HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 129/2007
CNR: RJHC020042042006 | URN: CMA / 401U / 2007

Union of India through the Executive Engineer, Central Public-Construction Department, Central Division Ist, NCR Building, Statue Circle, Jaipur.

----Appellant

Versus

M/s Hanuman Prasad & Brothers, Plot No.26, Madhav Nagar, in front of Durgapura Railway Station, Jaipur.

----Respondent

Connected With

S.B. Civil Miscellaneous Appeal No. 911/2015
CNR: RJHC020836462015 | URN: CMA / 1539U / 2015

M/s Hanuman Prasad & Brothers, Plot No.26, Madhav Nagar, in front of Durgapura Railway Station, Jaipur.

----Appellant

Versus

1. Union of India through Secretary, CPWD, Nirman Bhawan, New Delhi.
2. Chief Engineer, C.P.W.D., Sector No. 10, Vidhyadhar Nagar, Jaipur.
3. Executive Engineer, C.P.W.D., Sector No. 10, Kendriya Sadan, Vidhyadhar Nagar, Jaipur.

----Respondent

S.B. Civil Miscellaneous Appeal No. 1320/2015
CNR: RJHC020436592015 | URN: CMA / 2091U / 2015

1. Union of India Through The Secretary, Central Public Works Department, Nirman Bhawan, New Delhi
2. Chief Engineer, C.p.w.d., Sector No. 10, Vidhyadhar Nagar, Jaipur.
3. Executive Engineer, C.p.w.d., N.c.r. Building, C-Scheme, Jaipur Presently At Sector No. 10, Vidhyadhar Nagar, Jaipur.

----Appellant

Versus

3. M/s. Hanuman Prasad And Brothers, R/o Plot No. 26, Madhav Nagar, Opposite Durgapura Railway Station, Jaipur Raj.

----Respondents

For Appellant(s)	:	Mr. Parag Rastogi (Respondent in S.B. CMA No. 911/2015)
For Respondent(s)	:	Mr. Devi Dutt Sharma (Appellant in S.B. CMA No. 911/2015)

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

1.	Date of conclusion of Arguments	03.09.2026
2.	Date on which the judgment was reserved	03.09.2026
3.	Whether the full judgment or only operative part is pronounced	Full
4.	Date of pronouncement	07.10.2026

1. All these three miscellaneous appeals have come up before this Court under Section 37 of the Arbitration & Conciliation Act, 1996 (for short, 'A&C Act').

2. S.B. Civil Miscellaneous Appeal No.129/2007, filed by and on behalf of non-claimant, arises against the arbitral award dated 30.04.2003, whereagainst application filed by non-claimant under Section 34 of the A&C Act (registered as Arbitration Application No.266/2003), came to be dismissed vide order dated 15.12.2005 passed by the District Judge, Jaipur City, Jaipur, and review application filed thereagainst by non-claimant, came to be dismissed vide order dated 20.09.2006, which have been assailed by the non-claimant-appellant in this appeal.

3. S.B. Civil Miscellaneous Appeal No.911/2015, filed by claimant, and S.B. Civil Miscellaneous Appeal No.1320/2015, filed by and on behalf of non-claimant, have arisen out of arbitral award dated 15.11.2004, whereagainst application filed by non-

claimant under Section 34 of the A&C Act (registered as Arbitration Application No.232/2008), has partly been allowed and interest rate as awarded by Arbitrator, has been reduced vide order dated 07.02.2015 passed by Additional District Judge No.2, Jaipur Metropolitan, hence, both parties have preferred their respective appeals thereagainst.

4. Since parties to the appeals are common and the issues challenging the arbitral awards are also identical in nature, therefore, in order to avoid repetition of the referred judgments and reasonings to be passed by this Court and with the consent of respective counsels appearing on behalf of both the parties, appeals have been heard together and would stand decided by this common judgment.

5. Appellant-Non-claimant-Union of India in its both respective appeals, moved an application dated 28.01.2017 to add and raise a ground in the memo of appeal that the sole Arbitrator, Retired Chief Engineer Shri RJ Bhakhru, who passed both the impugned awards dated 30.04.2003 & 15.11.2004, was appointed by the District Judge, whereas the power of appointment of Arbitrator can be exercised by the Chief Justice of High Court under Section 11 of the A&C Act and the District Judge has no power to appoint Arbitrator, hence, the appointment of Arbitrator itself is *per se* illegal, wrong and void ab-initio and on this ground alone, the impugned awards are liable to be declared as void ab-initio and without jurisdiction. The application for amendment has been allowed in both the appeals, hence, first of all, before dealing with

the other objections of appellant-non-claimant on merits, it would be appropriate to deal with this objection first.

6. Simultaneously, while dealing with the objection of appellant-non-claimant, in respect of appointment of the sole Arbitrator by the District Judge, it is also necessary to determine whether the impugned awards dated 30.04.2003 & 15.11.2004 would be governed by the provisions of old Arbitration Act, 1940 or by the new Arbitration & Conciliation Act, 1996?

7. In order to consider both the issues, the factual background of the disputes, which led to the appointment of Arbitrator and resolution of disputes through arbitration proceedings are required to be considered.

7.1 In this context, it can be noticed from the record that in respect of arbitral award dated 30.04.2003, the cause of action arose after completion of the contractual work on 30.09.1986 when payment to the claimant-Contractor as per his final bills, was not made. On filing application under Section 20 of the old Act by the claimant, under the directions of the concerned District Judge, Jaipur, initially, sole Arbitrator Shri HN Chandwani was appointed by the Government in terms of Clause 25 of Contract, but later on, he resigned and in turn, few other sole Arbitrators were appointed, but everyone resigned, hence, lastly and finally District Judge appointed, Retired Chief Engineer Shri RJ Bhakhru as sole Arbitrator on 26.02.2001. The sole Arbitrator entered on reference and commenced the arbitration proceedings w.e.f. 08.03.2001. Thereafter, arbitration proceedings culminated into passing of arbitral award dated 30.04.2003, whereagainst

objections filed by non-claimant under Section 34 of the A&C Act have been dismissed vide order dated 15.12.2005 and review application filed thereagainst by non-claimant has also been dismissed vide order dated 20.09.2006, hence, assailing both the orders dated 15.12.2005 & 20.09.2006, non-claimant has filed S.B. Civil Miscellaneous Appeal No.129/2007.

7.2 However, in respect of arbitral award dated 15.11.2004, the cause of action arose when the Contract was rescinded by the Government on 23.04.1988, then on filing application under Section 20 of the old Arbitration Act by the claimant, under the directions of the concerned District Judge, Jaipur, the sole Arbitrator was appointed by the Government-Non-claimant in terms of Clause 25 of Contract. Initially, sole Arbitrator Shri HN Chandwani was appointed, but later on, he resigned and in turn, few other sole Arbitrators were appointed, but everyone resigned, hence, lastly and finally sole Arbitrator, Retired Chief Engineer Shri RJ Bhakhru was appointed on 26.02.2001 by the District Judge. The sole Arbitrator entered on reference and commenced the arbitration proceedings w.e.f. 08.03.2001. Thereafter, arbitration proceedings culminated into passing of arbitral award dated 15.11.2004, whereagainst objections filed by non-claimant under Section 34 of the A&C Act have been decided vide order dated 07.02.2015 whereagainst claimant has preferred S.B. Civil Miscellaneous Appeal No.911/2015 & non-claimant has preferred S.B. Civil Miscellaneous Appeal No.1320/2015.

7.3 It is noteworthy that the appointment of sole Arbitrator by the District Judge in respect of four different contracts between

the parties, including the two contracts out of which the present disputes between the parties arose, was challenged by the appellant-Union of India before the Rajasthan High Court by way of filing four separate revision petitions bearing No.769/2001, 770/2001, 771/2001 & 772/2001, all bearing similar title viz. Union of India Vs. Hanuman Prasad & Brothers. All four revision petitions were dismissed on merits vide common order dated 01.02.2002 by the High Court, wherein it was held and observed that initially, after accrual of disputes and on filing application under Section 20 of the old Arbitration Act, 1940 by the claimant, District Judge asked the Government-Union of India to appoint sole Arbitrator in terms of Clause 25 of the Contract and though Union of India appointed sole Arbitrator, he resigned later on, and then new sole Arbitrators were appointed, but they also resigned and thereafter, Union of India did not choose to appoint a new Arbitrator, hence, waived its right to appoint Arbitrator. In the order dated 01.02.2002, High Court clearly observed that in the backdrop of factual scenario, it became necessary for the District Judge to appoint an independent sole Arbitrator and there is no illegality or jurisdictional error in appointment of sole Arbitrator by the District Judge. The copy of order dated 01.02.2002, passed by the High Court dismissing all four revision petitions, has been placed on record by the claimant along with his written submissions. Hence, in view of order dated 01.02.2002 which has attained finality, and has binding effect on both parties, the objection of appellant-Union of India in respect of appointment of

Arbitrator by the District Judge does not sustain, rather is misconceived and rejected.

7.4 Coming to the another issue, undisputedly, as per record, sole Arbitrator, who has passed the impugned awards, commenced arbitration proceedings w.e.f. 08.03.2001, it means after coming into force of the A&C Act w.e.f. 22.08.1996.

7.5 It is not the specific case of either party that the proceedings in respect of both the arbitral awards, before the learned sole Arbitrator were not commenced and concluded as per the procedure and provision of A&C Act, rather, in the reply application dated 06.02.2018 of claimant, it has been accepted that after appointment of sole Arbitrator by the District Judge under the old Arbitration Act, 1940 (for short, "old Act"), proceedings before Arbitrator were conducted, with the consent of both parties, as per the procedure envisaged under the new A&C Act, 1996. Further, counsel for claimant, during course of hearing, admits and states at Bar that after culmination of arbitration proceedings, but before passing of the arbitral awards by the sole Arbitrator, both parties expressly agreed to adhere and follow the procedures and provisions of the A&C Act for the purpose of challenging and execution of the arbitral awards.

7.6 Admittedly, objections against both arbitral awards by non-claimant were raised within scope of Section 34 of the A&C Act and same were decided accordingly and present appeals thereagainst have also been preferred under the ambit and scope of Section 37 of the A&C Act.

7.7 It is noteworthy here that although during course of arguments, learned counsel appearing on behalf of claimant sought to submit, in a subtle manner, that the arbitral awards have been passed by the sole Arbitrator under the provisions of old Act, hence, in respect of awarding interest on the decreed amount of claims, Section 29 of the old Act shall apply which clearly stipulates that "*Where and in so far as an award is for the payment of money, the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree*". In alternative, submission of counsel for claimant is that since there is no bar in the Contract to award interest on the decreed claims by the Arbitrator, hence, learned Arbitrator, in exercise of his discretion and by assigning reasons, thought it just to award interest @ 18%, which is reasonable in the present case and cannot be held to be against Section 31(7)(a) & (b) of the A&C Act. Hence, the interest as awarded by the sole Arbitrator is well within jurisdiction and is not required to be interfered with by the Court.

7.8 Learned counsel appearing for and on behalf of non-claimant-Union of India, on the strength of the judgment of Hon'ble Supreme Court delivered in case of **Thyssen Stahlunion GMBH Vs. Steel Authority of India** reported in **[(1999) 9 SCC 334]**, submits that the old Act has been repealed with commencement of the new Act i.e. A&C Act, by virtue of Section 85(1) of the A&C Act and the only exception is provided in sub-Section 2 of Section 85 in respect of continuity of proceedings

under the old Act, where the proceedings which had commenced when the old Act was in force and continued even after coming into force of the new A&C Act and all the parties thereto agreed that the old Act shall apply to the said proceedings. However, there is a caveat that when arbitral proceedings under the old Act have not commenced, and the new A&C Act has come in force, then parties cannot agree for the applicability of the old Act.

7.9 Having looked into the impugned arbitral awards, it appears that both arbitral awards are absolutely silent on this aspect and do not spell out the provision of Act. There is no whisper, even for the namesake that under which Act, old or new, the arbitral awards have been passed. Going back to the procedure, which was undertaken by the parties for appointment of sole Arbitrator, it is not in dispute that same was done in furtherance to Clause 25 of the Contract which ensures the agreement and procedure in appointment of sole Arbitrator, was followed under the old Act. It would be apposite here to reproduce Clause 25 of the Contract for ready reference:

> "Clause 25.
>
> Settlement of disputes by Arbitration
>
> Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings, and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work, or as to any other question, claim, right, matter, or thing whatsoever, in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders, or these conditions or otherwise concerning the works, or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be

referred to the sole arbitration of the person appointed by the Chief Engineer, Central Public Works Department, in charge of the work at the time of dispute or if there be no Chief Engineer, the administrative head of the said Central Public Works Department at the time of such appointment. It will be no objection to any such appointment that the Arbitrator so appointed is a Government servant, that he has to deal with the matters to which the contract relates and that in the course of his duties as Government servant he had expressed view on all or any of the matters in dispute or difference. The Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, such Chief Engineer or administrative head as aforesaid at the time of such transfer, vacation of office, or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Chief Engineer or administrative head of the C.P.W.D., as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter is not to be referred to arbitration at all. In all cases where the amount of dispute is Rs. 50,000 (Rupees fifty thousand) and above, the arbitrator shall give a reasoned award.

Subject as aforesaid the provisions of the Arbitration Act, 1940, or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount claimed in respect of each such dispute.

It is also a term of the contract that if the contractor(s) do/does not make any demand for arbitration in respect of any claim(s) in writing within 90 days of receiving the intimation from the Govt. that the bill is ready for payment, the claim of the contractor(s) will be deemed to have been waived and absolutely barred, and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

> The arbitrator(s) may from time to time, with the consent of the parties enlarge the time, for making and publishing the award."
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> (emphasis supplied)

7.10 In case of **Thyssen Stahlunion GMBH** (*supra*), Hon'ble Supreme Court in para No.35 has held and observed that the parties can agree to the applicability of the A&C Act even before the A&C Act comes into force and when the old Act is still holding the field. There is nothing in the language of Section 85(2)(a) of the A&C Act, which bars the parties from so agreeing. There is, however, a bar that they cannot agree to the applicability of the old Act after the A&C Act has come in force, when arbitral proceedings under the old Act have not commenced, though the arbitral agreement was under the old Act.

7.11 The arbitration agreement between the parties as contained in Clause 25 of the Contract refers to applicability of old Act or any other new statutory enactment, for the time being in force. Thus, there was agreement between the parties that the provisions of that Act would apply to the arbitration proceedings which will be in force at the relevant point of time, when the arbitration proceedings are held.

7.12 Hence, taking into consideration the entirety of factual matrix and the legal proposition so also the stand of both parties, it stands clear that the proceedings before the sole Arbitrator were commenced and culminated as per the procedure envisaged under A&C Act and as such, the sole Arbitrator was required to adhere to the provisions of A&C Act and particularly to Sections 28(3), 31(3), (7)(a)(b) of the A&C Act, while passing the impugned

awards and issuing directions to award interest on the decreed amount in favour of claimant.

7.13 In that view of the matter, it is hereby concluded that the impugned arbitral awards would be governed by the provisions of new A&C Act.

Scope of interference in the Arbitral Award, in exercise of jurisdiction under Section 34 of the A&C Act and in appeal under Section 37 of the A&C Act.

8. Recently, Hon'ble Supreme Court in case of **Jan De Nul Dredging India Private Limited Vs. Tuticorin Port Trust**, reported in **[(2026) 3 SCC 186]**, after sailing through the previous dictum on the subject in issue, held and concluded in para Nos.35 & 36 as under:

> "35. The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.
>
> 36. In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the appellate court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The appellate court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The appellate court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement."
>
> (emphasis supplied)

9. The Constitutional Bench of Hon'ble Supreme Court in case of ***Gayatri Balasamy Vs. ISG Novasoft Technologies Ltd.***, reported in **[(2025) 7 SCC 1]** while replying a reference dealing with the ambit and scope of interference in the arbitral award under Section 34 of the A&C Act, per majority held and observed as under:

> "33. We hold that the power conferred under the proviso to Section 34(2)(*a*)(*iv*) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.
>
> 34. To this extent, the doctrine of *omne majus continet in se minus*—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.
>
> 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.
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> 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.
>
> **IX. *Post-award interest***
>
> 73. The next question that arises is: *Do courts possess the power to declare or modify interest, especially post-award interest?* In respect of pendente lite interest, Section 31(7)(*a*) (Annexure A), states that unless otherwise agreed by the parties, the Arbitral

Tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(*b*) (Annexure A) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till the date of payment. The Explanation defines the expression "current rate of interest".

74. There can be instances of violation of Section 31(7)(*a*), and the pendente lite interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the Court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or second, recourse may be had to the powers of remand under Section 34(4).

75. For the post-award interest in terms of Section 31(7)(*b*), the courts will retain the power to modify the interest where the facts justify such modification. This is why the standard rate stipulated in clause (*b*) applies when the award itself does not specify the applicable post-award interest. There can be a situation where the party to be paid money is at fault and is guilty of delay which may require a modification in the rate of interest. In the absence of grant of post-award interest in the award, the Court also possesses the power to grant post-award interest. Clearly, as per the legislative mandate, it is not the sole prerogative of the arbitrator.

78. Inherent in the discussion above, is the Court's power to both increase or decrease the post-award interest rate. It would be incorrect to state that the Court's power to interfere with this interest rate is limited solely to decreasing the interest rate. Situations may arise where the rate should be increased due to delays or obstructions in the execution of the award. Interest rates may also fluctuate over time.

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, computational 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."
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> (emphasis supplied)

10. There is not and cannot be any quarrel about the proposition of law as enunciated by Hon'ble Supreme Court in the above referred two recent decisions and both parties are bound to abide by such dictum of law.

11. Learned counsel appearing on behalf of both parties have referred and relied upon following case laws:-

From the side of non-claimant-Union of India:

(I) Indian Oil Corporation Limited Vs. M/s Shree Ganesh Petroleum Rajgurunagar [(2022) 4 SCC 463]

(II) State of Chhattisgarh & Ors. Vs. M/s. Sal Udyog Pvt. Ltd. [(2022) 2 SCC 275]

(III) Union of India Vs. M/s Concrete Products & Const. Co. & Ors. [(2014) 4 SCC 416]

(IV) Union of India (UOI) Vs. Manraj Enterprises [(2022) 2 SCC 331]

(V) The Project Director, National Highways Nos. 45E and 220, National Highways Authority of India vs. M. Hakeem and Ors. [(2021) 9 SCC 1]

(VI) Unibros Vs. All India Radio [(2023) SCC OnLine SC 1366]

(VII) Executive Engineer (R and B) and Ors. Vs. Gokul Chandra Kanungo (Dead) thr. his L.Rs [(2022) 7 SCR 309]

(VIII) Union of India (UOI) and Ors. Vs. Larsen & Tubro Limited (L&T) [2026 INSC 203]

(IX) Oil & Natural Gas Corporation Ltd. Vs. Western Geco International Ltd. [(2014) 9 SCC 263]

(X) Ramnath International Construction Pvt. Ltd. vs. Union of India (UOI) and Ors. [(2007) AIR (SC) 509]

(XI) Kranti Associates Pvt. Ltd. & Ors. Vs. Masood Ahmed Khan & Ors. [(2010) 9 SCC 496]

From the side of claimant:

(I) Bhagwati Oxygen Ltd. Vs. Hindustan Copper Ltd. [(2005) 6 SCC 462]

(II) M/s Chaudhary Construction Co., Jaipur Vs. State of Rajasthan & Anr. [2009 SCC OnLine Raj 1155]

(III) Union of India (UOI) Vs. Susaka Pvt. Ltd. & Ors. [(2018) 2 SCC 182]

(IV) Channa Bros. & Co. Vs. Union of India [(2009) 17 SCC 402]

(V) Hind Construction Contractors by its Sole Proprietor Bhikamchand Mulchand Jain (Dead) by Lrs vs. State of Maharashtra [AIR 1979 SC 720]

(VI) A.T. Brij Paul Singh and Ors. vs. State of Gujarat [AIR 1984 SC 1703]

(VII) Union of India (UOI) Vs. Rampur Distillery & Chemical Co. Ltd. [AIR 1973 SC 1098]

12. On the issue of exercising powers by Court under Section 34 of A&C Act, to modify/set aside the arbitral award and the jurisdiction of Arbitrator to award interest on the arbitral awards for all three stages i.e. (i) pre-reference period, (ii) pendente lite period and (iii) post-award period, within scope of Section 31 (7) (a) & (b) of A&C Act, various judgments by both parties have been referred, hence, instead of multiplying the judgments on the similar points, pronouncements of the Courts in few of the judgments are being considered and reproduced hereunder:

(I) In case of **Indian Oil Corporation Limited *(supra)***, the relevant portion is being reproduced hereunder:

> "41. As held by this Court in *Associate Builders* v. *DDA* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , cited by Mr Prasenjit Keswani, learned counsel appearing on behalf of the respondent, Section 34 in conjunction with Section 5 of the 1996 Act makes it clear that an arbitral award that is governed by Part I of the 1996 Act, can only be set aside on grounds mentioned under Sections 34(2) and (3) of the said Act and not otherwise. The Court considering an application for setting aside an award, under Section 34 of the 1996 Act cannot look into the merits of the award except when the award is in conflict with the public policy of India as provided in Section 34(2)(*b*)(*ii*) of the 1996 Act.
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> 42. In *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court held that an award could be said to be against the public policy of India in, inter alia, the following circumstances:
>
> 42.1. When an award is, on its face, in patent violation of a statutory provision.
>
> 42.2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.
>
> 42.3. When an award is in violation of the principles of natural justice.

42.4. When an award is unreasonable or perverse.
42.5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.
42.6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court.

43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract. "

(emphasis supplied)

(II) In case of **Oil & Natural Gas Corporation Ltd. *(supra)***, Hon'ble Supreme Court on the issue of fundamental policy of India law held and observed as under:

"35. What then would constitute the "fundamental policy of Indian law" is the question. The decision in *ONGC* [*ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country.....
36....
37....
38....
39....
40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."

(emphasis supplied)

(III) In case of **Executive Engineer (R and B) and Ors. *(supra)*,** Hon'ble Supreme Court, while discussing the jurisdiction of Arbitrator to award interest under Section 31 (7)(a) & (b) of A&C Act and considering that the 18% interest in the given facts and circumstances is unreasonable, reduced the interest @9% p.a. in exercise of its powers under Article 142 of the Constitution of India. The relevant portions of the judgment i.e. para Nos.10, 20 & 21 are being reproduced hereunder:

> "10. The provisions of Section 31(7)(a) of the 1996 Act fell for consideration before this Court in many cases including in the cases of Hyder Consulting (UK) Limited (supra) and Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation. A perusal of Clause (a) of Sub-section (7) of Section 31 of the 1996 Act would reveal that, no doubt, a discretion is vested in the arbitral tribunal to include in the sum for which the award is made interest, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. However, it would reveal that the Section itself requires interest to be at such rate as the arbitral tribunal deems reasonable. When a discretion is vested to an arbitral tribunal to award interest at a rate which it deems reasonable, then a duty would be cast upon the arbitral tribunal to give reasons as to how it deems the rate of interest to be reasonable. It could further be seen that the arbitral tribunal has also a discretion to award interest on the whole or any part of the money or for the whole or any part of the period between the date of cause of action and the date on which the award is made. When the arbitral tribunal is empowered with such a discretion, the arbitral tribunal would be required to apply its mind to the facts of the case and decide as to whether the interest is payable on whole or any part of the money and also as to whether it is to be awarded to the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
>
> 20. Noticing the similarity between the aforesaid cases and the present case, we find that the present case is also a fit case wherein this Court needs to exercise its powers Under Article 142 of the Constitution of India to reduce the rate of interest. As already discussed

hereinabove, taking into consideration the conduct of the Respondent in delaying the proceedings at every stage which led to a long pendency of the dispute, we are of the view that, though it will not be in the interest of justice to interfere with the principal award, this is a fit case wherein the interest at all the three stages, that is pre-reference period, pendente lite and post-award period, requires to be reduced.

21. In the result, we partly allow the appeal and pass the following order:

(i) The Respondent would not be entitled to any interest for the period between 30th August 1977 and 25th July 1989 and for the period between 14th February 2000 and 15th October 2001;

(ii) In respect of the remaining period at all the three stages, that is pre-reference period, pendente lite and post-award period, the Respondent would be entitled to interest at the rate of 9% per annum."

(emphasis supplied)

(IV) Recently, in case of **Larsen & Tubro *(supra)*** decided on 27.02.2026, in respect of granting indulgence in exercise of powers by the Arbitrator to award interest under Section 31 (7)(a) & (b), noticed the difference and granted indulgence accordingly in the teeth of the agreed term of Contract in respect of interest under Clauses 16 (3) and 64 (5) of the GCC which, as referred in para Nos.31 & 32 of the judgment are as under:

"31. Clause 16(3) of the GCC reads as under:

"no interest will be payable upon the Earnest Money and Security Deposit or amounts payable to the Contractor under the Contract, but Government Securities deposited in terms of Sub-clause (1) of this Clause will be payable with interest accrued thereon".

32. Clause 64(5) of the GCC provides as under:

"where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made."

For ready reference, the relevant portion of judgment is being reproduced hereunder:

> **"In respect of pre-award interest:**
>
> 45. The provisions of the Act of 1996, including provisions contained in Section 31(7)(a) give paramount importance to the contract entered into between the parties and categorically restrict the power of an arbitrator to award pre-award/pendente lite interest when the parties have themselves agreed to the contrary. Thus, the AT cannot award pre-award/pendente lite interest, even in the form of compensation, in view of specific Clause 16(3) of GCC read with Clause 64(5) of GCC.
>
> 52. We are of the view that the AT has committed serious error by awarding pre-award/pendente lite interest qua Claim Nos. 1, 3 & 6, though AT has observed that the said amount are awarded by way of compensation, however, in view of the peculiar Clause of GCC as well as provisions contained in Section 31(7)(a) of the Act of 1996 and the decisions rendered by this Court, the AT could not have awarded the pre-award/pendente lite interest.
>
> 53. For the above stated reasons, the Commercial Court and the High Court failed to appreciate that the AT had awarded pendente lite interest in violation of an express contractual bar and such failure attracts interference even within the limited scope of Sections 34 and 37 of the Act.
>
> **In respect of post-award interest:**
>
> "47. With regard to the post-award interest, Section 31(7)(b) of the Act provides that unless the award otherwise directs, the sum awarded shall carry interest from the date of the award till payment. The legislative intent underlying this provision is twofold: first, to compensate the successful party for delayed realization of the award, and second, to ensure prompt compliance with the award by the judgment-debtor.
>
> 59. In this context, the decision of this Court in Gayatri Balasamy v. M/s. ISG Novasoft Technologies Limited, (2025) 7 SCC 1, is significant. In paragraphs 74 to 78, this Court has categorically held that courts retain the power to modify post-award interest Under Section 31(7)(b) of the Act where the facts justify such

modification. It has been clarified that Section 31(7)(b) is a distinct legislative creation which prescribes a statutory standard to guide the determination of post-award interest and since such interest is inherently future-oriented, the courts may increase or decrease the rate of post-award interest where compelling reasons exist. The Court further observed that when the statute itself benchmarks a standard, such benchmark must weigh in the consideration of the rate awarded and that the power of modification is necessary to avoid unnecessary setting aside of the entire award merely on the question of interest.

60. Thus, in the facts and circumstances of the present case, we deem it appropriate to modify the rate of post-award interest from 12% per annum to 8% per annum from the date of award till realization.

Final conclusion:

61. Accordingly, the answer to the issues framed in the present matter is that:

A. The AT is not justified in awarding pre-award/pendente lite interest, by way of compensation, while passing the award in favour of the Respondent-claimant, and more particularly in view of Clause 16(3) and Clause 64(5) of the GCC. The award of such interest is not in accordance with the agreement, and liable to be set aside.

B. The AT is justified in awarding post award interest in favour of the Respondent-claimant, however, the rate of post-award interest is modified from 12% per annum to 8% per annum from the date of award till realization.

C. The Courts below committed a serious error while dealing with Issue (A) and Issue (B) referred hereinabove while exercising the powers Under Section 34 and Section 37 of the Act."

(emphasis supplied)

(V) In case of **Bhagwati Oxygen Ltd.** ***(supra)*** referred by the counsel for claimant, wherein the Hon'ble Supreme Court declined to grant indulgence in awarding interest by Arbitrator @18% p.a. for pre-award and post-award period, it is suffice to observe that the provisions of old Arbitration Act, 1940 were under consideration, hence, the ratio decidendi expounded therein

does not apply in the present appeals, wherein the rate of interest as awarded by the Arbitrator is required to be considered within scope of Section 31 (7)(a) & (b) of A&C Act. Similarly, the judgment of Hon'ble Supreme Court delivered in case of **Channa Bros. *(supra)*** and judgment of High Court of Rajasthan delivered in case of M/s. Choudhary Construction Co. (supra) also pertain to the provisions of Old Arbitration Act, 1940.

(VI) In case of **Susaka Pvt. Ltd. *(supra)***, the Hon'ble Supreme Court has held and observed in para No.33 as under:

> "33. Indeed, Section 31(7) (a) and (b) of the Act empowers the Arbitral Tribunal to award interest on the awarded sum and secondly, it is always subject to the agreement between the parties."

(VII) In case of **Rampur Distillery & Chemical Co. Ltd. *(supra)***, the Hon'ble Supreme Court expounded the proposition of law that the party to a contract taxing security deposit from the other party to ensure due performance of the contract is not entitled to forfeit the deposit on ground of default when no loss is caused to him in consequence of such default.

Objections of the non-claimant:

13. Although nature of objections as put forth by the non-claimant against both the arbitral awards are substantially similar in nature, yet objections have been decided vide two independent and separate orders, which too are different in nature and outcome as much as the factual backdrop, in respect of making compliance of arbitral award and payment by the non-claimant, pursuant to award is also different, hence, it is better to deal with the objections of non-claimant separately in both appeals.

S.B. Civil Miscellaneous Appeal No.129/2007:

14. Facts relating to S.B. Civil Miscellaneous Appeal No.129/2007 are as under:

14.1 Notice Inviting Tender (NIT) dated 11.06.1982 was issued by appellant-non-claimant for construction of additional 122 residential quarters for AG Staff Colony at Bajaj Nagar Jaipur (SH-Type II 82 more quarters including water supply, sanitary installments and drainage), against which bid submitted by claimant-respondent was finalized and for execution of work, contract agreement dated 15.07.1982 came to be executed between the parties. After completion of work, final bill was raised by the claimant, but since differences arose between the parties, claimant filed application under Section 20 of the Arbitration Act, 1940, seeking direction against non-claimant to appoint Arbitrator. On such application, directions were issued by the concerned District Judge to appoint Arbitrator by the non-claimant-appellant-Union of India, but when the few of Arbitrators appointed by Government resigned and no new Arbitrator was appointed, then lastly, on 26.02.2001, Retired Chief Engineer of CPWD was appointed as sole Arbitrator by the concerned District Judge.

14.2 Sole Arbitrator, entered on reference and issued notices to both the parties. Claimant submitted statement of claim for Rs.41,50,000/- and the interest thereupon, to which reply along with counter claim was submitted by non-claimant. After concluding arbitration proceedings, sole Arbitrator passed award dated 30.04.2003.

14.3 In the arbitral award dated 30.04.2003, claimant's claim was considered under different sub-claims i.e. Claim Nos.1 to 20 and counter claim of non-claimant for cost of arbitration was considered under counter claim No.1. Finally, Arbitrator passed award, directing non-claimant to pay claimant a sum of Rs.9,17,953/- and interest thereupon.

(i) Claim No.1: Refund of security deposit of Rs.1,00,000/- was allowed with simple interest @18% interest p.a. w.e.f. 21.07.1987 (date of encashment of bank guarantee) to the date of payment.

(ii) Claim No.2: Balance payment against final bill was allowed for Rs.1,96,553/- and simple interest thereupon @18% p.a. was awarded w.e.f. 01.04.1987 (six months from the date of completion of work i.e. 30.09.1986) till the date of actual payment.

(iii) Claim Nos. 3, 14 & 19- Against damages due to non-supply of drawings, non-supply of cement and in fructous expenditure & damages for prolongation of work respectively, combined amount of Rs.4,00,000/- was allowed and simple interest thereupon @ 18% per annum was awarded w.e.f. 01.05.2003 (date of award) till the date of actual payment.

(iv) Claim No. 4- Extra cost for use of Puzzolona cement was not awarded since specific type of cement was not specified in agreement.

(v) Claim No. 5- For loss due to delay in payment of bills, a nominal sum of Rs. 10,000/- along with simple interest thereupon @ 18% per annum was awarded w.e.f. 01.05.2003 (date of award) till the date of actual payment..

(vi) Claim No. 6- Claim against increase in price of men and materials under Clause 10 (CC) was discarded as there was no Clause 10 (CC) in the agreement.

(vii) Claim No. 7- Extra cost of use of Teak Wood Panels and Deodar frames was allowed for Rs. 1,40,000/- and simple interest @ 18% p.a. was awarded w.e.f. 01.04.1987 (six months from date of completion of i.e. 30.09.1986) till the date of actual payment.

(viii) Claim No. 8- Extra cost in repairs of quarters due to premature storage of cement was allowed for Rs. 11,000/- and simple interest thereupon @ 18% per annum was awarded w.e.f. 01.05.2003 (date of award) till the date of actual payment.

(ix) Claim No.9- No award was granted for cost of part rates due to rectification of defects since there was no adequate evidence in support of claim.

(x) Claim No.10.- Award for the amount that was withheld due to delay in recording complete measurements of 18th R.A. Bill and released in 19th R.A. Bill was allowed to the tune of Rs.400/- and simple interest thereupon @ 18% per annum was awarded w.e.f. 01.05.2003 (date of award) till the date of actual payment.

(xi) Claim No.11- No award for loss due to change of cup-board frames was awarded since there was no adequate evidence in support of claim.

(xii) Claim Nos. 12 & 13- The award for withholding amount of Rs. 70,000/- was considered to be covered under Claim No.2.

(xiii) Claim No.15- Cost of transport, levelling/dressing of Earth work was allowed for Rs. 40,000/- and simple interest @ 18% p.a. was awarded w.e.f. 01.04.1987 (six months from date of completion of i.e. 30.09.1986) till the date of actual payment.

(xiv) Claim No. 16- A nominal interest of 18% p.a. was awarded against Claim No.1 w.e.f. 21.07.1987, Claim Nos. 2,7 & 15 w.e.f. 01.04.1987 and Claim Nos. 3,5,14,19, 8 & 10 w.e.f. 01.05.2003 till the date of actual payment.

(xv) Claim No.17- Cost of Rs. 20,000/- was awarded for cost of arbitration.

(xvi) Claim No.18- Cost of recover from R.A. Bills was not awarded since there was no adequate evidence in support of claim.

(xvii) Claim No. 20- Award for encashment of Bank Guarantee was covered under Claim Nos. 1 & 16.

(xviii) Counter Claim No. 1- Claim for Cost of arbitration of Rs. 30,000/- was not awarded as the delay in Arbitration proceedings and filing reply to statement of claims was found to be on the part of Respondents.

15. Non-claimant filed this appeal belated, after expiry of the limitation period, however, while condoning the delay vide order dated 01.02.2007, non-claimant-appellant was asked to make payment of the principal amount of arbitral award to the claimant and to pay interest amount also, which was permitted to be paid to the claimant on furnishing solvent security. As per record, it is an admitted position that in pursuance thereto, the principal amount of arbitral award of Rs.9,17,953/- has already been paid by the appellant-non-claimant to the claimant, which is an admitted fact by learned counsel for both parties. As far as interest amount is concerned, a sum of Rs.19,95,776/- vide Banker's cheque No.350966 dated 12.02.2008 has been deposited by the appellant-non-claimant before the High Court in the name of the Registrar (Administration), Rajasthan High Court, Jaipur Bench, Jaipur and same is lying deposited in the FDR, which has been permitted to be renewed time to time and lastly vide order

dated 30.05.2014, till the disposal of appeal without reference to the Court, hence, on the interest amount so deposited in the FDR, obviously interest at the bank rate has also been accrued and matured amount of FDR must be much higher.

16. As per Section 28(3) of the A&C Act, it is mandatory for the Arbitral Tribunal to take into account the terms of the Contract and trade usage applicable to the transaction. Hence, while determining interest, Arbitral Tribunal is bound to adhere to the terms of Contract and under legal obligation to award the interest, in due adherence to the provisions of Section 31(7)(a) & (b) of the A&C Act. For ready reference, the provisions of Section 31(7)(a) & (b) are being reproduced hereunder:

> "(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
>
> (b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.
>
> *Explanation*. The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978)."

17. Clause 29 of the Contract, which contains a bar against the Contractor to claim interest, reads as under:

> "Clause 29. Withholding and lien in respect of sums claimed-
> (i) Whenever any claim or claims for payment of a sum of money arises out of under the contract

against the contractor the Engineer-in-Charge or the Govt. shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the contractor and for the purpose aforesaid the Engineer-in-Charge or the Government shall be entitled to withhold the security deposit if any furnished as the case may be and also have a lien over the same pending finalization of any such claim. In the event of the security being insufficient to cover the claimed amount (or) amounts (or) if no security has been taken from the contractor the Engineer-in-Charge or the Government shall be entitled to withhold and have a lien to retain to the extent of such claimed amount or amounts referred to above from any sum or sums found payable or which at any time thereafter may become payable to the contractor under the same contract or any other contract with the Engineer-in-Charge or the Govt. or any contracting person through the Engineer-in-Charge pending finalization or adjudication of any such claim.

(ii) It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above by the Engineer-in-Charge or Government will be kept withheld or retained as such by the Engineer-in-Charge or Government till the claim arising out of or under the contract is determined by the arbitrator (if the contract is governed by the arbitration clause) or by the competent court as the case may be and that the contractor will have no claim for the interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to above and duly notified as such to the contractor for the purpose of this clause, where the contractor is a partnership firm or limited company the Engineer-in-Charge or the Government shall be entitled to withhold and also have a lien to retain toward such claimed amount in whole or in part from any sum found payable to any partner/limited company as the case may be whether in his individual capacity or otherwise."

(emphasis supplied)

18. In the written submissions, placed on record from the side of appellant-non-claimant, much emphasis has been laid on the issue of awarding interest by the Arbitrator @18% for the period of pre-award so also for post-award, particularly in respect of Claim Nos.3, 14 & 19. In addition, it has also been submitted that the

impugned award dated 30.04.2003 is patently illegal and perverse being not based on any evidence as well as in conflict with the "public policy of India".

19. Learned District Judge, in the impugned order dated 15.12.2005, noted and pondered over each and every objection raised by the non-claimant against the arbitral award dated 30.04.2003 in its application filed under Section 34 of A&C Act and after considering the nature of each objection, finally arrived at a conclusion that none of the objection attracts any ground envisaged under Section 34 of the A&C Act, hence, the arbitral award is not liable to be set aside on any of the ground.

20. Although, learned counsel appearing for the non-claimant-Union of India, in his oral submission argued that the District Judge committed perversity in dismissing application under Section 34 of the A&C Act since the Arbitrator passed the award without discussing the evidence of parties and without adhering to the terms of Contract as much as the award lacks reasonings and the relevant statutory provisions of Contract Act so also Section 28 (3) of the A&C Act have not been taken note of, hence, in this way, the award is patently illegal and perverse as much as in conflict with the public policy of India.

21. This Court has gone through the arbitral award dated 30.04.2003. A bare perusal of award does not reflect any non-application of mind by the Arbitrator nor shows that the award has been passed in ignorance or without considering the terms of Contract. In the award, reference of the Contract agreement dated 15.07.1982, entered into between the parties, has been given and

its relevant clauses have also been considered. Each claim of the claimant has been independently discussed on merits. The security deposit has been held to be refunded as per Clause (17) of the Contract Agreement to the claimant. Deductions made by the non-claimant against the final bills of claimant have also been considered and it has specifically been observed that there is no evidence of non-claimant to incur any loss rather the delay in completion of contract has been held to be attributable to the non-claimant on account of causing delay in supply of the material of cement, steel and drawings. While giving reference of Section 74 of Indian Contract Act, non-claimant has been held as not entitled for any damages and consequently, while declaring the penal recoveries, made by the non-claimant as unjustified, the balance amount of bills submitted by the claimant has been ordered to be paid. The condition of Contract Clause (2), wherein time is essence of the Contract, has also been dealt with and after going through the relevant correspondence and the specific period of delay during which no supply of cement, despite demand, was made by the non-claimant as much as by noticing the delay on the part of non-claimant in giving water connection for testing of water system and giving the layout, it has been concluded that prolongation of work up to 30.09.1986 was entirely due to lapses, defaults and failure to perform contractual obligations on the part of respondent, i.e., non-claimant. Under the claim of increase of cost index, the amount claimed by claimant under Claim No.6 has not been awarded in the light of Clause 10(cc) of the Contract Agreement. Similarly, Claim No.4 of claimant for extra cost for use

of Puzzolana Cement, has been denied; Claim Nos.9, 11 & 18 were also denied. While dealing with other claims, instead of the amount claimed by claimant, lesser amount has been awarded, assigning the reasons. Counter claim set up by non-claimant has been declined assigning the reasons of delay on the part of non-claimant even during the arbitration proceedings, filing of reply to the statement of claim and in conclusion of arbitration proceedings.

Thus, it is difficult to discern that the award impugned is patently illegal or is in conflict to the public policy of India or has been passed without adhering to the terms of Contract Agreement or without considering the evidence of parties. There is no breach of the fundamental policy of Indian law in the award and therefore, learned District Judge has not committed any illegality or jurisdictional error in dismissing the application of non-claimant under Section 34 of A&C Act vide order dated 15.12.2005. The *ratio decidendi* as expounded by the Hon'ble Supreme Court in case of **Indian Oil Corporation Limited Vs. M/s. Shree Ganesh Petroleum**, **Oil & Natural Gas Corporation Ltd. Vs. Western Geco International Ltd.** and other case laws as referred by the counsel for non-claimant, on the scope of interference in the arbitral award under Section 34 of A&C Act, do not apply to the facts obtaining in the present appeal, hence, are of no assistance to the appellant-non-claimant.

22.1 As far as awarding interest by the Arbitrator @ 18% simple interest is concerned, pre-award interest has been allowed in respect of Claim No.1, refund of security and Claim Nos.2, 7 & 15.

Post-award interest at the similar rate of interest has been allowed in respect of Claim Nos.3, 5, 14, 19, 8 & 10. The pre-award interest has been alleged to be contrary to Clause 29 of the Contract Agreement. Clause 29 has already been reproduced hereinabove. This Clause puts an embargo against claimant to claim interest on security deposition and other sums, payable by the non-claimant to claimant yet has been withheld or kept under the lien by the non-claimant. Indeed this clause does not put an absolute and conclusive embargo against claimant to get interest on the decreed amount of arbitral award. The language of Clause 29 is not akin and identical to the language of Clause 64(5) of the GCC which was a condition of Contract in case of **Larsen & Tubro Limited (L&T) (*supra*)**, hence, the *ratio decidendi*, to set aside the pre-award interest by the Hon'ble Supreme Court in the light of Clause 64(5) of GCC, does not apply in the present appeal and in the light of Clause 29 of Contract Agreement, it may not be held that the Arbitrator acted arbitrarily or contrary to Clause 29, while allowing pre-award interest on Claim Nos.1, 2, 7 & 15. For allowing a pre-award interest @ 18% simple interest, Arbitrator, in Claim No.16, has assigned reasons to apply this rate of interest. Indeed claimant claimed interest @ 24% p.a., against which, Arbitrator allowed simple interest @ 18%, that too, after due appreciation of the peculiar facts and by supporting the simple interest of 18% with reasons, which show that Arbitrator applied his mind while allowing simple interest @ 18% for the pre-award period. The reasons, recorded by the Arbitrator, find place in para No.17 of the arbitral award, wherein Claim No.16, relating to

interest has been discussed and finalized, hence, need not to be reiterated herein. It is suffice to observe here that allowing pre-award interest @ 18% by the Arbitrator does not go contrary to Clause 29 of the Contract Agreement and has been allowed by the Arbitrator as he deemed just and reasonable in exercise of his discretionary jurisdiction envisaged under Section 31(7)(a) of the A&C Act. Therefore, in the present appeal neither awarding interest for the pre-referral and pendente lite period (pre-award period) nor the rate of interest @ 18% simple interest in respect of Claim Nos.1, 2, 7 & 15 can be held to be against Section 31 (7) (a) of the A&C Act. Hon'ble Supreme Court in case of **Executive Engineer (R and B) and Ors. (*supra*)**, reduced 18% interest to 9% in exercise of its powers under Article 142 of the Constitution of India and in case of **Larsen & Tubro Limited (L&T) (*supra*)**, set aside the pre-award interest in the teeth of Clause 64(5) of GCC which provides an absolute bar to pay interest on whole or any part of money until the arbitral award is made, therefore, the *ratio decidendi* of both the judgments do not apply on the facts obtaining in the present appeal. In view of above discussions, learned District Judge did not commit any manifest illegality nor jurisdictional error in non-granting any interference in respect of allowing pre-award interest, in respect of Claim Nos.1, 2, 7 & 15, in favour of claimant by the Arbitral Tribunal and this Court in exercise of appellate jurisdiction under Section 37 of the A&C Act, finds that interference in allowing pre-award interest by the Arbitral Tribunal is not warranted, in the given facts and

circumstances, within the scope of Section 34 because same is not contrary to the provisions of Section 31(7)(a) of the A&C Act.

22.2 As far as allowing 18% simple interest for post-award period on the amount of Rs.4,21,400/-, decreed as total amount against Claim Nos.3, 5, 14, 19, 8 & 10 in favour of claimant is concerned, at the first blush, the rate of interest appears to be on higher side and unreasonable, however, jurisdiction by the Court to grant interference in the rate of interest for post-award period within scope of Section 31(7)(b) of the A&C Act, is expected to be exercised, where the facts demand such interference and modification in the award, and not in every case. In this respect, the Hon'ble Supreme Court, recently in case of **Larsen & Tubro Limited (L&T) (*supra*)** has observed that "*The legislative intent underlying this provision is twofold: first, to compensate the successful party for delayed realization of the award, and second, to ensure prompt compliance with the award by the judgment-debtor.*"

In the peculiar facts of the present appeal, Arbitral Tribunal has observed delay and lapses on the part of non-claimant, not only with regard to delay in completing the project by claimant, but also in concluding the arbitration proceedings as well. The reasons which have been found justified to allow 18% simple interest for pre-award period has also been applied for awarding post-award interest and therefore, the post-award interest @ 18% simple interest allowed in favour of claimant, may not be considered as Arbitrary, unreasonable and towards higher side. Moreover, the fact may not be oversight that the interest amount

to the tune of Rs.19,95,776/- has already been deposited by the non-claimant before the High Court vide Banker's Cheque dated 12.02.2008 and same is lying deposited in FDR. Thus, interference with the rate of post-award interest with an object to ensure prompt compliance of the arbitral award is also not warranted.

22.3 The issue of granting non-interference in the interest for post-award period, may be considered from an another angle as well that the entitlement of claimant for the post-award interest on the decreed amount of arbitral award under Section 31(7)(b) of the A&C Act, is not in dispute and if any interference in the rate of 18% simple interest is done at this stage, same would certainly result into complications. The interest amount @ 18% for the post-award period as well has already been deposited by non-claimant, which is admittedly lying deposited in FDR and whereupon interest at the bank rate too has been accrued. Therefore, it is practically impossible to separate the interest part of post-award period and interest of FDR thereupon, and if such interest tried to be separated, it will result into serious complications and infirmities, hence, in order to render quietus to the dispute and to give finality to the arbitral award, the justice demands, not to interfere with the interest rate of post-award period as well.

22.4 Admittedly, principal award amount under the arbitral award dated 30.04.2003 has already been paid to the claimant and against the interest amount, including the pre-award and post-award period, a full and final payment of Rs.19,95,776/- has also been deposited by non-claimant in the High Court, which has been

invested in FDR, hence, the peculiar facts and circumstances of the present appeal, warrant that in order to render finality to the arbitral award so also the issue of execution thereof, no interference should be made in the rate of post-award interest as well.

22.5 It is in fitness of things and just that the interest amount, which is lying deposited in the FDR should be allowed to disburse and release to the claimant along with the matured amount of FDR as full and final payment, by non-claimant to the claimant against the interest payable under the impugned arbitral award.

22.6 Thus, in the considered opinion of this Court, the justice demands non-interference in the arbitral award dated 30.04.2003 and to render the finality to the award. However, the findings and observations made by this Court hereinabove, dealing with the peculiar facts and circumstances of this appeal, to affirm the interest of 18% for pre-award and post-award period, may not be considered as a judicial precedent. Hence, finally the interest amount of Rs.19,95,776/- along with the interest accrued thereupon during its deposition in the FDR is permitted to be released in favour of claimant against the full and final payment of interest, but with a caveat that interest, over and above to such amount, would neither be claimed by claimant nor shall be payable by the non-claimant to the claimant under the award dated 30.04.2003.

22.7 The claimant is held entitled to receive the matured amount of FDR, either by breaking the FDR in the mid-term or after

completion of its last period of extension, whatsoever may be, at the discretion and option of claimant.

22.8 Thus, this appeal, without interference to the impugned award dated 30.04.2003, is disposed of with the above directions and observations.

S.B. Civil Miscellaneous Appeal Nos.911/2015 & 1320/2015:

23. Facts relating to S.B. Civil Miscellaneous Appeal No.911/2015 and S.B. Civil Miscellaneous Appeal No.1320/2015 are as under:

23.1 Notice Inviting Tender (NIT) dated 11.06.1982 was issued by appellant-non-claimant for construction of building for gsi bhawan, jhalana dungri, jaipur, against which, bid submitted by claimant-respondent was finalized and for execution of work, Contract Agreement dated 04.04.1983 came to be executed between the parties. Since according to non-claimant, despite issuing show cause notices pointing out slow progress in work and defects, no satisfactory response was given, hence, the contract was rescinded by the non-claimant on 23.04.1988. Thereafter, claimant asked, to appoint Arbitrator by the respondent to resolve the dispute and filed application under Section 20 of the old Act before the concerned District Judge, but few of Arbitrators, appointed by the Government resigned and no new Arbitrator was appointed, then another application under Section 8 of the old Act was also filed by claimant and finally as per directions of the concerned District Judge, R.J. Bhakru, Retired Chief Engineer, CPWD, was appointed as a sole Arbitrator on 26.02.2001.

23.2 Sole Arbitrator, entered on reference and issued notices to both the parties. Claimant submitted statement of claim for Rs.1,94,57,000/- and interest thereupon, to which reply along with counter claim of Rs.64,80,107/- and interest thereupon was submitted by non-claimant. After concluding arbitration proceedings, sole Arbitrator passed award dated 15.11.2004.

23.3 In the arbitral award dated 15.11.2004, claimant's claim was considered under different sub-claims i.e. Claim Nos.1 to 32 and counter claim set up by non-claimant was considered under sub-claim Nos.1 to 6. Finally, Arbitrator passed award directing non-claimant to pay claimant a sum of Rs.27,38,749/- and interest thereupon.

(i) Claim No.1- Cost of Earth work was allowed for Rs. 1,12,128/- and simple interest thereupon @ 18% per annum was awarded w.e.f. 24.10.1988 (6 months from the date of rescission) till the date of payment.

(ii) Claim No.2- The award for penal recovery of 138 bags of cement was considered to be covered under Claim No.2.

(iii) Claim No. 3- Extra cost for use of Puzzolana cement was not awarded as according to contract agreement "Cement in returnable bags" was specified, which covers all type of grey cement.

(iv) Claim Nos. 4 & 20- Cost of work done but not paid was allowed to the tune of Rs. 7,48,287/- and simple interest thereupon @ 18% per annum was

awarded w.e.f. 24.10.1988 (6 months from the date of rescission) till the date of payment.

(v) Claim No.5- No award was granted for recovery of Rs. 6000/- from R.A. Bill since there was no adequate evidence in support of claim.

(vi) Claim Nos. 6A & 6B- Costs for short payment for agreement item of Shutters 6.2 & 6.3 and stone veering respectively was found overlapping with Claim No. 4, hence, no award was allowed.

(vii) Claim No.7- No award was granted for recovery of R.A. Bill since there was no adequate evidence in support of claim.

(viii) Claim Nos. 8, 9 & 10- Costs for short payment for agreement items 9.1, 3.7 & 3/11 were found already covered by Claim No. 4, hence, no award was allowed.

(ix) Claim Nos. 11, 12 & 13- Award for short payment for excavation, cost of levelling and extra payments for deviation in quantity of steel was not allowed since there was no adequate evidence in support of claims.

(x) Claim No.14- Cost for increase in price of materials was found covered by Claim No. 26 para 29.0 and simple interest thereupon @ 18% per annum was awarded w.e.f. 24.10.1988 (6 months from the date of rescission) till the date of payment.

(xi) Claim No.15- Cost for loss due to delay in sample of Acid Resisting Tiles was found covered by Claim No. 14, hence, no award was allowed.

(xii) Claim Nos. 16, 17 & 18- Costs for short payment for work were found already covered by Claim No. 4, hence, no award was allowed.

(xiii) Claim No.19- Costs for damages due to Storage of Cement in Lab Block was not allowed since there was no adequate evidence of the loss suffered.

(xiv) Claim No. 21- Claim for extra expenditure on establishment, T&P etc. was allowed for Rs. 3,88,000/- and simple interest thereupon @ 18% per annum was awarded w.e.f. 24.10.1988 (6 months from the date of rescission) till the date of payment.

(xv) Claim No. 22- Cost for loss of profit due to non-completion of work on time was allowed for Rs. 2,21,640/-.

(xvi) Claim No. 23- Payment against loss due to prolongation of work was found already covered by Claim Nos. 14, 26 & 24, hence, no award was allowed.

(xvii) Claim No. 24- Award against refund of security deposit was allowed to the tune of Rs. 4,00,000/-.

(xviii) Claim No. 25- Payment against extra expenditure due to interest to bankers was found already

covered by Claim No. 31, hence, no award was allowed.

(xix) Claim No.26- Costs for increase in cost of work done after stipulated date of completion due to defaults and lapses on part of respondents, was awarded to the tune of Rs. 8,68,694/-.

(xx) Claim Nos. 27, 28, 29 & 30- Payment for losses occurred due to non-payment of labour, substitution of stone veneering, in fructuous trips of truck and booking materials for chowkats respectively were found to be covered under Claim Nos. 4, 14 & 26, hence, no award was allowed.

(xxi) Claim No. 32- Cost of arbitration was awarded to the tune of Rs. 75,000/-.

(xxii) Counter Claim No. 1- Claim for recovery of cost of Japanese steel was rejected in view of reasons given under para 9(ii) of the award, hence, no award was allowed.

(xxiii) Counter Claim No. 2- Claim for cost of balance work executed at risk and cost of claimants was rejected as the action of respondents to rescind the contract was found illegal.

(xxiv) Counter Claim No. 3- Claim for non-submission of labour report was not pursued by respondents.

(xxv) Counter Claim No. 4- Claim for non-employment of graduate engineer was dropped by respondents.

(xxvi) Counter Claim Nos. 5 & 6- Claims for loss of interest and cost of arbitration respectively were rejected as rescission of contract was found to be illegal.

24.1 Against the arbitral award dated 15.11.2004, non-claimant raised objections by filing application under Section 34 of the A&C Act before the concerned District Judge. Application has been decided by the Additional District Judge No.2, Jaipur Metropolitan vide order dated 07.02.2015 in the manner that no interference has been made with regard to allowing the claims in favour of claimant and rejecting the counter claim, however, the rate of simple interest @ 18% on the decreed claim amount of Rs.21,17,109/- relating to Claim Nos.1, 4, 14 & 21 has been modified to @10% for the pre-award period w.e.f. 24.10.1988 up to the date of order i.e. 07.02.2015 and 6% for the post-award period from the date of order i.e. 07.02.2015 till full payment of award.

24.2 In the appeal filed by non-claimant thereagainst being S.B. Civil Miscellaneous Appeal No.1320/2015, operation of impugned award, as modified by the District Judge, has been stayed vide order dated 25.05.2015 and the stay order is continuing in force since then, hence, no amount against arbitral award as modified by the District Judge has been paid to the claimant.

24.3 It is noteworthy here as an undisputed fact that as per the Contract entered into between the parties, the project was commenced from 04.04.1983 and the date of completion was agreed up to 03.10.1985. Later on, period to complete the project

was extended by non-claimant vide letter dated 30.12.1987 up to 31.03.1988, but thereafter Contract was rescinded by the non-claimant vide Letter dated 23.04.1988. Admittedly, Contractor-claimant completed only 82.55% work of project and remaining work was got completed by the non-claimants by incurring their own cost and expenses. According to non-claimant, left out work was completed on 04.12.1992, in which huge amount was incurred by non-claimant; and whereagainst Rs.51,17,369/- was claimed in the counter claim. Before the Arbitral Tribunal, claimant raised 32 claims for an amount of Rs.1,94,57,000/- and non-claimant set up counter claims for a value of Rs.64,80,107/-. Arbitral Tribunal vide impugned award dated 15.11.2004 allowed claim in favour of claimant to the tune of Rs.27,38,749/- and rejected the counter claim. Simple interest @ 18% p.a. was allowed only against sum of Rs.21,17,109/- w.e.f. 24.10.1988 till the date of actual payment, which has been reduced by the District Judge @ 10% w.e.f. 24.10.1988 to the date of order i.e. 07.02.2015 and @ 6% thereafter till the actual and full payment. The interest for pre-award period @ 18% was allowed only for Claim Nos.1, 4, 14 & 21.

24.4 Submission of counsel for non-claimant, in his written as well as verbal arguments is that the arbitral award dated 15.11.2004 has been passed in violation to section 23(2)(a) and section 31(3) of the a&c act as well as is patently illegal, perverse and in conflict with the "Public Policy of India". Further submission is that Claim No.21 for Rs.3,88,000/- on account of extra expenditure of establishment/T&P etc. and the Claim No.22 of

Rs.2,21,640/- on account of loss or profit in favour of claimant have been allowed by the Arbitral Tribunal without there being any evidence to support such claim and allowing pre-award interest is exceedingly arbitrary as well as against Clause 29 of the Contract Agreement and post-award interest @18% has also been allowed at a very excessive and high rate.

His further submission is that learned Additional District Judge failed to exercise its jurisdiction under Section 34 of the A&C Act and non-interference in the claims, decreed in favour of claimant, warranting interference by this Court in appeal, hence, the impugned order dated 07.02.2015 so also the impugned award dated 15.11.2004 are liable to be set aside being against substantive provisions of law. The case law, as has already been referred hereinabove, was relied upon by the counsel for non-claimant.

24.5 *Per contra*, learned counsel appeared on behalf of claimant while supporting the arbitral award dated 15.11.2004, argued that the rate of simple interest @ 18% p.a. allowed by the Arbitral Tribunal has arbitrarily been reduced by the Additional District Judge in exercise of jurisdiction under Section 34 of the A&C Act vide impugned order dated 07.02.2015, hence, to the extent of reducing the rate of interest for pre-award so also post-award period, order impugned is liable to be set aside, so as to restore the interest awarded in the arbitral award. In support thereof, the judgments as referred hereinabove have been relied upon by the counsel for claimant.

24.6 Heard. Considered.

24.7.1 A bare perusal of the award dated 15.11.2004 goes to show that in para No.5, Arbitral Tribunal considered the factors due to which delay in completion of project work occurred and what were the basic reasons due to which the claimant could not complete the project. While undertaking such task, contention of both parties, levelling allegations against each other for delay, were duly considered by the Arbitral Tribunal and finally, Arbitral Tribunal arrived at a conclusion that there has been delay and latches on the part of non-claimant in giving layout of building, short/delay supply of cement and steel, delay/non-issue of working drawings timely and additionally, on account of laying electrical conduits and getting the air-conditioning work done by other agencies.

24.7.2 Arbitral Tribunal observed that the extension of the contract period was made unilaterally by non-claimant vide Letter dated 30.12.1987 i.e. much belated, whereas the contractual period to complete the work had expired on 03.10.1985, therefore, the Arbitral Tribunal arrived at a conclusion that the rescission of Contract by non-claimant on 23.04.1988 by invoking Clause 2 of the Contract Agreement, was illegal and unjustified act of non-claimant.

24.7.3 On the similar lines, Arbitral Tribunal held that non-claimant is not justified to set up a counter claim for recovery of Rs.51,17,369/- from claimant, taking a stand that completion of remaining work of 17.45% has to be done by non-claimant at the risk and cost of claimant under Clause 3 of the Contract Agreement.

24.7.4 It is apparent that the arbitral tribunal took into consideration the terms of contract, contractual period agreed in the Contract Agreement to complete the contract, reasons of delay in project, unilateral extension of project period that too belated, by the non-claimant and finally found that time was not essence of the contract rather was set at large. The condition to this effect, enumerated in the Contract Agreement, was not applied in strict sense and contractual period was extended by the non-claimant itself unilaterally.

24.8 Further, this Court finds that it is not the case of non-claimant that due opportunity of hearing to the non-claimant was not given by the Arbitrator or the claim has been allowed beyond the scope of arbitrability of such claim or Arbitrator is guilty of any biasness or misconduct.

24.9 In the considered opinion of this Court, after perusal of the award, the submission of counsel for non-claimant that award has been passed in favour of claimant and counter claim has been rejected by the Arbitral Tribunal, without considering the evidence and material on record, is not acceptable since it is from the face value of arbitral award that the rival pleadings and documents of both parties were duly considered and the findings have been recorded, after due application of mind and by assigning the reasonings. So, in any way, it may not be held that award is not based on appreciation of evidence or suffers from lack of reasoning rather the other attending facts and circumstances have also been taken into consideration. The award cannot be termed to be passed in breach of fundamental principles of natural justice

or contrary to the statutory provisions or in conflict with the "Public Policy of India".

However, above observations are not to be read in respect of allowing Claim Nos. 21 and 22 and pre-award interest @ 18% for Claim Nos. 1, 4, 14 & 21 by the Arbitral Tribunal in favour of claimant. The award to such extent, suffers from patent illegality and against the Fundamental Policy of India, so much so not in conformity to section 31(7)(a) of A&C act.

24.10 Claim No.21 for Rs.2,68,000/- against extra expenditure allegedly incurred by Contractor to engage extra staff and for Rs.1,20,000/- against extra cost for T&P, totalling of Rs.3,88,000/- has been allowed by Arbitral Tribunal in favour of claimant, but no evidence in support of such claim was produced by claimant except placing on record bills and vouchers. Arbitral Tribunal has allowed Claim No.21, merely based on the vouchers submitted by the Contractor, without discussing a scintilla of evidence. In this way, allowing claim no.21, without evidence is ex-facie arbitrary, patently illegal, perverse and untenable under the Fundamental Policy of Indian Law.

24.10.1 The objection raised by non-claimant against allowing Claim No.21, in application under Section 34 of the A&C Act has not been addressed by the Additional District Judge in the impugned order dated 07.02.2015.

24.10.2 Apparently, the amount under this claim has been allowed based on surmises and conjectures which on its face value suffers from patent illegality as much as appears to be unreasonable and perverse.

24.10.3 The part of Claim No.21 is an independent and separable claim, hence, this invalid part of arbitral award may be severed and partly set aside in exercise of powers under Section 34 of the A&C Act, in the light of dictum of law expounded by the Hon'ble Supreme Court, recently in case of ***Gayatri Balasamy*** **(*supra*)**.

24.10.4 Therefore, the decreed amount under Claim No.21 by the Arbitral Tribunal in the arbitral award dated 15.11.2004 and non-interference to this extent by the Additional District Judge in the impugned order dated 07.02.2015 are liable to be set aside partially to this extent and claimant is not entitled to recover an amount of Rs.3,88,000/- and interest thereupon from the non-claimant under the arbitral award dated 15.11.2004.

24.11 Similarly, this Court finds that Claim No.22 whereunder amount of Rs.2,21,640/- has been awarded by the Arbitral Tribunal in favour of claimant against the loss of profit, has also been allowed hypothetically and merely based on assumption and presumption. There is no iota of evidence of claimant in support of such claim, however, claim has been allowed without any evidence. In the arbitral award itself, in para No.5.5(ix), a finding of fact has been recorded by the Tribunal that Contractor completed 82.55% work only, hence obviously, it cannot be disputed that rest of work on project was got done and completed by non-claimant by incurring their own costs and expenses. It is altogether a different thing that since delay and latches in non-completion of project have been attributed to non-claimants, but on that count, counter claim of non-claimant for recovery of

Rs.51,17,369/- has been rejected. The non-claimant cannot be saddled with the liability to pay loss of profit as well to claimant otherwise it would be unjust enrichment of claimant and contrary to the proposition of Indian Legal Theory. Hence, allowing Claim No.22 by Arbitral Tribunal is perverse, unreasonable and against the terms of Contract.

24.11.1 The proposition of law expounded by the Hon'ble Supreme Court in case of ***Associate Builders* (*supra*)**, which has been followed in case of **Indian Oil Corporation Limited Vs. M/ s. Shree Ganesh Petroleum**, suggests to hold that Arbitral Award is patently illegal and suffers from perversity as also unreasonableness.

24.11.2 Learned Additional District Judge, while deciding objection against Claim No.22 has not pondered over this aspect and committed jurisdictional error in affirming Claim No.22, which has no foundation at all.

24.11.3 Since this claim is also an independent and separable claim having no attachment with the other claims, hence, there is no hurdle in law to quash Claim No.22 and to set aside the arbitral award partly to the extent of allowing Claim No.22 in favour of claimant.

24.11.4 The legal proposition expounded by the Hon'ble Supreme Court in case of ***Gayatri Balasamy* (*supra*)** permits to quash the arbitral award partly, if it is separable part, hence, Claim No.22 for an amount of Rs.2,21,640/- as allowed by Arbitral Tribunal is hereby quashed and the arbitral award dated 15.11.2004 to this extent, partially stands set aside.

24.12 It is true that the Appellate Court, in exercise of appellate jurisdiction under Section 37 of the A&C Act cannot go beyond the grounds envisaged under Section 34 and does not exercise its powers as an ordinary Court of appeal, but since Claim Nos.21 and 22 could have been set aside by the Additional District Judge in exercise of powers under Section 34 of the A&C Act, however, learned District Judge failed to exercise his jurisdiction to this extent, hence, interference by this Court to the extent of setting aside Claim Nos.21 & 22 has to be made by this Court.

24.13 In respect of remaining Claim Nos.1, 4 & 20, 14, 24, 26, 32, non-interference by learned Additional District Judge in exercise of powers under Section 34 of A&C Act has been found to be justified, hence, no interference is warranted thereagainst.

24.14 In respect of other Claim Nos. 3, 5, 6A, 6B, 7, 11, 12, 13, 15, 16, 17, 18, 19, 23, 25, no award was allowed by the Arbitral Tribunal itself.

24.15 Now, this Court takes up the issue of allowing pre-award and post-award interest at the simple rate of 18% p.a. by the Arbitral Tribunal, whereagainst, learned Additional District Judge within its jurisdiction under Section 34 of the A&C Act, has granted indulgence by reducing to rate of 10% for pre-award period and 6% for post-award period, respectively.

24.15.1 The submission of counsel for non-claimant is that no interest for pre-award period in the light of Clause 29 of the Contract Agreement (supra, referred in para No.17) could have been allowed, is not acceptable since Clause 29, reproduced hereinabove in para No.17, does not put an absolute embargo for

awarding interest. The interest has been allowed by Arbitrator only against Claim Nos.1, 4, 14 & 21 w.e.f. 24.10.1988 till the date of payment, which includes period of pre-award as well as post-award period.

24.15.2 Since Claim No.21 has already been set aside, question of demand of interest thereupon does not arise at all.

24.15.3 Even if, in the terms of Contract Agreement, no rate of interest has been prescribed, hence, it is for arbitral tribunal to assign justified reasons to award @ 18% simple interest. Claim No. 1 pertains to excavation work for setback of 60 feet, whereas in original layout setback of 40 feet was shown. Claim No. 4 relates to amount, found payable by the Arbitrator to claimant for the work done and Claim No. 14 is overlapping with Claim No. 26. No interest on the decreed Claim No. 26 has been awarded, therefore, allowing interest on Claim No. 14 is not justified. No specific reasons have been assigned by the Arbitral Tribunal to award interest, for pre-award period for Claim Nos. 1 and 4 as well. Similarly, learned Additional District Judge, while reducing rate of interest from 18% to 10% for pre-award period, did not record any reasons.

24.15.4 Since the interest of pre-award period, which is governed by Section 31(7)(a) of A&C Act is an independent part of award and this Court finds that Arbitrator, so also learned Additional District Judge, acted arbitrarily in allowing interest for pre-award period, without any justified reason, and same is unreasonable as much as not warranted in the given facts and circumstances, where the contract work was not completed by the

claimant, for one and other reason whatsoever may be, but certainly, non-claimant also has to suffer for that to bear cost of completing the rest part of contract work.

24.15.5 Hence, this Court, in exercise of powers under Section 37, read with Section 34 of A&C Act, set aside the pre-award interest on Claim Nos. 1,4 & 14 as well, which is permissible in law as per proposition of law, expounded in case of **Gayatri Balaswami (supra) and Larson & Turbo (supra)** by the Hon'ble Supreme Court.

24.15.6 So far as post-award interest is concerned, same is well within discretion of Arbitral Tribunal, and governed by Section 31(7)(b) of A&C Act. In case of **Larson & Turbo (supra)**, in para No. 47, Hon'ble Supreme Court, observed that "*The legislative intent underlying this provision is twofold: first, to compensate the successful party for delayed realization of the award, and second, to ensure prompt compliance with the award by the judgment-debtor*". This Court finds that Arbitral Tribunal and learned Additional District Judge miserably failed to exercise their discretion and jurisdiction to allow post-award interest at a reasonable rate, on the entire decreed claims of claimant, instead of confining it to Claim Nos. 1, 4, 14 and 21 only. Since Claim No. 21 has already been set aside, hence, it is made clear that post-award interest @ 6% shall be payable by the non-claimant to claimant on the entire decreed awarded amount, if same is not paid/deposited by the non-claimant within a period of three months from today. In case of non-payment of awarded amount, post-award interest shall be payable by non-claimant from date of

award i.e. 15.11.2004 to the date of making entire and full payment of decreed claims in favour of claimant, in terms of the present order, but if payment is made by non-claimant within three months from today, no post award interest would be payable.

24.16 Thus, this Court arrives at a final conclusion that the impugned award dated 15.11.2004 as well as the impugned order dated 07.02.2015 deserve to be modified accordingly, in above terms.

24.17 This Court does not find any force in submission of counsel for non-claimant that the counter claim has been rejected by the Arbitral Tribunal without due application of mind and without considering the document and evidence produced by the non-claimant in support thereof. A bare perusal of the arbitral award clearly shows that due appreciation of the letters sent by non-claimants to the claimant was made and after appreciation in detail, non-claimant was held to be guilty for delay and latches on account of various factors as such the rescission of Contract by non-claimant was also declared illegal and unjustified. The fact finding, recorded by arbitral tribunal, may not be termed as against the terms of contract or in conflict with the "Public Policy of India" nor can be said to be patently illegal or against the principle of natural justice.

24.18 This Court finds that against rejection of counter claim, the interference, within scope of Section 34 of the A&C Act by learned Additional District Judge was not warranted as none of the ground envisaged therein attracted and therefore, learned

Additional District Judge acted well within his jurisdiction while dismissing objections of non-claimant made in respect of rejection of its counter claim. Hence, on this count, impugned award dated 15.11.2004 so also the impugned order dated 07.02.2015 do not warrant any interference by this Court as well.

24.19 It is necessary to record that this Court, in arriving at the above conclusions, has been guided by the proposition of law as expounded by the Hon'ble Supreme Supreme Court in the judgments, referred by both parties, although each case has not been discussed and referred independently, just to avoid the prolixity of judgment. But, the proposition of law as enunciated by the Hon'ble Supreme Court in the judgments referred by both parties have duly been considered and followed, while granting indulgence in the arbitral award dated 15.11.2004 and the impugned order dated 07.02.2015 in the present order.

Conclusion:

A) S.B. Civil Miscellaneous Appeal No.129/2007 is hereby disposed of without interfering with the arbitral award dated 30.04.2003 and impugned orders dated 15.12.2005 & 20.09.2006. Since, the principal amount under award has already been paid by the non-claimant to claimant and the interest amount of Rs.19,95,776/- has already been lying deposited in the FDR, hence, claimant is entitled to receive the interest amount of Rs.19,95,776/- along with accrued interest thereupon as full and final payment against the award dated 30.04.2003. The matured amount of FDR is directed to be disbursed to the claimant, either by breaking the FDR in mid-term or on completion of last term

period of investment in FDR, at the discretion and option of claimant. It is also made clear that the award dated 30.04.2003 stands finally executed as well and no additional interest amount is payable by non-claimant, under this award.

B) S.B. Civil Miscellaneous Appeal Nos.911/2015 & 1320/2015 stand disposed of by modifying the arbitral award dated 15.11.2004 in the manner that Arbitral Award dated 15.11.2004 stands partially set aside to the extent of allowing Claim No.21 for Rs.3,88,000/- & Claim No.22 for Rs.2,21,640/- and for allowing the interest of 18% p.a. in favour of claimant. Rest of claims, decreed in favour of claimant under award dated 15.11.2004 are hereby sustained. It is further made clear that if the amount of decreed claims is paid/deposited by non-claimant within a period of three months from today, the non-claimant shall not be liable to pay interest, but if non-claimant fails to pay/deposit the entire decreed amount of claimant, within three months, then, shall be liable to pay simple interest @ 6% p.a. to the claimant on the entire decreed claims of claimant i.e. claim Nos. 1, 4 & 20, 14 & 26, 24, 32 (Rs.1,12,128/- + Rs.7,48,287/- + Rs.8,68,694/- + Rs.4,00,000/- + Rs.75,000/- = Rs.22,04,109/-) w.e.f date of award dated 15.11.2004 till making full payment. The impugned order dated 07.02.2015 too stands modified accordingly. The stay order dated 25.05.2015 stands vacated.

25. All pending application(s), if any, stand(s) disposed of.

26. Record be sent back.

(SUDESH BANSAL),J

198-200-S/RONAK JAIMAN