

South Eastern Coalfields Limited S E C L vs M/S Punjab Small Industries And Export ... on 9 October, 2026

Author: [Parth Prateem Sahu](#)

Bench: [Parth Prateem Sahu](#)

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Order reserved on 17.09.2026

Order delivered on 09/10/2026

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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBA No. 63 of 2017

1. South Eastern Coalfields Limited S E C L Through Its Chairman-Cum- Managing Director, S E C L Head Quarter, Seepat Road Bilaspur Chhattisgarh 495006, Chhattisgarh
 2. South Eastern Coalfields Ltd, Through Its General Manager, Sales And Marketing, S E C L Head Quarter, Seepat Road Bilaspur Chhattisgarh 495006, District : Bilaspur, Chhattisgarh
- ... Appellants

versus

1. M/s Punjab Small Industries And Export Corporation Ltd. Chandigarh A Punjab Government Undertaking , Through Its Authorised Signatory, Shri Mohd. Mozaffar Ahmed, Aged About 56 Years, Occ. Service, R/o 44 B, Karl Marx, Sharani, Kolkata 700023 Ltd., West Bengal

... Respondent

For Appellants : Mr. Abhishek Sinha, Sr. Advocate assisted by Mr. Himanshu Yadav, Ms. Amisha Sinha, Mr. Vaibhav Shukla and Ms. Astha Shukla, Advocates

For Respondent : Mr. Ashish Shrivastava, Sr. Advocate assisted by Mr. Ashutosh Shrivastava and Mr. Abhishek Vinod Deshmukh, Advocates.

DB: Hon'ble Mr. Justice Parth Prateem Sahu, J
& Hon'ble Mr. Justice Sachin Singh Rajput, J
CAV Order

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Per Parth Prateem Sahu, J

1. Present arbitration appeal arises out of refusal by the Commercial Court (District Judge Level) Naya Raipur to interfere with the award dated 26.11.2025 passed by the Arbitrator.

2. Facts of the case, in brief, are that on 12.12.2011 respondent Company, a Government of Punjab undertaking, entered into Fuel Supply Agreement (FSA) with the Coal India Limited for supply of 2.18 lakh tonnes of coal for the year 2011-12 (from the date of signing of contract i.e. 12.12.2011, till end of financial year i.e. 31.03.2012), to be released from its subsidiaries, to be consumed in units / consumers in small and medium sectors located in the State of Punjab. This agreement was initially for a period of 24 months and may be extended to a further period not exceeding 12 months upon mutual agreement in writing by both parties. As per agreement, Annual Contracted Quantity (ACQ) of coal agreed to be supplied by appellant SECL was 1,02,000 tonnes. As per Clause 3.1.2 of the agreement, purchaser is required to deposit with seller a sum of Rs.61,20,00/- as security deposit in the form of cash/bank guarantee. After deposit of bank guarantee of Rs.30,00,000/- towards security deposit, respondent has not been able to deposit remaining amount of security deposit of Rs.31,21,000/- till 31.12.2011. Meantime, the price of coal was enhanced w.e.f. 01.01.2012, therefore, respondent was called upon to furnish additional bank guarantee towards security deposit as also financial coverage, which respondent had deposited with the appellants on 23.3.2012. Due to delay in submission of additional bank guarantee towards security deposit and financial coverage, the purchase indents and coal program of respondent could not have been accepted by appellants upto 23.03.2012 and thereafter respondent did not submit any purchase indent and coal program for supply of coal. Consequently, a penal bill was sent to respondent by appellants on 30.8.2012 for short lifting of coal. According to fuel supply agreement, if level of lifting in a year falls below 30% of annual contracted quantity, the seller has the right to cancel the fuel supply agreement. Since respondent herein failed to lift any quantity of coal since the date of signing of fuel supply agreement, notice dated 22.3.2013 was issued to petitioner by appellants intimating their intention to terminate the fuel supply agreement with consequent forfeiture of security deposit after expiry of notice period of 30 days. Respondent did not respond to notice by submitting reply/representation within stipulated period, therefore, after expiry of notice period of 30 days, appellants terminated the fuel supply agreement dated 12.12.2011 and forfeited the 4 security deposit vide order dated 23.4.2013. Pursuant to termination of agreement, appellants invoked bank guarantee of Rs.30 Lakhs and Rs.89 Lakhs submitted by respondent towards security deposit vide letter No.452 dated 25.4.2013. Since the fuel supply agreement for the year 2011-12 had already expired and no valid contracted subsisted for 2012- 13, the purchase indents submitted by respondent for the period from July 2012 to April 2013 was not taken into consideration and respondent was advised to enter into fresh fuel supply agreement.

3. Aggrieved by the termination of Coal Supply Agreement as also Penal bill issued by the appellants, respondent preferred WPC No.684/2013 which came to be dismissed vide order dated 14.06.2013 reserving liberty to avail the remedy of arbitration available under the agreement. Respondent submitted an application for appointment of Arbitrator before appellant SECL. The Arbitrator was appointed on 27.7.2009. Respondent herein i.e. original claimant, submitted statement of claim on 28.02.2014 challenging termination of agreement on the grounds mentioned thereunder. Appellant herein submitted statement of defence. During course of the arbitral proceedings, both the parties were afforded adequate opportunity to substantiate their respective claims and defences. In pursuance thereof, they adduced both oral and 5 documentary evidence in support of their respective cases, exhibited the relevant documents, examined their witnesses, and cross-examined the witnesses produced by opposite party.

4. Upon a comprehensive consideration of the pleadings, the evidence adduced by the parties, the documents brought on record, and the submissions advanced on their behalf, the Arbitrator vide award dated 26.11.2015 allowed the claim of respondent in part holding that appellant SECL had terminated fuel supply agreement in utter disregard of preconditions expressly stipulated in the fuel supply agreement. Learned Arbitrator has recorded that according to sub-clause (b) (I) of Clause 17.1 of the agreement, in the event level of lifting by the purchaser falls below 30% of ACQ for the concerned year, notice for termination should have been issued within 60 days of the end of relevant year i.e. 2011-2012 (31.03.2012) and by providing at least 30 days prior notice, can terminate the agreement. SECL had issued notice to respondent-purchaser, for termination of fuel supply agreement on 22.03.2013 i.e. far beyond the end of financial year 2011-12. Thus, the provision of fuel supply agreement has not been adhered to. The Arbitrator has further held that forfeiture of security deposit, being a consequence flowing from termination of fuel supply agreement, is also not sustainable. Consequently, the learned Arbitrator set aside the termination of fuel supply agreement and directed appellants herein to refund the amount of security deposit to respondent herein together with interest at the rate of 15% per annum, to be calculated from the date of encashment of the bank guarantees i.e., 26.04.2013, until the date of the award. The

learned Arbitrator further directed that, in the event, awarded amount remained unpaid, appellants would be liable to pay post-award interest at the rate of 18% per annum on the amount so awarded, from the date of the award till actual realization.

5. Appellants filed an application under [Section 34 \(3\)](#) of the Arbitration and Conciliation Act, 1996 challenging the award dated 26.11.2015 before the learned Commercial Court (District Judge Level) Naya Raipur, District Raipur on the grounds mentioned therein, which came to be registered as MJC No.15/2016. By the order dated 26.07.2017, learned District Judge Bilaspur dismissed the said application and declined to interfere with the award. The learned District Judge observed that, under the termination clause contained in the Fuel Supply Agreement, SECL was entitled to terminate the Agreement only upon issuance of a 60-days notice. The procedure and conditions prescribed under the termination clause were mandatory in nature and constituted a condition precedent for the valid termination of the Agreement. However, the SECL while terminating fuel supply agreement executed between the parties did not adhere to preconditions stipulated under the agreement. Hence, finding recorded by the learned Arbitrator that termination of fuel supply agreement was against the spirit of terms and conditions of agreement because agreement is not terminated by issuing 60 days notice, is based upon proper appreciation of clauses contained in the agreement and did not warrant interference in the proceedings under [Section 34 \(3\)](#) of the Act of 1996. Consequently, learned Commercial Court affirmed the award dated 26.11.2015 passed by learned Arbitrator. Being aggrieved therewith, this arbitration appeal has been filed by appellants.

6. Learned Senior Counsel for appellant SECL would argue that vide letter dated 08.04.2011, Coal India Limited (CIL) had permitted the respondent to procure coal to the extent of 2.18 lakh tonnes from its subsidiary companies under an appropriate arrangement. Pursuant thereto, and SECL being one of the subsidiary companies of CIL, entered into a Fuel Supply Agreement (FSA) with the respondent on 12.12.2011. The said agreement, in terms of Clause 2.1 thereof, was to remain in force for a period of 24 months from the date of its execution by the parties. Under the terms of the agreement, 8 the Annual Contracted Quantity (ACQ) to be released by the appellants was 1,02,000 tonnes. However, despite execution of the agreement, the respondent did not lift any quantity of coal from the appellant. In view of such complete failure on the part of the respondent to avail the contracted quantity, after affording the respondent requisite opportunity by issuing a 30 days' notice, the agreement was terminated and security deposit was forfeited. However, learned Arbitrator by the impugned award has set aside the termination of agreement merely on the ground that notice of 30 days was not issued within 60 days of the end of the relevant year. The conclusion arrived at by learned Arbitrator regarding applicability of Clause 17 (b) to be mandatory, is perverse and contrary to other clauses of agreement, like Clause 4.9 and 17 (e). He submits that provision contained in Clause 17 (b) (I) of the agreement is not mandatory in nature. The word 'may be' has been used which indicates its nature to be discretionary. He submits that merely because the notice of termination was issued by the appellant after 60 days, it would not render the termination bad in law as no prejudice has been caused to the respondent. If a restrictive interpretation of termination clause is taken then it will set a wrong precedent as no penalty will be imposed on the purchasers who initially bid for coal and 9 later on do not discharge their responsibility under the agreement.

7. He submits that validity of the agreement dated 12.12.2011, was for a time period of 24 months from the signature date, as is evident from Clause 2.1 of the agreement, meaning thereby the agreement signed on 12.12.2011 was valid upto 11.12.2013. Notice of termination was issued on 22.03.2013. Thus, it is clear that the termination notice was issued to the respondent well within the subsistence and validity of agreement period. Hence, the conclusion arrived at by the learned Arbitrator that the notice of termination issued to respondent was beyond the stipulated period in agreement and it should have been issued within 60 days of the end of the relevant year i.e. 31.03.2012, is based on incorrect appreciation of terms of agreement i.e. Clause 2.1, and therefore, cannot be sustained.

8. He further submitted that very foundation of reasoning adopted by the learned Arbitrator is legally untenable, inasmuch as it overlooks the specific and unambiguous stipulation contained in Clause 2.1 of the FSA regarding the tenure of agreement. The agreement was executed on 12.12.2011 and, by its express terms, was to remain valid for a period of 24 months from the signature date. Consequently, the contractual period was to expire only on 11.12.2013. The validity of the agreement, therefore, was not confined to the financial year ending on 31.03.2012, nor did the expiry of the relevant financial/contractual year ipso facto bring the agreement to an end.

Hence, the conclusion arrived at by learned Arbitrator and affirmed by the learned Commercial Court that termination notice dated 22.03.2013 was invalid merely because it was not issued within 60 days from the end of the relevant year, i.e. 31.03.2012, is contrary to the express terms of the agreement and suffers from an error of contractual interpretation and therefore, liable to be interfered with.

9. He further submits that appellants had raised a penal bill dated 31.08.2012 towards compensation on account of the respondent's failure to lift the contracted quantity of coal. The said penal bill/claim was duly communicated to and received by the respondent. Despite receipt thereof, the respondent neither raised any dispute with regard to its liability nor made payment of the compensation within the stipulated period of 180 days. Thus, the respondent's failure was not merely a case of non-lifting of the contracted quantity; it was followed by a further and independent failure to discharge the contractual liability towards compensation even after the claim had been raised by the appellants. He submits that Clause 17(c) of the Fuel Supply Agreement (FSA) specifically 11 contemplates termination of the agreement in the event the purchaser fails to make payment of the compensation within the period of 180 days. Aforesaid stipulation is further supported by Clause 4.9 which specifically envisages that in the event of non-payment of compensation by the purchaser beyond 180 days of such claim, the seller shall be entitled to take any or all remedies including termination of coal supply and encashment/forfeiture of security deposit. However, the learned Arbitrator did not take into consideration this aspect by mere recording that no provision of FSA has been quoted, the subject of termination of agreement is dealt with by Clause 17.1 of the FSA and consequent forfeiture of security deposit.

10. Referring to Clause 3.1.2 of the agreement, it is submitted that aforementioned clause specifically envisages that the purchaser shall not be entitled to claim any interest on security deposit. Thus, the award of interest on security deposits in favour of respondent by the learned Arbitrator is contrary to an unambiguous stipulation in the agreement and being so, the finding of learned Arbitrator awarding interest on the security deposit is liable to be set aside.

11. Lastly, he submits that learned Arbitrator failed to properly appreciate relevant provisions of the agreement governing the rights and obligations of the parties and thus the award 12 suffers from patent illegality under [Section 34 \(2A\)](#) of the Act of 1996. The findings recorded in the impugned award is based on an erroneous interpretation and non-consideration of material contractual stipulations, resulting in conclusions contrary to the express terms of the agreement. The impugned award, therefore, suffers from a manifest error in appreciation and interpretation of the contractual provisions and is unsustainable in law and liable to be set aside. In support of his submission, learned counsel for appellants relied upon the decision in (2009) 12 SCC 26; [\(2019\) 17 SCC 786, Union of India vs Bright Power Projects \(I\) P. Ltd.](#), reported in (2015) 9 SCC 695; [Union of India vs Manraj Enterprises](#) reported in (2022) 2 SCC 331; [Vidarbha Industries Power Ltd. vs. Maharashtra State Electricity Regulatory Commission](#) reported in (2022) 8 SCC 352, State of CG vs Sal Udyog, reported in (2022) 2 SCC 275.

12. Per contra, learned Senior Counsel for the Respondent argues, at the threshold, that the scope of interference under [Section 37](#) of the Act is extremely limited, and cannot extend beyond the contours of [Section 34](#) of the Act. It is contended that the learned arbitrator had interpreted various clauses of the FSA and recorded a definite finding thereon in passing the award. The interpretation of the clauses of the Agreement, as made by the Arbitral Tribunal had to be accepted. The said 13 finding of the arbitrator was further affirmed by the Commercial Court while exercising the jurisdiction under [Section 34](#) of the Act. Therefore, the scope of interference in the present appeal becomes even narrower as it is well settled that in arbitration higher the court, lesser is the propensity to interfere. It is further argued that proceedings under [Section 37](#) of the Act of 1996 are much more summary in nature and not like an ordinary civil appeal, and therefore it do not permit re appreciation of facts, evidence or reinterpretation of contractual terms. The award cannot be interfered unless it is contrary to the substantive provision of law; any provision of the act or the terms of the agreement. In order to substantiate his argument, he relies upon decision of Hon'ble Supreme Court in cases of Jan De Nul Dredging India (P) Limited v. Tuticorin Port Trusts 2026 [\(3\) SCC 186, & Ramesh Kumar Jain vs. Bharat Aluminium Company Limited \(BALCO\)](#) 2025 SCCOnLine SC 2857.

13. While placing reliance on Clause 17.1 of the Fuel Supply Agreement, he submits that the seller can terminate the agreement if the purchaser's lifting during relevant Financial Year falls below 30% of the ACQ for the

concerned year. Such termination could only be effected by sending notice within 60 days from the end of relevant financial year and only after serving a prior notice of thirty days upon the purchaser. 14 Hence, the notice for termination of agreement ought to have been issued within 60 days of the end of the relevant year and the final order of termination ought to have been issued after expiry of prescribed 30 days notice period. However, the notice for termination was issued on 22.03.2013 i.e. far beyond the end of relevant year. Thus, it was in clear violation of the terms of contract pertaining to termination. In order to buttress his submission, he places reliance in the matter of [Ramchandra Narayan Nayak vs. Karnataka Neeravari Nigam Limited](#) (2013) 15 SCC 140.

14. He further submits that so far as the appellant's contention regarding the award of pendente lite interest on the security deposit is concerned, learned counsel submits that such an award is legally permissible. He further submits that Clause 3.1.2 of the Agreement, which stipulates that the purchaser shall not be entitled to claim any interest on the security deposit, binding only the appellant and is not binding upon the learned Arbitrator. To substantiate his argument he places reliance in the matter of [Raveeche and Company and Co. Vs. Union of India](#). 2018 (7) SCC 664, and [Union of India vs Susaka Private Limited and Others](#) (2018) 2 SCC 182, and [Union of India vs Larsen and Turbo](#) 2026 SCC OnLine SC 327 15

15. Lastly, learned counsel submits that even assuming, arguendo, that pendente lite interest could not have been awarded in violation of an express contractual prohibition, this Hon'ble Court may sever the offending portion of the arbitral award from its valid and enforceable part. He submits that the doctrine of severability permits the Court, while exercising jurisdiction under [Section 34](#) of the Arbitration and Conciliation Act, 1996, to set aside only that part of the award which is found to be unsustainable, while preserving the remainder of the award. According to him, the said power of severance is equally available to the appellate court while exercising jurisdiction under [Section 37](#) of the Act. To buttress his submission, he places reliance in the matter of [Gayatri Balasamy vs ISG Novasoft Technologies Limited](#) 2025(1) SCC 7.

16. Heard learned counsel for the parties and perused the record of the learned Commercial Court as also the Arbitrator.

17. For the sake of brevity and convenience, this judgment is divided into following four parts:-

- i. Scope and Ambit of [Section 37](#) of the Act of 1996;
- ii. Terms and Conditions of the Fuel Supply Agreement as entered into by the parties;
- (iii) Issues for consideration; and
- (iv) Conclusion 16
- (i) SCOPE AND AMBIT OF SECTION 37:

18. Before embarking upon the arguments of the rival parties, it will be apposite and necessary to scan the position of law relating to arbitral award vis-a-vis the scope and ambit of judicial review. It is no longer res integra that this Court, in an appeal under [Section 37](#) of the Arbitration Act, cannot substitute the findings of the Arbitrator on the merits of the rival claims of the parties. The judicial intervention is only permissible to the extent of ensuring that the award is a reasoned award. In case of [MMTC Ltd. vs. Vedanta Ltd.](#) reported as (2019) 4 SCC 163, Hon'ble Supreme Court has observed that interference with an order made under [section 37](#) cannot travel beyond the restrictions [laid down in](#) section

34. Relevant para of said decision is reproduced herein below:-

"12. 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."

19. In case of [UHL Power Company Ltd v. State of Himachal Pradesh](#) reported in (2022) 2 SCC 401, Hon'ble Supreme Court has observed as under:-

"16. As it is, the jurisdiction conferred on courts under [Section 34](#) of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under [Section 37](#) of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."

20. In case of [Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking](#) reported in (2023) 9 SCC 85, Hon'ble Supreme Court has observed in Para-18 that the scope of appellate scrutiny under [Section 37](#) of the Act of 1996 is necessarily co-extensive with the parameters mandated under [Section 34](#) of the Act of 1996 and hence the said provision does not enlarge the jurisdiction of the appellate court. Para-18 of said decision is as follows:-

"18. At the outset, we may state that the jurisdiction of the Court under [Section 37](#) of the Act, as clarified by this Court in [MMTC Ltd. v. Vedanta Ltd.](#)⁹, is akin to the jurisdiction of the court under [Section 34](#) of the Act. 10 Scope of interference by a court in an appeal under [Section 37](#) of the Act, in examining an order, 18 setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under [Section 34](#) of the Act."

21. In case of [Larsen Air Conditioning and Refrigeration Company vs Union of India](#), reported in (2023) 15 SCC 472, Hon'ble Supreme Court has observed that the scope of interference in exercise of appellate power under [Section 37](#) of the Act of 1996 is even narrower to review the findings of the awards, if it has been upheld or substantially upheld under [Section 34](#). It was observed thus:

"15. The limited and extremely circumscribed jurisdiction of the court under [Section 34](#) of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground" [ref:

Associate Builders (supra)]. The other ground would be denial of natural justice. In appeal, [Section 37](#) of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under [Section 34](#). It is important to notice that the old Act contained a provision which enabled the court to modify an award.

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However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been reiterated decisively by this Court in [Project Director, National Highways No. 45E and 220 National Highways Authority of India v M. Hakeem](#):"

22. The settled position has again been echoed in the case of [Reliance Infrastructure Ltd. vs State of Goa](#), reported in (2024) 1 SCC 479, Hon'ble Supreme Court, has spelt-out the limits of judicial review qua the arbitral award in proceedings under [Section 34](#) and even in appellate proceedings under [Section 37](#) of the Act of 1996, as under:-

"57. As noticed, arbitral award is not an ordinary adjudicatory order so as to be lightly interfered with by the Courts under [Sections 34](#) or 37 of the Act of 1996 as if dealing with an appeal or revision against a decision of any subordinate Court. The expression "patent illegality" has been ex-

posited by this Court in the cases referred hereinbefore. The significant aspect to be reiterated is that it is not a mere illegality which would call for interference, but it has to be "a patent illegality", which obviously signifies that it ought to be apparent on the face of the award and not the one which is culled out by way of a long- drawn analysis of the pleadings and evidence.

58. Of course, when the terms and conditions of the agreement governing the parties are completely ignored, the matter would be different and an award carrying such a shortcoming shall be directly hit by [Section 28\(3\)](#) of the Act, which enjoins upon an Arbitral Tribunal to decide in accordance with the terms of contract while taking into account the usage of trade applicable to the transaction. As said by this Court in [Associate Builders vs. DDA](#), if an Arbitrator construes the term of contract in a reasonable manner, the award cannot be set aside with reference to the deduction drawn from construction. The possibility of interference would arise only if the construction of the Arbitrator is such which could not be made by any fair-minded and reasonable person."

23. General principles, as culled out from reading of the above decisions and which are to be kept in mind before entering into the core issue agitated before this Court, are that arbitral awards are not liable to be set aside merely on the ground of erroneous in law or alleged misappreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section (s) 34 &

37. It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under [Section 34](#) and [37](#). Even when the arbitral awards may appear to be unreasonable and non- speaking that by itself would not warrant the courts to interfere with the award unless that unreasonableness has 21 harmed the public policy or fundamental policy of Indian law. It might be a possibility that on re-appreciation of evidence, the courts may take another view which may be even more plausible but that also does not leave scope for the courts to reappraise the evidence and arrive at a different view.

(ii) Terms and Conditions of the FSA entered into by the parties;

24. Keeping in view the aforesaid scope and ambit of the jurisdiction of this Court in relation to the setting aside of an arbitral award, we shall now proceed to consider the submissions advanced by the learned counsel appearing for the respective parties. However, before delving into the merits of the contentions raised in this arbitration appeal, it would be necessary to examine, in some detail, the terms and conditions embodied in the Fuel Supply Agreement dated 12.12.2021.

25. Fuel supply agreement dated 12.12.2011 provides for definition clause which provides certain definitions and relevant ones are reproduced herein below:-

"(o) Signature date" .- shall mean the date on which the Agreement is signed by both parties hereto.

(q) "Truncated year" .- shall mean a truncated year by virtue of the Signature Date occurring after April 1st in the case of first year of this Agreement or otherwise truncated due to Force Majeure Acts etc. 22

(f) 'Year' shall mean the financial year of the Seller, commencing on April 1st and ending on the following March 31st and shall include a "Truncated Year"

26. After the definition clause, Clause 2 of the said agreement provides that said agreement shall come into force on the signature date and shall remain in force for a period of 24 months from the signature date and the term of agreement may be extended for a period not exceeding 12 months upon mutual agreement in writing by both the parties.

27. Under Clause 3.1.1. it was provided that the respondent shall deposit with SECL as security deposit in the term of cash or bank guarantee of amount equivalent to the Base Price of coal prevalent on the signature date. It was further provided that value of security deposit shall be suitably increased/decreased to match the changes in

the base price of coal as notified by CIL. Under Clause 3.7 it is provided that in the event of termination of the agreement by the seller in accordance with Clause 17.1 (a) to (d), the Seller shall be entitled to forfeit the Security Deposit of the purchaser in addition to any other rights vested within the Seller upon such termination.

28. Under Clause 4 of agreement, it is provided that during period of agreement the respondent shall purchase the Annual Contracted Quantity (ACQ) of 1,02,000 tonnes of coal per 23 annum. As per Clause 4.2, annual contracted quantity shall be revised and reset by the CIL on yearly basis based on coal quantity lifted by the purchaser in immediately preceding year. Under Clause 4.6 it is provided that annual contracted quantity shall be sub-divided in four quarters of a year and the quantity to be supplied within the quarter shall be quarterly quantity (QQ). It is further provided that QQ will be pro-rated depending upon the date / month of commencement and termination of this agreement. Under Clause 4.8 it was agreed that if for a year, the level of delivery by the seller or level of lifting by the purchaser falls below 100% of ACQ with respect to that year, the defaulting party shall be liable to pay "Delivery Compensation" to the other party for the shortfall. Under Clause 4.9 it was agreed that delivery compensation for short delivery / lifting shall be payable by defaulting party to the other party within a period of 90 days from the date of receipt of claim. In the event of non-payment within the due date, the defaulting party shall be liable to pay interest in accordance with Clause 1.5. However, in the event of non- payment of delivery compensation beyond 180 days of such claim by purchaser, the Seller shall be entitled to take any or all remedies including but not limited to encashment of security deposit and/or termination of coal supply. 24

29. Level of delivery/lifting is to be calculated in the form of percentage as per formula provided in Clause 5 of the agreement. Clause 16 of the agreement deals with the mechanism of dispute resolution and it is mentioned therein that in case of a dispute or difference between the parties, parties would attempt to settle the difference amicably before the commencement of arbitration. It further states that disputes if not settled would be referred to the sole arbitration of a person to be nominated by the Chairman, CIL.

30. Clause 17 of the agreement deals with termination of agreement, which reads as under:-

"17. Termination of Agreement:-

This Agreement may be terminated in the manner and subject to the condition detailed herein below.

(a) Automatically, in the event the nomination of the purchaser is withdrawn or cancelled by the concerned State Government, which shall be deemed to be the default of the Purchaser under the Agreement. However, liabilities of the Purchaser that had already accrued on the effective date of such termination shall survive.

(b) LD/LL obligations:

(i) By the Seller within 60 days of the end of the relevant year, in the event that Level of Lifting (LL) by the Purchaser falls below 30% of ACQ for the concerned year, and on providing at least thirty (30) days' prior written notice to the Purchaser.

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(i) By the Purchaser within 60 days of the end of the relevant year, in the event that Level of Delivery (LD) by the Purchaser falls below 30% of ACQ for the concerned year, and on providing at least thirty (30) days' prior written notice to the Seller.

(c) By the Seller in the event of non-payment of compensation by the Purchaser within 180 days the claim for compensation being made by the Seller in accordance with clause 4.9 herein above.

(d) By the Seller, on receipt or advise from the State Government in accordance with clause 4.5 herein above.

(e) By either party by providing prior written notice for a period of 90 days, where any Party is rendered wholly or partially unable to perform its obligation under this Agreement because of a Force Majeure Act, as described in Clause 18 below; and such inability to perform lasts for not less than a total of 90 days in any continuous period of 180 days, In such event, the termination shall take effect on expiry of the notice period of 90 days, and the Parties shall be absolved of all rights/obligations under this Agreement, save those that had already accrued as on the effective date of termination.

17.2. Termination of this Agreement shall be without prejudice to the accrued rights and obligations of either Party as at immediately prior to the termination. On termination of the Agreement, State Government shall be duly informed by the Party terminating the Agreement, of such termination. 26

17.3. 17.3 Notwithstanding the provisions of Clause 17.1 and 17.2 above, in the event of any material change in the coal distribution system of Seller due to a Government directive/ notification, at any time after the execution of this Agreement, the same shall be notified by the Seller to the Purchaser in writing. In the event the Seller decides to terminate this Agreement, arising out of any such change, it shall notify the Purchaser at least 30 days in advance of such termination coming into effect and the Seller shall stand relieved of any obligation under the Agreement. For the avoidance of any doubt, CIL/ Seller shall bear no liability on account of such termination."

(iii) Issues for consideration;-

31. Now reverting back to the fact of present case. Based on the above factual situation, the issues arises for our consideration in this arbitration appeal are;

- whether the learned Arbitrator was justified in setting aside cancellation of termination of contract on the ground that the notice of termination issued to respondent was beyond the stipulated period in agreement and it should have been issued within 60 days of the end of the relevant year i.e. 31.03.2012? • Whether such interpretation of Clause 17 was a plausible view, or was so perverse and contrary to its plain terms as to constitute patent illegality warranting interference under [Section 37](#) of the Act of 1991? 27 • Where the contract contains a clause barring payment of interest on security deposit to the purchaser, is an arbitrator nonetheless competent under the [Arbitration and Conciliation Act, 1996](#) to award (a) pendente lite interest, and (b) post-award interest respectively, notwithstanding the contractual bar ?

32. Perusal of the record reveals that respondent herein is a nodal agency nominated by the Government of Punjab for distribution of coal to all categories of consumers such as small scale industries, brick kilns etc. The CIL vide its letter dated 08.04.2011 decided to allocate 2.18 lakh tonne of coal for the year 2011-12 in favour of State of Punjab to be released by its subsidiaries namely CCL, NEC and SECL under Fuel Supply Agreement and directed to contact concerned coal companies for execution of FSA at the earliest. Submission of 100% bank guarantee was a pre- requisite for signing the agreement. Respondent submitted bank guarantee of Rs.30 Lakhs on 4.6.2011 with a request to submit remaining amount of bank guarantee in installments which was accepted by appellants. On 12.12.2011 the agreement was signed between the parties for supply of 1.02 Lakh tonne of coal. This agreement was valid for a period of 24 months. Due to frequent increase in coal price, demand of deposit of additional bank guarantee towards security deposit 28 and financial coverage was made. Bank Guarantee of Rs.89 Lakhs was submitted by respondent on 7.3.2012, which was valid upto 7.3.2013. A bank guarantee of Rs.2,71,32,000/- towards Financial Coverage was also submitted by respondent on 7.3.2012, which was valid upto 11.03.2013. After submission of security deposit and financial coverage, respondent submitted purchase indents on monthly basis for the period from July 2012 to April 2013, however, no supplies were made to respondent on the ground that financial year 2011-12 was expired. Vide letter dated 4.8.2012, the Appellant, SECL, informed the Respondent that, owing to the Respondent's failure to lift any quantity of coal, the agreement was liable to be cancelled. Thereafter, vide letter dated 31.08.2012 SECL issued a bill of penalty/compensation to respondent for short lifting of coal. Vide letter dated 22.03.2013, the Appellant, SECL, called upon the Respondent to show cause as to why the agreement should not be terminated, with consequential forfeiture of the security deposit, upon expiry of the stipulated notice period of 30 days. Respondent neither submitted any reply nor made any representation within the said period. Consequently, upon expiry of the notice

period, the Appellants, vide letter dated 23.04.2013, terminated the agreement and forfeited the security deposit in accordance with the terms thereof. 29

33. Being aggrieved by termination of fuel supply agreement with consequential forfeiture of security deposit by appellant SECL, respondent submitted a statement of claim before the Arbitrator. Appellant herein filed the statement of defence. Thereafter, pleadings were complete, evidences were adduced and the parties were heard.

34. After considering the pleadings of the parties; contractual terms and conditions; oral/written arguments and legal submissions made by both the parties, the Sole Arbitrator passed the award on 26.11.2015. Learned Arbitrator has held that relevant provisions of the fuel supply agreement are apparent and plain reading of the provisions demonstrates that issue of notice for termination is obligatory and it should have been issued within 60 days of the end of the relevant year i.e. 31.03.2012, which has not been done by the SECL. Therefore, not only the termination of agreement but forfeiture of security deposit by SECL is bad. Accordingly, the claim of respondent herein was allowed; SECL was directed to refund the security deposit with interest @ 14% from 26.04.2013, on which date bank guarantees were encashed, till the date of award.

35. The award passed by the Sole Arbitrator was challenged by the appellants SECL under [Section 34](#) of the Act of 1996 before the Commercial Court. While questioning the award 30 the appellants had taken broadly following grounds for setting aside the award in the application;-

- the award is in conflict with public policy of India; termination of agreement and consequent forfeiture of security deposit has been made strictly in accordance with terms of agreement because respondent failed to lift any quantity of coal within stipulated time.
- Award passed by learned Arbitrator is contrary to the provisions of agreement, in particular Clauses No.4.8, 4.9, 17 (b) and 17 (c) of the agreement.
- Learned Arbitrator erred in awarding interest on security deposit from the date of encashment because the same is not covered by the agreement.

36. The learned Commercial Court, Raipur after taking note of the submissions of parties, framed the point for determination and then examined the award and found that the award was passed after hearing the parties and considering the conditions of the agreement, and thereafter vide order dated 26.7.2017 rejected the application filed by appellants under [Section 34](#) of the Act of 1996. The operative portion of the order dated 26.7.2017 passed by the learned Commercial Court, Raipur is quoted hereunder:-

"14. The record shows that there were frequent changes in the price of coal in the month of January and February 2012. The learned arbitrator has 31 discussed the evidences and arrived to the conclusion on the basis of facts that there were confusion in determining the base price of coal which is required for computation of SD and financial coverage towards coal value. The award and record reveals that the non- applicant vide letter dated 20-01-2012, was seeking information about SD and BG but the facts shows that there was no response from the applicant side. These facts have been taken into consideration by the learned arbitrator in the impugned award at para 13.1.2. The learned arbitrator has discussed all the evidences led by the parties and arrived at a conclusion that both the parties were accountable for delay.

15.As per termination clause of the agreement, this agreement may be terminated by the Seller within 60 days of the end of the relevant Year. In the event that Level of Lifting (LL) by the Purchaser falls below 30% of ACQ for the concerned Year, and no providing at least thirty (30) days prior written notice to the Purchaser. It means the termination notice should have been issued within 60 days of the relevant year i.e. 31-03-2012, and by providing at least 30 days mandatory prior notice to terminate the agreement. But, this has not been done by the applicant. The manner and conditions provided in the termination clause is mandatory for termination of the agreement. The applicant has not followed the provisions of the termination clause. The record shows that the applicant had terminated the FSA vide letter dated 23-04-2013 without following the procedure stipulated in the termination clause. Thus, the learned arbitrator has arrived at a conclusion that the termination of FSA vide letter dated 23-04-2013 was 32 against the spirit of FSA and hence it is

illegal. The finding so arrived at by the learned arbitrator is based upon the provisions of the termination clause of FSA. On the basis of evidence led by the parties the learned arbitrator has also arrived at a conclusion that forfeiture of SD by the applicant, which flows termination of FSA, is therefore not permissible. Hence, the reason stated by the learned arbitrator is found to be correct.

21. In the instant case the applicant without following the mandatory provision of the agreement terminated the FSA vide letter dated 23-04-2013 which is illegal consequently encashment of BG is also against the spirit of FSA. It is admitted fact that the non- applicant (purchaser) shall not be entitled to claim any interest on the SD as per clause 3.1.2 of the FSA. But, in the instant case the applicant had illegally terminated the FSA and also illegally encashed of BGs. The learned arbitrator has awarded interest @ 14% per annum, computed from 26-04-2013, the date on which BGs were encashed by the applicant, up to signing of the award i.e. 26-11-2015. Hence, the learned arbitrator awarded interest from the date of encashment of BGs till the date of award which is found to be correct in the light of [Section 31\(7\)](#) of the Act, 1996. Interference is permissible only when findings of arbitrator are arbitrary, capricious or perverse, or when conscience of court is shocked, or when illegality is not trivial but goes to root of the matter."

37. Perusal of letter dated 08.04.2011 issued by the Chief General Manager (S&M), Coal India Limited would show that a decision has been taken to allocate total 2.18 lakh tonne of 33 coal for the year 2011-12 in favour of the Government of Punjab through its nominated nodal agency i.e. respondent, under fuel supply agreement.

38. A bare reading of Clause 17(a) (i) of the agreement, quoted above and based on which fuel supply agreement dated 12.12.2011 was terminated by appellants, would show that this clause creates a conditional and time-bound contractual right of termination. The right arises only upon the Level of Lifting falling below 30% of annual contracted quantity for the relevant Year. The Seller entitled to terminate must then exercise that right in the manner and within the period prescribed by the clause. The expression "within 60 days of the end of the relevant Year" operates as an outer temporal limitation on the termination mechanism. Since the clause simultaneously requires not less than 30 days' prior written notice, the terminating party must comply with both requirements.

39. The term 'year' has been defined in sub-clause (f) of Clause 1 of the Agreement, which means, the financial year of the Seller, commencing on April 1st and ending on the following March 31st and shall include a truncated year. Definition of Truncated Year is also provided in the agreement, according to which, a truncated year by virtue of the Signature Date occurring after 1st April in the case of first year of this 34 agreement or otherwise truncated due to force majeure acts etc.

40. Now the question that arises for consideration is as to what is meant by the expression "relevant year" in the context of the agreement executed on 12.12.2011. In the backdrop of the terms and conditions of the agreement, the expression "relevant year" mentioned in clause 17 of the agreement has to be understood with reference to the contractual definition of the term "Year", which expressly means a financial year. Accordingly, notwithstanding the fact that the agreement was executed in December, 2011 for a period of 24 months, first relevant year for the purposes of the agreement would be the financial year 2011-12, commencing from 01.04.2011 and ending on 31.03.2012. The date of execution of the agreement i.e. 12.12.2011 cannot alter or enlarge the meaning of "Year" as specifically agreed between the parties. Thus, where the Agreement refers to an obligation, allocation or entitlement for a particular "Year", the same has to be reckoned with reference to the corresponding financial year and not with reference to the date of execution of the Agreement or a period of twelve months therefrom.

41. Merely because the contractual relationship commenced during the subsistence of a financial year cannot result in the 35 period from December, 2011 to December, 2012 being treated as a "Year". Such an interpretation would amount to rewriting the contractual stipulation agreed between the parties. The expression "Year", wherever employed in the agreement, must therefore be construed in accordance with its defined meaning, namely, a financial year commencing on 1 April and ending on 31 March. Consequently, in the present case, the relevant year is the financial year 2011- 12, commencing on 01.04.2011 and ending on 31.03.2012.

42. In case at hand, admittedly the notice for termination of coal supply agreement was issued on 22.3.2013 on the ground that respondent did not book any quantity of coal under the agreement for the year 2011-12 and as such, level of lifting in a year falls below 30% of ACQ. Vide letter dated 23.4.2013, the agreement for supply of coal was terminated and security deposit was forfeited. Thus, from the notice for termination it is evident that alleged default admitted pertained to the relevant year 2011-12. The contractual right of termination, therefore, had to be exercised in conformity with the time- frame expressly stipulated under Clause 17(a)(i). The stipulation prescribing within the period of 60 days from the end of the relevant Year cannot be treated as otiose or redundant. Rather, it constitutes an integral part of the contractual mechanism governing termination. The two 36 temporal requirements contained in Clause 17(a)(i), namely, the issuance of not less than 30 days' prior written notice and the exercise of the right within 60 days of the end of the relevant Year, are required to be read harmoniously and given full effect.

43. It is true that Clause 17.1 of the agreement starts with the words "the agreement may be terminated". The phrase "may be terminated" in Clause 17.1 means termination is a discretionary and not an automatic consequence. Meaning thereby, in the event level of lifting by the purchaser falls below 30% of annual contracted quantity for the concerned year, the seller is entitled to terminate the agreement. This is discretion of seller, however, is not absolute and it is circumscribed by the conditions expressly attached to it. Consequently, where the Seller elects to exercise the termination right, it must satisfy the stipulated triggering conditions mentioned therein i.e. within 60 days of the end of the relevant year on providing at least 30 days prior written notice. In case at hand, apparently, the 30 days' notice for termination was issued much after 60 days of the end of the relevant year. Hence, we do not find any force in the submission of learned counsel for appellants that issuance of notice after expiry of 60 days would not make any difference and also will not take away the right of the appellant to 37 terminate the agreement in case of default committed by respondent.

44. In [Dyna Technology Private Limited v. Crompton Greaves Limited](#), reported in (2019) 20 SCC 1, Hon'ble Supreme Court observed as under:

"25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under [Section 34](#) of the Arbitration Act."

45. In case of [Patel Engineering Ltd. vs NEEPCO](#), reported in (2020) 7 SCC 167 it is held by Hon'ble Supreme Court that patent illegality as a ground for setting aside an award is available only if the decision of the Arbitrator is found to be perverse or so irrational that no reasonable person would have arrived at the same or the construction of the contract is such that no fair or reasonable person would take or that the view of the Arbitrator is not even a possible view.

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46. In case of [Punjab State Civil Supplies Corporation Limited & Anr. Vs. Sanman Rice Mills & Ors. Reported](#) in (2024) SCC OnLine SC 2632, Hon'ble Supreme Court has held thus:-

"10. [Section 34](#) of the Act provides for getting an arbitral award set aside by moving an application in accordance with sub-Section (2) and sub-Section (3) of [Section 34](#) of the Act which inter-alia provide for the grounds on which an arbitral award is liable to be set aside. One of the main grounds for interference or setting aside an award is where the arbitral award is in conflict with the public policy of India i.e. if the award is induced or affected by fraud or corruption or is in contravention with the fundamental policy of Indian law or it is in conflict with most basic notions of morality and justice. A plain reading of [Section 34](#) reveals that the scope of interference by the court with the arbitral award under [Section 34](#) is very limited and the court is not supposed to travel beyond the aforesaid scope to find out if the award is good or bad."

47. In case of Somdatt Builders - NCC-NEC (JV) vs NHAI, (2025) 6 SCC 757, Hon'ble Supreme Court relying on its earlier decisions, has held thus:-

(a) the Court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under [Section 34\(2\)\(b\)\(ii\)](#) i.e. if the award is against the public policy of India.

(b) Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the 39 arbitrator are arbitrary, capricious or perverse or when the conscience of the Court is shocked or when the illegality is not trivial but goes to the root of the matter.

(c) An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts.

(d) As far as interference with an order made under [Section 34](#) by the Court under [Section 37](#) is concerned, it has been held 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. ([Reliance Infrastructure Ltd v. State of Goa](#)²)

(e) The scope of interference under [Section 37](#) is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under [Section 34](#) of the 1996 Act. As it is, the jurisdiction conferred on courts under [Section 34](#) of the 1996 Act is fairly narrow. "

48. In case of [Consolidated Construction Consortium Limited VS. Software Technology Parks of India](#), reported in (2025) 7 SCC 757 Hon'ble Supreme Court has held thus:-

"23. Scope of [Section 34](#) of the 1996 Act is now well crystallized by a plethora of judgments of this Court. [Section 34](#) is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited 40 grounds i.e. as those contained in sub-sections (2) and (2A) of [Section 34](#). It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator.

The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under [Section 34](#) of the Act. The court exercising powers under [Section 34](#) has perforce to limit its jurisdiction within the four corners of [Section 34](#). It cannot travel beyond [Section 34](#). Thus, proceedings under [Section 34](#) are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or [Section 34](#) of the 1996 Act or the terms of the agreement.

24. Therefore, the role of the court under [Section 34](#) of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act."

49. Coming to next issue which relates to award of interest by the Arbitrator on the security deposit ordered to be refunded. On perusal of the award it reveals that, the learned Arbitrator has awarded interest on security deposit of Rs.1,19,000/- @ 14% per annum to be computed from the date on which bank guarantee submitted towards security deposit was encashed to the date of award. The Arbitrator has also directed that appellants should pay interest at the rate of 18% p.a. on Rs.1,19,00,000/- from the date of award till actual payment is made.

50. It would be relevant to refer to the relevant contractual terms in order to address the issue whether award of interest on security deposits, is liable to be set aside as contrary to the terms of the fuel supply agreement. Clause 3 of the agreement contain provisions regarding the furnishing of security deposit. Relevant clauses as set out under the heading 'Security Deposit' in the agreement are reproduced below:-

"3.1.2. The Purchaser shall have the following options to furnish the Security Deposit amount of Rs. 61,20,000/- to the Seller: (a) Deposit 100% of the Security Deposit prior to the signing of this Agreement; or (b) Deposit a minimum of 20% of the Security Deposit amount referred to in 3.1.1 above. prior to signing of this Agreement and the balance amount in two installments after signing of the Agreement. The Purchaser shall not be entitled to claim any interest on the Security Deposit. It is clarified that the Base Price of Grade D ROM Coal of the Seller has been considered only for the purpose of calculating the amount of Security Deposit and no commitment whatsoever shall be inferred thereby to supply such grade of Coal at the said Base Price or otherwise.

3.5. The Security Deposit shall be refundable to the Purchaser at the end of its validity subject to successful completion of and complete settlement of the claims of Seller arising out of this Agreement. 3.7. In the event of termination of the Agreement by the Seller in accordance with Clause 17.1(a) to (d), the Seller shall be entitled to forfeit the Security Deposit of the Purchaser in addition to any other rights vested with the seller upon such termination."

51. A bare reading of above clause of agreement would show that it has been agreed between the parties that the purchaser shall not be entitled to claim any interest on the security deposit. Security deposit shall be refundable to the purchaser at the end of its validity subject to successful completion of agreement and in the event of termination of the agreement by the seller in accordance with Clause 17.1 (a) to (d), seller shall be entitled to forfeit the security deposit upon such termination. Thus, there was a specific term in the FSA that no interest was to be paid on security deposits.

52. The power of the Arbitrator to award pendente lite interest has been examined by a three Judges Bench of Hon'ble Supreme Court in case of [Bright Power Projects](#) (supra) and it was specifically observed and held that in view of specific contract between the parties and the bar for awarding the interest, the payment of interest was not permissible even on earnest money deposit or security deposit or amounts payable to the contractor under the contract. Relevant Para of the decision is reproduced herein below:-

"18. [Section 31 \(7\) \(a\)](#) of the Act ought to have been read and interpreted by the Arbitral Tribunal before taking any decision with regard to awarding interest. The said Section, which has been reproduced hereinabove, gives more respect to the agreement entered into between the parties. If the parties to the agreement agree not to pay interest to each other, the Arbitral Tribunal has no right to award interest pendente lite."

53. In case of [Manraj Enterprises](#) (supra), Hon'ble Supreme Court examined Clause 16 (2) of the General Conditions of Contract [in that case](#), which is reproduced below:

"(2) No interest will be payable upon the earnest money or the 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 repayable with interest accrued thereon."

After referring to its earlier decisions, Hon'ble Supreme Court has held thus:

"... in view of Clause 16(2) of the GCC, the arbitrator could not have awarded the interest, pendente lite or future interest on the amount due and payable to the contractor under the contract in the instant case."

54. *Inn Garg Builders v. Bharat Heavy Electronics Ltd.*, reported in (2022) 11 SCC 697, relevant clause of the agreement expressly provided that no interest shall be payable by BHEL on earnest money deposit, security deposit or on any moneys due to the contractor, and in such a situation, Hon'ble Supreme Court considered the question regarding the power of the arbitrator to award interest and observed thus:-

"10. We have carefully considered the submissions of the learned counsel for both the parties made at the Bar. The law relating to award of pendente lite interest by arbitrator under the 1996 Act is no longer res integra. The provisions of the 1996 Act give paramount importance to the contract entered into between the parties and categorically restricts the power of an arbitrator to award pre-reference and pendente lite interest when the parties themselves have agreed to the contrary."

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55. In the case at hand, it is apparent that the agreement between the parties contains an express bar against the award of interest on the security deposit. The parties, having consciously agreed that no interest would be payable on the bank guarantees furnished towards the security deposit, were bound by such contractual stipulation. Once the parties to the agreement had agreed that interest would not be payable on security deposit, the Arbitrator could not have disregarded or rendered nugatory the said stipulation. In our considered view, therefore, the Arbitrator fell in error in awarding interest on the security deposit, notwithstanding the clear contractual prohibition governing the same. The award of interest, being contrary to the express terms of the contract, cannot be sustained.

56. In view of the above, the impugned award to the extent that it awards pendente lite interest at the rate of 14% per annum on the bank guarantees deposited towards security v cannot be sustained.

57. So far as the post-award interest on the amount of Rs.1,19,00,000/- i.e. from the date of award till its realization is concerned, the law with regard to the power of an Arbitrator to award interest for pre-reference period, pendent lite period and post-award period is well settled. [Section 31\(7\)\(a\)](#) of the Act of 1996 deals with grant of pre-award interest while sub- 46 clause (b) of [Section 31\(7\)](#) of the Act deals with grant of post- award interest. [Section 31\(7\)\(a\)](#) and [31\(7\)\(b\)](#) reads as under:-

"31. Form and contents of arbitral award.-- (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)."

58. From the above provision, it is clearly discernible that the discretion to grant interest would be available to the arbitral tribunal under clause (a) of sub- section (7) of [Section 31](#) of the Act of 1991 only when there is no agreement to the contrary between the parties. Further, clause (b) provides that the sum so directed to be made by the Award shall carry interest at a certain rate for the post award period. Post- award interest is to ensure speedy payment in compliance of the award. Thus, the purpose behind making this provision is 47 clear i.e. to encourage early payment of the awarded sum and to discourage usual delay, which accompanies execution of the Award in the same manner as if it were a decree of the Court vide [Section 36](#) of the Act of 1996.

59. In the case of [State of Rajasthan and Another v. Ferro Concrete Construction Private Limited](#), reported in (2009) 12 SCC 1, Hon'ble Supreme Court has held as follows:

"60. The appellants contend that there was no provision in the contract for payment of interest on any of the amounts payable to the contractor and therefore no interest ought to be awarded. But this Court has held that in the absence of an express bar, the arbitrator has the jurisdiction and authority to award interest for all the three periods-- pre-reference, pendente lite and future (vide decisions of the Constitution Bench in [Irrigation Deptt., Govt. of Orissa v. G.C. Roy](#) [(1992) 1 SCC 508], [Dhenkanal Minor Irrigation Division v. N.C. Budharaj](#) [(2001) 2 SCC 721] and the subsequent decision in [Bhagawati Oxygen Ltd. v. Hindustan Copper Ltd.](#) [(2005) 6 SCC 462]). In the present case as there was no express bar in the contract in regard to interest, the arbitrator could award interest."

60. In the case of [Morgan Securities & Credits \(P\) Ltd. v. Videocon Industries Ltd.](#), reported in (2023) 1 SCC 602, Hon'ble Supreme Court has held thus:-

"21. The purpose of granting post-award interest is to ensure that the award-debtor does not delay the payment of the award. With the proliferation of 48 arbitration, issues involving both high and low financial implications are referred to arbitration. The arbitrator takes note of various factors such as the financial standing of the award-debtor and the circumstances of the parties in dispute before awarding interest. The discretion of the arbitrator can only be restricted by an express provision to that effect. Clause (a) subjects the exercise of discretion by the arbitrator on the grant of pre- award interest to the arbitral award. However, there is no provision in the Act which restricts the exercise of discretion to grant post-award interest by the arbitrator. The arbitrator must exercise the discretion in good faith, must take into account relevant and not irrelevant considerations, and must act reasonably and rationally taking cognizance of the surrounding circumstances." (Emphasis supplied)
Hon'ble Supreme Court has further held as under: -

"21. The purpose of granting post-award interest is to ensure that the award-debtor does not delay the payment of the award. With the proliferation of arbitration, issues involving both high and low financial implications are referred to arbitration. The arbitrator takes note of various factors such as the financial standing of the award-debtor and the circumstances of the parties in dispute before awarding interest. The discretion of the arbitrator can only be restricted by an express provision to that effect. Clause (a) subjects the exercise of discretion by the arbitrator on the grant of pre- award interest to the arbitral award. However, there is no provision in the Act which restricts the exercise of discretion to grant post-award interest by 49 the arbitrator. The arbitrator must exercise the discretion in good faith, must take into account relevant and not irrelevant considerations, and must act reasonably and rationally taking cognizance of the surrounding circumstances." (Emphasis supplied)

61. In case of [R.P. Garg v. The General Manager, Telecom Department & Ors.](#), reported in 2024 INSC 743, Hon'ble Supreme Court had the occasion to deal with the question of entitlement of post-award interest on the sum awarded by the Arbitrator. It was observed as under:-

"11. So far as the entitlement of the post-award Interest is concerned, sub-Section (b) of [Section 31\(7\)](#) provides that the sum directed to be paid by the Arbitral Tribunal shall carry interest. The rate of interest can be provided by the Arbitrator and in default the statutory prescription will apply. Clause (b) of [Section 31\(7\)](#) is therefore in contrast with clause (a) and is not subject to party autonomy. In other words, clause (b) does not give the parties the right to "contract out"

interest for the post-award period. The expression 'unless the award otherwise directs' in [Section 31\(7\)\(b\)](#) relates to rate of interest and not entitlement of interest. The only distinction made by [Section 31\(7\)\(b\)](#) is that the rate of interest granted under the Award is to be given precedence over the statutorily prescribed rate. The assumption of the High Court that payment of the interest for the post award period is subject to the contract is a clear error.

12. The clear position of law that granting post- award interest is not subject to the contract between the parties was recently affirmed in the decision of this Court in [Morgan Securities & Credits \(P\) Ltd. v. Videocon Industries Ltd.](#),[®] wherein the court observed as follows:

"24. The issue before us is whether the phrase "unless the award otherwise directs"

in [Section 31\(7\)\(b\)](#) of the Act only provides the arbitrator the discretion to determine the rate of interest or both the rate of interest and the "sum" it must be paid against At this juncture, it is crucial to note that both clauses (a) and (b) are qualified. While, clause (a) is qualified by the arbitration agreement, clause (b) is qualified by the arbitration award. However, the placement of the phrases is crucial to their interpretation. The words, "unless otherwise agreed by the parties" occur at the beginning of clause (a) qualifying the entire provision. However, in clause (b), the words, "unless the award otherwise directs"

occur after the words "a sum directed to be paid by an arbitral award shall" and before the words "carry interest at the rate of eighteen per cent". Thereby, those words only qualify the rate of post-award interest.

25. [Section 31\(7\)\(a\)](#) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest The arbitrator has the discretion to determine 51 the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the principal amount, and the period for which payment of interest is to be made --

whether it should be for the whole or any part of the period between the date on which the cause of action arose and the date of the award. When a discretion has been conferred on the arbitrator in regard to the grant of pre-award interest it would be against the grain of statutory interpretation to presuppose that the legislative intent was to reduce the discretionary power of the arbitrator for the grant of post-award interest under clause (b). Clause (b) only contemplates a situation where the arbitration award is silent on post-award interest, in which event the award holder is entitled to a post-award interest of eighteen per cent.'" (Emphasis supplied)"

62. In case of HLV Limited (Formerly Known as Hotel Leelaventure Pvt. Ltd.) v. PBSAMP Projects Pvt. Ltd reported in 2025 INSC 1148, Hon'ble Supreme Court has held thus:

"25.3. From the above, the view of the court is clearly discernible in that the discretion to grant interest would be available to the arbitral tribunal under clause (a) of sub- section (7) of [Section 31](#) only when there is no agreement to the contrary between the parties. When the parties agree with 52 regard to any of the aspects covered under clause

(a) of sub- section (7) of [Section 31](#), the arbitral tribunal would cease to have any discretion with regard to the aspects mentioned in the said provision. Only in the absence of such an agreement, the arbitral tribunal would have the discretion to exercise its powers under clause (a) of sub-section (7) of [Section 31](#) of the 1996 Act."

63. In the case of [North Delhi Municipal Corpn. v. S.A. Builders Ltd.](#), reported in (2025) 7 SCC 132, Hon'ble Supreme Court has held thus:-

"39. Generally, going by the provisions contained in [Section 31\(7\)](#) of the 1996 Act, it is evident that an Arbitral Tribunal has the power to grant: (i) pre- award, (ii) pendente lite, and (iii) post- award interest. Intention behind awarding pre-award interest is primarily to compensate the claimant for the pecuniary loss suffered from the time the cause of action arose till passing of the arbitral award. Further, this is also to ensure that the arbitral proceeding is concluded within a reasonable period to minimise the impact of the pre-award interest as well as interest pendente lite; thereby promoting efficiency in the arbitration process. Similarly, grant of post-award interest also serves a salutary

purpose. It primarily acts as a disincentive to the award debtor not to delay payment of the arbitral amount to the award-holder."

64. Reading of above quoted decisions of Hon'ble Supreme Court makes it clear that unless there is an express bar contained in 53 the agreement, the Arbitrator possesses the discretion and has jurisdiction to award interest including the post-award interest. Intention behind awarding pre-award interest is primarily to compensate the claimant for the pecuniary loss suffered from the time the cause of action arose till passing of the arbitral award. Further, this is also to ensure that the arbitral proceeding is concluded within a reasonable period to minimize the impact of the pre-award interest as well as interest pendente lite; thereby promoting efficiency in the arbitration process.

65. In view of above specific provisions under [Section 37\(1\)](#) of the Act of 1996 and in light of the above decisions of Hon'ble Supreme Court, coupled with the fact that in case at hand there is no provision in the FSA which expressly bars the grant of post-award interest, we are of the considered view that the Arbitrator has acted within the ambit of [Section 31\(7\)](#) of the Act of 1996 in granting post-award interest in favour of the respondent-claimant.

66. Now the question arises for consideration whether the award passed by the arbitral Tribunal can be partly set aside.

67. In the case of [J.G. Engineers Pvt. Ltd. v. Union of India](#), reported in (2011) 5 SCC 758], the Hon'ble Supreme Court has held as under:-

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"25. It is now well settled that if an award deals with and decides several claims separately and distinctly, even if the court finds that the award in regard to some items is bad, the court will segregate the award on items which did not suffer from any infirmity and uphold the award to that extent."

68. In case of [Gayatri Balasamy vs ISG Novasoft Technologies Ltd.](#) reported in (2025) 7 SCC 1, Hon'ble Supreme Court while answering the issue "whether the award can be severed by severing the 'invalid' portion from the 'valid' portion of the award, has held thus:-

"87. Accordingly, the questions of law referred to by [Gayatri Balasamy](#) (supra) 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 Part IV and V of our Analysis;

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87.3 post award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or..."

69. Considering the fact that the grant of pendente lite interest at the rate of 14% per annum on the bank guarantees deposited towards security deposit is contrary to the terms of the fuel supply agreement, in the light of above judgments of Hon'ble Supreme Court, this Court is of the view that the portion of the impugned award in respect of grant of pendente lite interest by learned Arbitrator is certainly severable one.

70. In the result, the award dated 26.11.2015 passed by the Arbitrator to the extent it grants pendente lite interest on bank guarantees furnished towards security deposit is hereby set aside. Rest of the award dated 26.11.2015

shall remain as it is.

71. Consequently, the arbitration appeal is allowed in part.

Impugned award stands modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sachin Singh Rajput)
Judge

roshan/-