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

Date of decision: 23rd SEPTEMBER, 2022

IN THE MATTER OF:

\+ **FAO (OS) COMM. 17/2022 & C.M. APPLs. 4701/2022 & 10471/2022**

CANARA BANK ..... Appellant

Through: Mr. Pradeep Dewan, Sr. Advocate with Ms. Anupam Dhingra, Advocate.

versus

THE STATE TRADING CORPORATON OF INDIA LTD. AND ANR ..... Respondents

Through: Mr. Tarkeshwar Nath, Mr. Lalit Mohan, Mr. Shivam Roy and Mr. Harshit Singh, Advocates for respondent No.1/ STC.
Mr. Amit Dhingra and Mr. Rohit Mahajan, Advocates for respondent No.2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SUBRAMONIUM PRASAD, J

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1966 (*hereinafter referred to as the* 'Arbitration Act') has been preferred by Canara Bank against the Order and Judgment dated 21.12.2021 passed by the Ld. Single Judge in OMP (COMM) 376/2016 dismissing the application filed by Canara Bank under Section 34(4) of the Arbitration Act (*hereinafter referred to as the* 'Impugned Order'), and also

setting aside the majority award of the Arbitral Tribunal dated 29.04.2016 to the extent that nil amount was awarded as interest to Canara Bank (*hereinafter referred to as the* 'Impugned Judgment').

2. The facts of the case indicate that back in 2008, Helm Dungemittel GMBH ('**Helm'**) entered into a contract to supply 3 lakh tonnes of urea @ 685.50 per metric tonne ("**Contract**") to the State Trading Corporation of India ("**STC**"). Clause 13 of the Contract called for Helm to furnish an irrevocable performance bank guarantee in favour of STC, for 3% of the total contract value, through any first-class international bank having its branch office in New Delhi (*hereinafter referred to as '**PBG'***). Since Helm's banker (*hereinafter referred to as the '**German Bank'***) did not have any branch office in New Delhi, Canara Bank issued a PBG of USD 67,86,450/- in favour of STC. This PBG was duly secured by a back-to-back counter-guarantee issued by German Bank in favour of Canara Bank for an identical amount (*hereinafter referred to as* 'counter-guarantee').

3. However, certain disputes arose between Helm and STC regarding the price of the goods to be supplied. Helm insisted on the contract price, whereas STC sought for reduction. Helm contended that as the contract stood discharged by performance, the PBG also stood discharged.

4. On 10.02.2009, STC invoked the PBG issued by Canara Bank. On the same date, Canara Bank also sought to invoke the counter-guarantee. However, the German Bank declined payment, contending that the demand was not in terms of its guarantee. The very next day, Canara Bank released the PBG, although German Bank did not release monies under the counter-guarantee.

5. On 12.02.2009, Helm filed a suit being CS(OS) 313/2009 titled '*Helm Dungemittel Gmbh v. The State Trading Corporation & Ors.*' before a bench of this Court impleading STC, Canara Bank, and German Bank seeking a permanent injunction against Canara Bank restraining it from invoking the counter-guarantee. An application seeking ad-interim injunction was also filed in the suit.

6. On 13.02.2009, *vide* an Order passed in CS(OS) 313/2009, an ad-interim ex-parte injunction was granted in favour of Helm, thereby restraining Canara Bank and German Bank from releasing the performance guarantee pursuant to its invocation by STC and also restraining STC from encashing the performance guarantee.

7. Thereafter, Canara Bank filed an IA in CS(OS) 313/2009 seeking vacation of stay granted vide Order dated 13.02.2009. This IA was decided in favour of Canara Bank in the following terms:

> *"32. For the reasons mentioned above, I am of the considered opinion that there is absolutely no fraud and no merit in the application under Order XXXIX Rule 1 & 2, CPC filed by the plaintiff which will warrant staying of the invocation of the counter guarantee by defendant no. 2 namely the Canara Bank against defendant no. 3 which was granted in favour of the plaintiff on 13.02.2009 much less the continuance of the same.*
>
> *33. I, accordingly vacate the stay order and permit defendant no.2 to realize the amount of counter guarantee from German Bank. The IA No. 2206/2009 is dismissed. So far as the IA No. 6701/2009 wherein the plaintiff had prayed for a direction to the STC to produce certain records has also become infructuous on account of the fact that an affidavit of Mr. S.K. Jain,*

> *a senior employee of the STC has been filed indicating that the amount of performance guarantee was credited to the international account of the STC on 10.02.2009 itself."*

8. Helm assailed the above-mentioned decision of the Ld. Single Judge vacating the stay *qua* Canara Bank in FAO OS 170/2021. By way of an interim Order dated 28.03.2011, a Division Bench of this Court observed the following:

> *"Having heard learned Counsel for the Appellant at some length, we think it expedient to direct the Appellant to deposit the amount represented by the performance bank guarantee with the Registrar General of this Court, within three weeks horn today. Subject to the aforementioned deposit being made, Canara Bank/Respondent. No.2 shall stand restrained from making any demand from Respondent No.3 pursuant to the counter guarantee."*

9. Pursuant thereto, Helm deposited the amount of sum of Rs.30,00,28,955/- with the Registrar General of this Court, and the balance amount of Rs.3,04,37,228/- on 25.03.2011 as well.

10. Thereafter, in order to get the amounts deposited with the Registrar General of this Court transferred to itself, Canara Bank filed an IA which was disposed of with the following observations:

> *"The short question which has arisen in the present application is whether the amounts deposited by the appellant in the Registry of the court, which has further been invested in a fixed deposit Receipt, should be directed to be paid to Canara bank. Mr. Chandiok, ld. senior Counsel for the appellant has raised several issues, all of which, however, go to the merits of the appeal. The short question is that whether the money*

should be retained in the bank in which it has been invested by the registrar General or should be given over to the Canara Bank. Mr. V.K. Shukla, General Manager of the Canara Bank has filed an undertaking that if the amount prayed for by the Canara Bank is granted, interest @9.10% per annum shall be payable on said deposit in the event of adverse orders to the said bank in this appeal. Mr. V.K.Shukla has further undertaken to deposit the abovementioned amounts (inclusive of interest) within 15 days if directed by this bench to do so. In these circumstances, we are satisfied that the application should be allowed. The registry is directed to pay the amount to the Canara Bank. In the present application a prayer is made in respect of Rs. 30,00,28,955/. Subsequent to the filing of this application a further deposit was made. We direct the Registry to pay of Rs. 30,00,28,955/- granting liberty to the applicant to file a fresh application if so advised."

11. Thereafter, *vide* an Order dated 31.08.2012 in FAO (OS) 170/2021, it was noted that Canara Bank would be willing to join the arbitration proceedings. In this regard, the following is reproduced:

"Learned counsel for R-2 / Canara Bank states that his instructions are that the Canara Bank is willing to join the arbitration proceedings only if the R-3/Hypo Vereins Bank also agrees to join the arbitration proceedings or in the alternative the appellant accepts to meet the liability, if any, which may fall on R-3/Hypo Vereins Bank. He further states he would, in the event of joining the arbitration proceedings, have to file claims against R-l/State Trading Corporation of India Ltd. and R3/ Hypo Vereins Bank, Learned counsel for the appellant states that he would like to obtain instructions in this behalf."

12. In accordance with the Indian Council of Arbitration, Rules of Arbitration, an arbitral tribunal comprising of Hon'ble Mr. Justice Devinder Gupta (Retd.), Hon'ble Mr. Justice Ajit Prakash Shah (Retd.) and Hon'ble Mr. Justice B.A. Khan (Retd.) was constituted and entered upon the reference to decide the dispute between Helm, STC, Canara Bank, and the German Bank. It is pertinent to note that the Arbitral Tribunal had framed an exhaustive list of issues. Pertinently, Issue No. 25 which was framed by the Ld. Tribunal is at the heart of the dispute and has been reproduced below:

> *"Whether the parties are entitled to any interest? If so, at what rate and for what period?"*

13. On 29.04.2016, the Arbitral Tribunal passed a detailed Arbitral Award. However, the Arbitral Award was consciously silent on the issue of the interest to be paid to Canara Bank. Consequently, Canara Bank preferred an appeal under Section 34 of the Arbitration and Conciliation Act, 1966, being OMP COMM 373/2016 against the award dated 29.04.2016.

14. During the pendency of the said Petition under Section 34, Canara Bank itself filed an Application under Section 34(4) and (5) of the Arbitration and Conciliation Act, 1996, in OMP COMM No. 373/2016, seeking the following relief:

> *"a) that in order to eliminate the ground for setting the impugned award this Hon'ble Court may in the interest of justice, fair play and to do justice to both the parties be pleased to adjourn the proceedings for a period of time as may be determined by this Hon'ble Court and pass necessary orders to give an opportunity to the Arbitral Tribunal to resume the arbitral proceedings or to take such other action as in the opinion of the Arbitral Tribunal will eliminate the ground for setting aside the award."*

15. Thereafter, *vide* an Order dated 21.12.2021 the Ld. Single Judge dismissed the Application pending under Section 34(4) and (5) of the Arbitration Act. The operative paragraphs are being reproduced below:

> *"At the outset, the instant application is not maintainable, having been filed at the instance of the party that is itself challenging the award. On this issue, this Court has already taken a view in ONGC Petro Additions Limited v. Tecnimont S.P.A. and Ors,' Mr. Pradeep Dewan, senior counsel, requests the Court to reconsider the said view, and relies primarily upon Kinnari Mullick v. Ghanshyam Das Damini, Dyna Technologies Pvt. Ltd. v. Crompton Greaves and other decisions. The Court has considered this submission, but is unable to find any contradictory view in the afore-noted decisions. Besides, in Tecnimont (supra), this Court has examined the decision in Kinnari Mullick (supra), and is unable to comprehend the logic behind the Petitioner pressing the aforenoted provision for directing the Tribunal to provide reasons and findings for not granting interest. If the Petitioner's challenge can succeed on the ground of lack of supporting reasons, why would it insist contemporaneously that the ground for setting aside the arbitral award be eliminated? The language of the statute is clear, and following the view taken in Tecnimont (supra), the Court finds the application to be misconceived and not maintainable. Dismissed."*

16. The Ld. Single Judge passed the Impugned Judgment on the same date, as the above-mentioned Order, whereby it set aside the nil award to Canara Bank's claim. The relevant paragraph reads as follows:

> *"28. In light of the above discussion, the nil award rendered by the Tribunal qua Canara Bank's claim of interest, noted above, is set aside.*
>
> *29. Before parting, the Court may note that Mr. Chandhiok had fairly stated that he would have no objection to go back to the same Arbitral Tribunal for adjudication of Canara Bank's claim of interest if STC were to also join the said proceedings. However, Mr. Puri, representing STC, stated that STC is a government-controlled corporation, and such consent cannot be given. In these circumstances, the Court, while setting aside the nil award only to limited extent noted above, leaves Canara Bank the option open to exercise its remedies in accordance with law, for adjudication of its afore-noted claims."*

17. It is against the above-mentioned judgment and Order, that the present FAO has been filed.

18. At the outset, the Ld. Counsel for the Appellant has stated that the present appeal is maintainable as it is falls squarely within the ambit of Section 37(1)(c) of the Arbitration Act. It is further submitted that the Ld. Single Judge has erred in setting aside the arbitral award, as the defect was curable in nature, and warranted a resumption of the arbitral proceedings.

19. The Ld. Counsel for the Appellant has further sought to argue that neither Section 34 nor any other provision of the Act provide that an application under Section 34(4) cannot be filed by a party challenging the award under Section 34(1). It has been stated by the Appellant that the decision of ONGC Petro Additions Limited v. Tecnimont S.P.A. and Another, **2019 SCC OnLine Del 8976,** does not lay down the law in this

regard. It has also been argued that if such a position is allowed to continue, it would defeat the very purpose of Section 34(4) of the Arbitration Act.

20. *Per contra*, the Ld. Counsel for Respondent No. 2 has submitted that the present appeal is not maintainable under Section 37 of the Arbitration Act. The Ld. Counsel for Respondent No. 2 has drawn the attention of this Court to the prayers of the present appeal. It is argued that the Appellant has sought to challenge the Order dismissing the Application under Section 34(4) in the present appeal, which is wholly unsustainable.

21. Further, it has been submitted that the Appellant also failed to file the application under Section 34(4) before the disposal of the proceedings under Section 34, consequent to which it becomes functus officio. Thus, as the pendency of a petition under Section 34(1) is a pre requisite for entertaining an application under Section 34(4) of the Act, the present appeal is not maintainable.

22. Ld. Counsel for the Respondent No.2 has also stated that neither the Ld. Single Judge nor this Court can remand the matter to the same arbitral tribunal, without the consent of the concerned parties. In this regard, reliance is placed upon Dr. A. Parthasarathy and Others v. E Springs Avenues Pvt. Ltd. and Others, **2022 SCC OnLine SC 719.**

23. It has further been contended that the power to set aside the Award under Section 34 of the Act, does not include the power to modify the Award. In this regard, the Respondent No. 2 has relied upon judgment titled Project Director, NHAI v. M. Hakeem, **(2021) 9 SCC 1**. Respondent No. 2 has submitted that the arbitral award has categorically stated that Respondent No. 1 was in wrongful possession and enjoyment of the interest

amount. In view of this, it has been submitted that it is the sole prerogative of Respondent No. 1 to pay the entirety of the amount.

24. Heard the counsel for the Appellant and Respondents, and perused the material on record.

25. A perusal of the Appellant's prayers indicates that it is seeking quashing of the Judgment which sets aside the arbitral award to the extent nil award had been rendered. Further, the Appellant has sought that the Order dismissing the Section 34(4) be set aside, and consequently, the matter may be remanded to arbitral proceedings, in order for the arbitral tribunal to cure the defects.

26. This Court shall first deal with the Impugned Order whereby the Ld. Single Judge has dismissed the application under Section 34(4) of the Arbitration Act. This application was dismissed by the Ld. Single Judge on the ground that the Appellant itself had filed the Application under Section 34, and hence, cannot contemporaneously file an Application under Section 34(4) to adjourn the proceedings, and remand the matter. In this regard, the Ld. Single Judge has placed reliance upon the judgment titled ONGC Petro Additions Limited v. Tecnimont S.P.A. and Another, **2019 SCC OnLine Del 8976.** This Court does not find the occasion to dwell on the propriety of ONGC Petro Additions Limited (Supra), considering that it has been upheld by a Division Bench of this Court, and the Hon'ble Supreme Court also did not find occasion to interfere with it (Refer to: SLP No. 18926/2021).

27. Regardless, an appeal under Section 37 of the Arbitration Act is not maintainable against an Order dismissing a 34(4) Application. Section 37 of the Arbitration Act is being reproduced below for ready reference:

> ***"37. Appealable orders**.—(1) An appeal shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely*
>
> *(a) refusing to refer the parties to arbitration under Section 8;*
>
> *(b) granting or refusing to grant any measure under Section 9;*
>
> *(c) setting aside or refusing to set aside an arbitral award under Section 34.*
>
> *(2) An appeal shall also lie to a court from an order of the Arbitral Tribunal—*
>
> *(a) accepting the plea referred to in sub-section (2) or sub-section (3) of Section 16; or*
>
> *(b) granting or refusing to grant an interim measure under Section 17.*
>
> *(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."*

28. On a bare perusal of the Section, it is evident that the ambit of Section 37 of the Arbitration Act is fairly narrow. An appeal under Section 37 lies only from three kinds of orders: an order refusing to refer the parties to arbitration under Section 8; an order granting or refusing to grant any measure under Section 9; and an order setting aside or refusing to set aside an arbitral award under Section 34.

29. The Impugned Order is evidently not an order refusing to refer the parties to arbitration under Section 8 or an order granting or refusing to grant any measure under Section 9. Further, the ambit of Section 37(1)(c) is also only limited to an order that sets aside or refuses to set aside the arbitral award, which is very evidently not the import of the Impugned Order.

Considering the narrow scope of Section 37, a challenge to the Order dismissing an application under Section 34(4) of the Arbitration Act is not maintainable under it.

30. Even otherwise, the Ld. Single ought not to have remanded the matter back to the Arbitral Tribunal. A perusal of the arbitral award indicates that it was conspicuously silent on the issue of pre-arbitration interest. Recently, the Apex Court in I-Pay Clearing Services (P) Ltd. v. ICICI Bank Ltd., **(2022) 3 SCC 121,** has distinguished between 'findings' and 'reasons' in the following way:

> *"37. In our view, Section 34(4) of the Act can be resorted to record reasons on the finding already given in the award or to fill up the gaps in the reasoning of the award. There is a difference between "finding" and "reasons" as pointed out by the learned Senior Counsel appearing for the respondent in the judgment in ITO v. Murlidhar Bhagwan Das [ITO v. Murlidhar Bhagwan Das, AIR 1965 SC 342] . It is clear from the aforesaid judgment that "finding is a decision on an issue". Further, in the judgment in J. Ashoka v. University of Agricultural Sciences [J. Ashoka v. University of Agricultural Sciences, (2017) 2 SCC 609 : (2017) 1 SCC (L&S) 517] , this Court has held that "reasons are the links between the materials on which certain conclusions are based and the actual conclusions".*

31. After observing the above, the Apex Court in I-Pay Clearing Services (P) Ltd. (Supra), held the following with regards to the discretion accorded to the Court while considering an Application under Section 34(4) of the Arbitration Act:

*"**38.** In absence of any finding on Point 1, as pleaded by the respondent and further, it is their case that relevant material produced before the arbitrator to prove "accord and satisfaction" between the parties, is not considered, and the same amounts to patent illegality, such aspects are to be considered by the Court itself. It cannot be said that it is a case where additional reasons are to be given or gaps in the reasoning, in absence of a finding on Point 1 viz. "whether the contract was illegally and abruptly terminated by the respondent?".*

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40**. Merely because an application is filed under Section 34(4) of the Act by a party, it is not always obligatory on the part of the Court to remit the matter to Arbitral Tribunal.* ***The discretionary power conferred under Section 34(4) of the Act, is to be exercised where there is inadequate reasoning or to fill up the gaps in the reasoning, in support of the findings which are already recorded in the award.

41. Under the guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the arbitrator, where there are no findings on the contentious issues in the award. If there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself. Under the guise of either additional reasons or filling up the gaps in the reasoning, the power conferred on the Court cannot be relegated to the arbitrator. In absence of any finding on contentious issue, no amount of reasons can cure the defect in the award.

***42**. A harmonious reading of Sections 31, 34(1), 34(2-A) and 34(4) of the Arbitration and Conciliation Act,*

> *1996, make it clear that in appropriate cases, on the request made by a party,* ***Court can give an opportunity to the arbitrator to resume the arbitral proceedings for giving reasons or to fill up the gaps in the reasoning in support of a finding, which is already rendered in the award. But at the same time, when it prima facie appears that there is a patent illegality in the award itself, by not recording a finding on a contentious issue, in such cases, Court may not accede to the request of a party for giving an opportunity to the Arbitral Tribunal to resume the arbitral proceedings.*** (emphasis supplied)

32. From the foregoing, it is evident that since the arbitral award had not recorded a finding with regard to the contentious issue of interest, it qualifies as a patent illegality. In these circumstances, Courts ought not to accede to the request of the party to resume the arbitral proceedings. Hence, in the absence of a 'finding' on the issue of interest, the Ld. Single Judge could not have remitted the proceedings back to the arbitral tribunal.

33. It is trite law that this Court under Section 37 of the Arbitration Act cannot travel beyond the scope of what is provided under Section 34 of the Arbitration Act. In view of the narrow scope of power provided under Section 37 of the Arbitration Act, this Court also cannot remand the matter back to the Arbitral Tribunal. In Dr. A. Parthasarathy and Others v. E Springs Avenues Pvt. Ltd. and Others, **2022 SCC OnLine SC 719,** the Hon'ble Supreme Court has held the following:-

> *"3. By the impugned judgment and order passed by the High Court in exercise of power under Section 37 of the Arbitration and Conciliation Act, 1996, the High* ***Court has set aside the award passed by the learned Arbitrator and has remanded the matter to the***

Arbitrator for fresh decision. As per the law laid down by this Court in the case of Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 and I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd., (2022) SCC OnLine SC 4, the same is wholly impermissible. Only two options are available to the Court considering the appeal under Section 37 of the Arbitration Act. The High Court either may relegate the parties for fresh arbitration or to consider the appeal on merits on the basis of the material available on record within the scope and ambit of the jurisdiction under Section 37 of the Arbitration Act. However, the High Court has no jurisdiction to remand the matter to the same Arbitrator unless it is consented by both the parties that the matter be remanded to the same Arbitrator."

(emphasis supplied)

34. This Court shall now consider the order passed under Section 34(1) whereby the Ld. Single Judge has set aside the award to the extent nil interest was granted to the Appellant. The facts of the case indicate that a contract was entered into between Helm and STC back in 2008. As per Clause 13 of the said contract, Helm was to furnish an irrevocable performance bank guarantee in favour of STC from a bank having a branch in New Delhi. As Helm's bank did not have a branch in New Delhi, it mandated Canara Bank to issue a PBG of USD 67,86,450/- in favour of STC. This PBG was duly secured by a back-to-back counter-guarantee issued by German Bank in favour of Canara Bank for an identical amount. After certain disputes arose, STC invoked the PGB, which was duly released by Canara Bank. However, the German Bank declined re-payment of the requisite amount to Canara Bank.

35. In litigation initiated by Helm itself, Helm was directed to deposit the requisite amount with this Court. Shortly thereafter, Helm had been directed by this Court to transfer the said amount to Canara Bank. The primary contention before the Single Judge was with regards to the interest that had accrued in the prolonged period of 2 years between when Canara Bank had remitted the money to STC, and the deposit of the amount by Helm with Canara Bank.

36. While the Arbitral Tribunal had also duly taken notice of the contentious issue, unfortunately, the award is entirely silent on this issue. In the considered opinion of this Court, the Ld. Arbitral Tribunal has committed a manifest error in not coming to any finding on this issue. In light of the facts, it is apposite to state that Canara Bank was entitled to interest for the pre-arbitration period as well, as also noted by the Ld. Single Judge. However, the power of the Ld. Single and this Court to interfere with the arbitral award halts at this juncture, considering the limited scope of Sections 34 and 37 of the Arbitration Act.

37. It is trite law that a Court cannot modify an award while adjudging its propriety under Section 34 of the Arbitration Act. The Hon'ble Supreme Court in NHAI v. M. Hakeem, **(2021) 9 SCC 1**, has reiterated this as follows:-

> *"**31**. Thus, there can be no doubt that given the law laid down by this Court, Section 34 of the Arbitration Act, 1996 cannot be held to include within it a power to modify an award. The sheet anchor of the argument of the respondents is the judgment of the learned Single Judge in Gayatri Balaswamy [Gayatri Balaswamy v. ISG Novasoft Technologies Ltd., 2014 SCC OnLine Mad 6568 : (2015) 1 Mad LJ 5] . This*

matter arose out of a claim for damages by an employee on account of sexual harassment at the workplace. The learned Single Judge referred to the power to modify or correct an award under Section 15 of the Arbitration Act, 1940 in para 29 of the judgment. Thereafter, a number of judgments of this Court were referred to in which awards were modified by this Court, presumably under the powers of this Court under Article 142 of the Constitution of India. In para 34, the learned Single Judge referred to para 52 in McDermott case [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] and then concluded that since the observations made in the said para were not given in answer to a pointed question as to whether the court had the power under Section 34 to modify or vary an award, this judgment cannot be said to have settled the answer to the question raised finally.

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48. Quite obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done. In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result. Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996. It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over."

(emphasis supplied)

38. While the scope of judicial scrutiny under Sections 34 is narrow, it is further restricted under Section 37 of the Arbitration Act, as it is a second

appeal. In this regard, in McDermott International Inc. v. Burn Standard Co. Ltd., **(2006) 11 SCC 181,** the supervisory role of the Courts has been circumscribed in the following manner:-

> *"52. **The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired.** So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."* (emphasis supplied)

39. Further, in MMTC Ltd. v. Vedanta Limited, **(2019) 4 SCC 163,** the following was observed:-

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

cautious and slow to disturb such concurrent findings." (emphasis supplied)

40. Previously, the Hon'ble Supreme Court has modified awards *qua* interest awarded therein, however, the same was undertaken under the discretionary powers of Article 142 of the Constitution of India (Refer to: Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India, **(2003) 4 SCC 172,** Krishna Bhagya Jala Nigam Ltd. v. Harischandra Reddy, **(2007) 2 SCC 720.**)

41. Considering the limited scope of judicial review under Section 34 of the Arbitration Act, the Ld. Single Judge could not have awarded interest to the Appellant. In light of the foregoing, the Ld. Single Judge has rightly left it open for the Appellant to pursue legal remedies in accordance with law, and refrained from awarding interest to the Appellant itself.

42. Hence, it emerges that the Order dismissing the Application under Section 34(4) is not maintainable under the present Appeal filed under Section 37 of the Arbitration Act. Further, although the Ld. Single Judge has rightly concluded that the Appellant ought to have been granted pre-arbitration interest, neither the Ld. Single Judge nor this Court can modify the award in order to award the Appellant interest.

43. Further, this Court shall not venture into identifying whether Respondent No. 1 or Respondent No. 2 is liable for the payment of pre-arbitration interest to the Appellant. The Appellant is at liberty to pursue legal remedies in accordance with law, including initiating *de novo* arbitration, and shall not be prejudiced by the observations contained herein.

44. In light of the aforesaid, the appeal stands disposed of, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

SEPTEMBER 23, 2022
Rahul