause 5 provided for the parties to agree to a workable written payment schedule for payment of funds to Anand family and to take care of its unsecured loans.

29. Clause 6 of the MoU dealt with the unsecured loans and it was agreed between the parties that the Claimant had provided to the Company (i) unsecured loan of Rs. 352.73 lakhs and (ii) share capital of Rs. 14.4 lakhs which was agreed to be proportionately paid out of the proposed Enterprise Value by Respondent Nos. 1 and 2 to the extent of their proposed shareholding. Clause 7 of the MoU provided for agreement on mutual payment schedule before signing the Shareholders Agreement. Clause 8 provided for an option to Anand family to exit from the Company by selling their shares to Respondent Nos. 1 and 2 at a predetermined consideration value of Rs. 3 crores. It is not necessary to delve deeper into clause 8 as the claim of the Claimant under this clause has been rejected and the Claimant has not challenged the Award. Respondent No. 1-Petitioner has relied upon Clause 20 of the MoU under which Respondent No. 1 had given advances of Rs. 5 lakh and Rs. 10 lakh to the Company through its associate concerns and Rs. 10 Lakh was given in advance by Respondent No. 2 to the Company and it was agreed to adjust those advance amounts against the equity shares to be acquired by Respondent Nos.1 and 2 in the Company. It was agreed that if the MoU did not materialise, the Company was to repay the advance amount to Respondent Nos. 1 and 2 by supplying goods and not in cash.

30. As per the MoU, parties prepared and signed a written Payment Schedule. Under the Payment Schedule, each share was valued at Rs. 416.67 and the value of 65% shareholding (9,360 shares) to be acquired by Respondent No. 1 was arrived at Rs. 39,00,000/- and value of 10% shareholding (1440 shares) to be acquired by Respondent No. 2 was arrived at Rs. 6,00,000/-, aggregate amount being Rs. 45,00,000/-. Under the Payment Schedule, the agreed consideration for acquisition of 75% shareholding was fixed at Rs. 3,00,00,000/- and the same was agreed to be paid by Respondent Nos. 1 and 2 to the Anand family as under:

Share of Loan from Respondent No. 1	:	Rs. 221.00 lakhs
Share of Loan from Respondent No. 2	:	Rs. 34.00 lakhs
Value of shares	:	Rs. 45.00 lakhs
		==================
Total	:	Rs. 300.00 lakhs

31. Thus Respondent No. 1 agreed to arrange a loan of Rs. 221.00 lakhs as a part of consideration to be paid to the Claimant. Similarly Respondent No. 2 was to arrange for loan of R. 34.00 lakhs to be paid to the Claimant. The loans were to be arranged for repayment of loans advanced by Anand family to the Company.

32. The Arbitral Tribunal has conducted a factual inquiry into the issue of actual payments made by Respondent Nos. 1 and 2 to the Claimant under the MoU and the Payment Schedule. It has arrived at a conclusion that out of the liability of Rs. 221.00 lakhs, Respondent No. 1 arranged for amount of Rs. 2,18,88, 516/- in the following manner:

Rs. 1,95,46,664/-	loan amount raised from bank in May 2012
Rs. 13,41,872/-	paid by group companies of Respondent No. 1 In May 2011
Rs. 10,00,000/-	Paid by Respondent No. 1 in February 2012
Rs. 2,18,88,516/-	**Total amount paid to Claimant by Respondent No. 1**

33. The Arbitral Tribunal has recorded findings of payment by Respondent No. 1 the sum of Rs. 2,18,88,516/- to the Claimant by considering the break-up of the same in paragraph 12 as under:

> "...It is an admitted position that out of the said sum of Rs.221Lakhs payable by Respondent No.1, the Respondent No.1 arranged for repayment of the loan availed of by the Anand family to the extent of Rs.2,18,88,516/- (Rupees Two Crores Eighteen Lakhs Eighty Eight Thousand Five Hundred Sixteen only). It is the case of the Respondent No. 1 that out of the said sum of Rs. 2,18,88,516/- (Rupees Two Crores Eighteen Lakhs Eighty Eight Thousand Five Hundred Sixteen only), the said loan was to be divided and shared by the group companies of Respondent No.1 and accordingly, a sum of Rs. 1,95,46,664/-(Rupees One Lakhs Ninety Five Lakhs Forty Six Thousand Six Hundred Sixty Four only) was raised from a bank in May 2012, Rs.13,41,872/- (Rupees Thirteen Crores Forty One Thousand Eight Hundred Seventy-Two only) was paid by the group companies of Respondent No.1 in May 2011 and Rs.10 Lakhs was paid by Respondent No.1 in February 2012). **This amount was the aggregate of the amounts paid by Respondent No.1 to the Claimant. "**

(emphasis supplied)

34. Thus, the Arbitral Tribunal has recorded a specific finding that all the three amounts of Rs. 1,95,46,664/-, 13,41,872/- and 10,00,000/- have been arranged/paid by Respondent No. 1/its group companies to the Claimant. The Claimant has not disputed this since he has not challenged the Award. Though some dispute is sought to be created by Respondent No. 1 with regard to the actual amount paid to the Claimant and about non-consideration of the advance amount under clause 20 of the MoU, this Court has its limitations in determining correctness of findings of fact about the actual payment. While exercising jurisdiction under Section 34 of the Arbitration Act, this Court cannot reassess the evidence on record like an appellate court and arrive at a finding different than the one recorded by the Arbitral Tribunal. I accordingly proceed with assumption that the Respondent No. 1 paid the sum of Rs. 2,18,88,516/- to the Claimant for acquisition of 65% shareholding in the Company.

35. The total liability of Respondent No. 1 to pay to the Claimant towards clearance of unsecured loans given by the Claimant to the Company was Rs. 221 lakhs. The amount of Rs. 2,18,88,516/- is held to be paid by Respondent No. 1 to the Claimant. Therefore, the balance amount payable by Respondent No. 1 out of loan liability of Rs. 221.00

Lakhs ought to have been only Rs. 2,11,484/- (*Rs. 2,21,00,000 less Rs. 2,18,88,516*). Additionally, Respondent No. 1 was to bear its share in the share price of Rs. 45 lakhs, which was 39.00 lakhs. The Tribunal has held that Respondent No. 1 did not pay the amount towards value of the shares. The following finding recording by the Tribunal in this regard is relevant:

> "Respondent No. 1 has not clarified that on the payment of the value of shares of Rs. 45 lakhs is not to be paid by it"

36. Therefore, the Arbitral Tribunal has held Respondent No. 1 liable to pay its share of the value of shares, which is determined in the Payment Schedule as Rs. 39,00,000/-. Thus, the liability of Respondent No. 1 towards outstanding amount ought to have been restricted to only Rs. 2,11,484 (+) Rs. 39,00,000 (=) Rs. 41,11,484/-. However the Arbitral Tribunal appears to have committed a grave computational error in the latter part of Para 12 of the Award wherein it has employed reverse calculation method by deducting Rs. 2,18,88,516/- (paid by Respondent No. 1) from the total amount due of Rs. 3.00 crores (payable by both Respondent Nos. 1 and 2).

37. Thus, after recording a finding that Respondent No. 1/its group companies had arranged/paid Rs. 2,18,88,516/- to the Claimant, the Arbitral Tribunal completely misdirected itself in the latter part of findings in Para 12 and undertook the exercise of reverse calculation method by deducting the paid amount by Respondent No. 1 from agreed consideration of Rs. 3.00 payable both by Respondent Nos. 1 and 2 . It has accordingly deducted paid amount of Rs. 2,18,88,516/- from agreed consideration of Rs. 3.00 crores and held that Rs. 81,11,484/- remained unpaid. The Tribunal then apportioned the unpaid amount of Rs. 81,11,484/- by assigning the amount of Rs. 67,17,703/- to Respondent No. 1 and Rs. 13,41,782/- to Respondent No. 2. This is clear from the following findings recorded by the Arbitral Tribunal:

> "..Thus, the final outstanding is Rs.81,11,484/- (Rupees Eighty One Lakhs. Eleven Thousand Four Hundred Eighty Four only) found payable by the Respondents as the proportion of acquisition of shares is 65% by the Respondent No.1, the Respondent no.1 is liable to pay the sum of Rs.67,17,703/- (Rupees Sixty Seven Lakhs Seventeen Thousand Seven Hundred Three only) and the balance of Rs. 13,93,781/- (Rupees Thirteen Lakhs Forty One Thousand Eight Hundred Seven Hundred Eighty One only) is that of the Respondent No.2. "

38. The above method of calculation done by the Arbitral Tribunal has resulted in apportionment of higher amount to Respondent No. 1 and lesser amount to Respondent No. 2. The folly in the above calculations is that though the entire amount of Rs. 2,18,88,516/- is arranged for exclusively by Respondent No. 1/its group companies, the entire credit thereof is not given to Respondent No. 1 alone, but even Respondent No. 2 has been given part-credit in that amount. On the other hand, if computations were to be correctly done (as observed above), the liability of Respondent No. 1 towards outstanding amount would only be Rs. 2,11,484 (+) Rs. 39,00,000 (=) Rs. 41,11,484/-. This is the reason why Mr. Andhyarujina has contended that the liability of Respondent No. 1 would only be in the range of Rs. 40 odd lakhs. The remaining liability would be on Respondent No. 2. However, neither Claimant nor the Respondent No. 2 have challenged the Award and therefore the limited remit of enquiry in the present Petition is only to the extent of determining the correctness of Award *qua* liability of Respondent No. 1.

39. After committing a serious computational error, in the latter part of Para 12 of the Award, the Arbitral Tribunal has proceeded to determine the liability of Respondent No. 1 at Rs. 67,17,703/- by recording generalized findings that the Respondents did not disprove the correctness of balance amount of Rs. 67,17,703/-. This is clear from the following findings:

> "In the written statement nor in the Affidavit in Evidence, the Respondent No. 1 has not led any evidence to disprove the correctness of the balance amount of Rs. 67,17,703 (Rupees Sixty Seven Lakhs Seventeen Thousand Seven Hundred Three Only) as payable to the Claimant **by the Respondents.** The cross-examination of the Claimant's witness on 10th December,1016 also does not displace the case of the Claimant that the Claimant is not entitled to the said sum of Rs., 67,17,703/- (Rupees Sixty Seven Lakhs Seventeen Thousand Seven Hundred Three Only). Accordingly the Clamant is awarded a sum of **Rs. 67,17,703** (Rupees Sixty Seven Lakhs Seventeen Thousand Seven Hundred Three Only)

> **<u>as against Respondent No. 1</u>** along with interest thereon as hereinafter stated."
>
> *(emphasis and underlining supplied)*

40. The Tribunal ignored the fundamental rule of evidence that the burden of proving the claim was on the Claimant and it was not for the Respondent No. 1 to disprove the same. Also the Tribunal appears to be extremely casual in recording findings with regard to the liability of Respondent No. 1 and 2. Though the Issue No. 1 was restricted to determination of liability of Respondent No. 1 and though a separate inquiry was to be conducted about the liability of Respondent No. 2 while answering Issue No. 2, the Tribunal has mixed the liabilities of both the Respondents at many places while answering Issue No.1. In the above quoted portion, the Tribunal holds that '*In the written statement nor in the Affidavit in Evidence, the Respondent No. 1 has not led any evidence to disprove the correctness of the balance amount of Rs. 67,17,703 ….. as payable to the Claimant **<u>by the Respondents.'</u>*** However, in the latter part it holds only Respondent No. 1 liable in respect of the said amount. Again, though the Tribunal has held that '*Accordingly the Claimant is awarded a sum of Rs. 67,17,703/- ….. as against Respondent No. 1'*, it has ultimately awarded only Rs. 63,17,703/- in the operative directions in the Award. The Award is thus riddled with inconsistencies.

41. In view of the reasons recorded above, award of claim in the sum of Rs. 63,17,703/- against Respondent No. 1 suffers from serious computational errors and is perverse and patently illegal to that limited extent. To this extent only interference in the impugned award would be warranted.

42. Both the learned counsels have referred to letter dated 24th May 2012 during the course of their submissions. Mr. Andhyarujina has submitted that the Tribunal has laid unnecessary emphasis on that letter while upholding the claim in the sum of Rs. 67,17,703/-. On the other hand, Mr. Mahajan has submitted that the letter dated 24th May 2012 constitutes a clear admission on the part of the first Respondent that the balance amount payable towards acquisition of shareholding by it was Rs. 67,17,703/-. However perusal of findings of the Arbitral Tribunal in paragraph 12 of the Award would indicate that there is no reference to that letter by the Tribunal. Since the letter dated 24th May 2012, does not appear to be the basis of upholding the liability of Respondent No. 1 for payment of amount of Rs. 67,17,703/- it is not necessary to delve deeper into the aspect of legal effect of that letter.

43. Mr. Andhyarujina has attempted to suggest that the award of the claim against Respondent No. 1 is contrary to the terms of the contract and has relied on judgment of the Apex Court in **T.N. Electricity Board v. Bridge Tunnel Constructions & Ors.** (supra).

However beyond the rectifiable computational error, I do not find that the Tribunal was awarded the claim contrary to the contract. Determination of liability of Respondent No. 1 by the Arbitral Tribunal flows out of the terms of contract (MoU and Payment Schedule). Also, Mr. Andhyrujina himself has suggested during the course of his submissions that the liability of Respondent No. 1 cannot exceed Rs. 40 odd lakhs. Therefore the argument that the determination of liability is contrary to the contractual terms is baseless.

44. Both sides have canvassed submissions about sufficiency of reasons in the Arbitral Award. Mr. Andhyarujina has submitted that the Award lacks reasons and has relied on judgments of the Apex Court in **Goralal v. Union of India** (supra), **Som Datt Builders Ltd. v. State of Kerala** (supra), **Anand Brothers Pvt. Ltd. v. Union of India & Ors.** (supra) and of this Court in **Iqbal Trading Company v. Union of India & Ors.** (supra). On the other hand, Mr. Mahajan has submitted that even if the reasons are found to be insufficient, the same cannot be a reason for setting aside the Award and has relied on judgments of the Apex Court in **Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.** (supra). In my view, however, it is difficult to hold that the Award lacks reasons completely. The Tribunal has recorded reasons for determining the liability of Respondent No. 1 in the transaction and except the computational error, determination of the liability appears to be well supported by reasons.

45. Having held that the award of claim in the sum of Rs. 63,17,703/- against Respondent No. 1 is perverse and patently illegal, the next question for consideration is the nature of order to be passed in the Petition, particularly, since this Court had arrived at the finding that the liability of Respondent No. 1 *qua* sum of Rs. 41,11,484/- is established. The award of claim in sum of Rs. 63,17,703/- suffers from serious computational errors and the actual sum due to the Claimant from Respondent No. 1 is Rs. 41,11,484/-. In such circumstances, this Court can severe the bad part of the Award from good part and preserve the good part. In **Gayatri Balasamy vs M/S Isg Novasoft Technologies Limited**[11]**,** the Apex Court has held that in exercise of powers under Section 34 of the Arbitration Act, the Court can correct *inter alia* the computational errors. It is held thus:

> "**33.** We hold that the power conferred under the proviso to Section 34(2)(*a*)(*iv*) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.
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> xxxx
>
> **35.** However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be interdependent or intrinsically intertwined. If they are, the award cannot be set aside in part.
>
> xxxx

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43. Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the Court can grant, while remaining within the contours of the statute. **A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34.** In other words, the power cannot contradict the essence or language of Section 34. The Court would not exercise appellate power, as envisaged by Order 41 of the Code of Civil Procedure, 1908.
xxxx
45. We are thus of the opinion that the Section 34 Court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in Part II of our Analysis.
Xxxx
49. **Notwithstanding Section 33, we affirm that a Court reviewing an award under Section 34 possesses the authority to rectify <u>computational</u>, clerical, or typographical errors, as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation. There are certain powers inherent to the Court, even when not explicitly granted by the legislature. The scope of these inherent powers depends on the nature of the provision, whether it pertains to appellate, reference, or limited jurisdiction as in the case of Section 34. The powers are intrinsically connected as they are part and parcel of the jurisdiction exercised by the Court.**

Conclusions

87. Accordingly, the questions of law referred to by Gayatri Balasamy [Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2024 SCC OnLine SC 1681] are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

87.1. When the award is severable, by severing the “invalid” portion from the “valid” portion of the award, as held in Part II of our Analysis;
87.2. **By correcting any clerical, <u>computational</u> or typographical errors which appear erroneous on the face of the record, as held in Parts IV and V of our Analysis;**

87.3. Post-award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or
87.4. Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in Part XII of our Analysis.”

(emphasis and underlining supplied)

46. Thus Section 34 Court is empowered to correct obvious computational errors in the Award. In the present case, correcting the computational errors in the Award by modifying the final amount payable by Respondent No. 1 to the Claimant, does not necessitate a merits-based evaluation.

47. While dealing with challenge to the arbitral award, every efforts should be made to preserve the same as much as possible. In the present case, this Court has not found the Award holding Respondent No. 1 liable for payment of amounts agreed under the MoU to be perverse or patently illegal. Therefore mere computational error committed by the Arbitral Tribunal cannot be a reason to set aside the entire Award. Rather the principle of severance can easily applied in the facts of the present case. Though Mr. Andhyarujina has sought to contend that the principle of severability envisaged in **Gayatri Balasamy vs M/S Isg Novasoft Technologies Limited** (supra) cannot be applied in the present case, he himself has pointed out the computational errors in the Award by contending that the liability of Respondent No. 1 cannot exceed Rs. 40 odd lakhs. I am therefore not inclined to set aside the entire award when the same can be preserved by correcting the computation errors thereon.

48. Regarding power of Section 34 Court to correct computational errors in the Award, a useful reference can be made to the Division Bench judgment of the Delhi High Court in **Jagdish Kaur Vs. Jasbir Singh Sandhu & Ors.**[12]. The Delhi High Court has preserved the award

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when it was noticed that the same suffered from apparent arithmetic errors by effecting necessary modifications therein. The Court has held thus:

> "34. In view of the foregoing findings, it becomes apparent that there exists an error on the face of the record in the manner in which the learned Arbitrator reconciled the payments received and the value of work executed. The figures adopted by the learned Arbitrator, namely, the admitted receipt of Rs.68,00,000/- and the assessed value of work at Rs.65,44,049/- , were derived from the Claimant's own documents, however, the computation of the resulting liability and the consequential Award does not correctly reflect the mathematical relationship between these figures.
>
> 35. This inconsistency arises not from any interpretative exercise or re-appreciation of evidence but from a manifest error, with regard to the computation of the resulting liability, that is self-evident upon comparing the numerical findings recorded in the Award. Such a computational discrepancy, being objectively demonstrable from the Award itself, constitutes an error apparent on the face of the record.
>
> 36. As already noted in the ratio in ***Gayatri Balasamy*** (supra) courts exercising jurisdiction under Sections 34 and 37 of the A&C Act, are empowered to rectify or modify an arbitral award where the mistake is purely arithmetical or clerical in nature, and where such correction does not entail substituting the Arbitrator's reasoning or undertaking a substantive review of the merits.
>
> 37. The Supreme Court has further clarified that the statutory power of setting aside an Award necessarily encompasses the lesser power of correction in cases of manifest computational errors.
>
> 38. **Applying this ratio, it becomes evident that there is no occasion to set aside the Award, as it neither suffers from perversity nor discloses any error warranting such interference and the mathematical inconsistency in the Award squarely falls within the category of correctable arithmetical errors, enabling this Court to modify the Award to bring it in conformity with the figures expressly recorded by the learned Arbitrator itself."**

(emphasis supplied)

49. In the present case as well, the error/inconsistency in the arbitral award does not stem out of interpretative process or re-appreciation of evidence but from an error with regard to computation of the resulting liability. Determination of liability of Respondent No. 1 by the

Tribunal is not flawed but a computational discrepancy, which is objectively demonstrable from the Award itself, constitutes an error apparent on the face of the record. Therefore following the ratio of the Constitution Bench judgment in **Gayatri Balasamy vs M/S Isg Novasoft Technologies Limited** (supra), since the correction does not entail substituting the Arbitrator's reasoning or undertaking a substantive review of the merits, in my view the obvious computational error in the present case can be corrected.

50. Coming to the aspect of award of interest, Respondent No. 1-Petitioner has challenged award of interest on the ground that the MoU did not provide for payment of any interest. The Tribunal has awarded the rate of interest of 18% p.a. from 1st June 2012 to 31st December 2013 and the rate of 9% p.a. from 1st January 2014 till payment/realisation. It is contended by Petitioner- Respondent No. 1 that there no rationale is indicated by the Tribunal for awarding different interest for different periods. The Award actually does not indicate any basis for awarding 18% interest for the period 1st June 2012 to 31st December 2013 and lesser rate of interest of 9% for the subsequent period. Mr. Andhyarujina's contention of impermissibility to award interest cannot be accepted only on account of the MoU being silent about interest liability. There is no specific prohibition in the MoU on award of interest. When contract is silent about interest liability, the Arbitral Tribunal can award reasonable rate of interest and reliance by Mr. Mahajan on judgment of this Court in **Mahaonline Ltd. v. Aksentt Tech Services Ltd.** (supra) in this regard is apposite. However why the Tribunal has differentiated in the rates of interest is not discernible either from the Award or from any other material on record. The majority of period for which interest is awarded carries the rate of 9% and only for a limited period from 1st June 2012 to 31st December 2013, higher rate of interest @ 18% p.a. is awarded. In my view since there is no justification for awarding higher rate of interest of 18% p.a. during 1st June 2012 to 31st December 2013, the rate of interest can be uniform for the entire period i.e. @ 9% p.a. The Constitution Bench judgment in **Gayatri Balasamy vs M/S Isg Novasoft Technologies Limited** (supra) permits this Court to modify the rate of interest.

51. In view of the above discussion, the Petition deserves to be partly allowed by determining the entitlement of the Claimant to receive from Respondent No. 1-Petitioner amount of Rs. 41,11,484/- along with interest @ 9% p.a. from 1st June 2012 till realisation. The Arbitral Tribunal has not awarded any costs in favour of either of the parties.

52. The Petition accordingly succeeds partly and the following order is passed:

(i) The Arbitral Award dated 10th August 2017 is set aside to the limited extent of direction in Para 19 thereof. Instead it is directed that Petitioner do pay to the Claimant (*Respondent No. 1 herein*) an amount of Rs. 41,11,484/- along with interest at the rate of Rs. 9% p.a. from 1st June 2012 till the date of payment or realisation.

(ii) Rest of the Award shall remain undisturbed and confirmed.

53. With the above directions, the Arbitration Petition is partly allowed and disposed of. There shall be no order as to costs.

54. In view of the disposal of the Arbitration Petiton, Interim application does not survive for consideration and stands disposed of.

[SHARMILA U. DESHMUKH, J.]