2025 INSC 1327

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13785 OF 2025
(Arising out of SLP(C) No. 12300 of 2020)

SRI LAKSHMI HOTEL PVT. LIMITED & ANR. ….Appellant(s)

VERSUS

SRIRAM CITY UNION FINANCE LTD. & ANR. ….Respondent(s)

J U D G M E N T

J.B. PARDIWALA, J.

1. Leave granted.

2. This appeal arises from the judgment and order passed by the Division Bench of the High Court of Judicature at Madras dated 07.01.2020 by which the original side appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, "**the Act, 1996**") filed by the appellants herein being O.S.A. No. 202 of 2019 came to be dismissed thereby affirming the order passed by the learned Single Judge dismissing O.P.

No. 137 of 2015 preferred by the appellants under Section 34 of the Act, 1996, seeking to challenge the arbitral award.

A. FACTUAL MATRIX

3. Appellant no.1, *viz.*, M/s Sri Lakshmi Hotels Pvt. Limited, is a Private Limited company registered under the Companies Act, 1956. Appellant no.2 *viz.*, V.S. Palanivel is the Managing Director of appellant no.1. Respondent no.1 *viz.*, Sriram City Union Finance Ltd. is a Non-Banking Financial Company (for short, "**the NBFC**"). Respondent no.2 *viz.*, Mr. K. Balasubramanian is a retired District Judge who was appointed as the arbitrator and who had passed the arbitral award.

4. Appellant no.1 through appellant no.2 had availed a loan facility amounting to INR 1,50,00,000/- (Rupees One Crore and Fifty Lakh) from respondent no.1 *vide* a loan agreement dated 03.04.2006 ("**First Agreement**"). Additionally, appellant No.2 had also obtained one another loan facility from respondent no.1 amounting to INR 7,25,000/- (Rupees Seven Lakhs Twenty-Five Thousand) *vide* a loan agreement dated 03.07.2006 ("**Second Agreement**"). Thus, in total an amount of INR 1,57,25,000 (Rupees One Crore Fifty-Seven Lakhs and Twenty-Five Thousand) was borrowed by the appellants from respondent no.1

5. The salient features of the loan agreements relevant for the adjudication of the subject in issue are as follows: -

i. Under the First Agreement, the appellants were to repay the loan amount within a period of 12 months along with an interest rate of 24% p.a. on monthly rest on the 4th of every month commencing from 04.05.2006.

ii. Under the Second Agreement, the appellants were to repay the loan amount within a period of 6 months along with an interest rate of 24% p.a. on monthly rest on the 4th of every month, commencing from 04.08.2006.

6. The appellants paid an amount of INR 44,66,250/- (Rupees Forty-Four Lakh Sixty-Six Thousand Two Hundred and Fifty only) till 04.04.2007 and thereafter, stopped making any further payment.

7. In view of the continuing default by the appellants, the respondent no.1 issued several demand notices upon the appellants to regularize their default. However, no further payments were made. Pertinently, in all their replies to the demand notices, the appellants never disputed the principal amount borrowed. Notably in a reply dated 06.09.2007, the appellants, *inter alia,* had assured the respondent no.1 that they were on *war footing* to repay the outstanding amount. However, even after such assurance no payment was made. In fact, for the first time, the appellants *vide* the letter dated 25.01.2008, objected to the interest rate of 24% p.a. and contended that only 12% p.a. was payable on the loan amount.

8. Pertinently, appellant no.2 had issued a cheque in 2008 amounting to INR 1,89,92,538/- (Rupees One Crore Eighty Nine Lakh Ninety-Two Thousand Five Hundred and Thirty Eight only) towards the full and final settlement of the loan amount. However, the said cheque was dishonored due to insufficiency of funds. Consequently, respondent no.1 initiated proceedings under Section 138 of the Negotiable Instruments Act,1881.

9. Since the appellants failed to repay the complete loan amount, the respondent no.1 invoked the arbitration clause under the First and Second loan agreements respectively and accordingly, the respondent no.2 was appointed as the sole arbitrator in Arbitration Case No. 01 of 2009. The respondent no.1 filed its Statement of Claim on 26.03.2009 *inter alia* claiming an amount of INR 2,21,08,244 (Rupees Two Crore Twenty-One Lakh Eight Thousand Two Hundred and Forty-Four) along with interest at the rate of 24% p.a. The appellants filed their respective statement of defense on 22.08.2009 *inter alia* disputing the rate of interest as usurious. However, there was no challenge as to the factum of the loan.

10. During the pendency of the arbitration proceedings, the appellants challenged the validity of the loan agreements before the respondent no.2 by way of filing an application being I.A. No. 1 of 2012 *inter alia,* seeking a direction from respondent no.2 for expert verification of the handwritings and signatures on the loan agreements. However, the said application was rejected by respondent no.2, and the appellants never

challenged the said rejection order. Accordingly, the said decision of rejection attained finality.

11. After cogitating the pleadings and submissions of both the parties, the respondent no.2 passed an Award dated 27.12.2014, wherein, while partly allowing the claim of the respondent no.1, the appellants were directed to pay a sum of INR.2,21,08,244/- (Rupees Two Crore Twenty One Lakh Eight Thousand Two Hundred and Forty Four) with interest at the rate of 24% p.a. from the date of filing of the statement of the claim till the date of its realization ("**Award**").

12. Being aggrieved by the said Award, the appellants herein challenged the same by filing a petition under Section 34 of the Act, 1996 before the Ld. Single Judge of the High Court. However, the same came to be dismissed by the Ld. Single Judge *vide* judgment dated 16.11.2017, whereby it was held that the respondent no.2 had passed the Award after a thorough appreciation of facts of the matter and the terms of the agreement. Further, the Ld. Single Judge observed that the ambit of interference under section 34 the Act, 1996 being limited to the conditions mentioned therein, no interference was warranted. The court further noted that an arbitrator is the final judge of facts and the findings in the award should not be interfered merely on the ground that the terms of contract were not correctly interpreted. Since, the view of the Ld. Single was that none of

the conditions under Section 34 were made out, the Award passed by the respondent no.2 was upheld and the petition, was accordingly dismissed.

13. As the appellants failed to pay the decretal amount in terms of the judgement passed by the Ld. Single Judge, the respondent no.1 filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") being CP/1140/(IB)/CB/2018 before the National Company Law Tribunal, Special Bench, Chennai, ("**NCLT**"). The said petition was admitted by the NCLT *vide* its order dated 28.02.2019 and an Interim Resolution Professional ("**IRP**") was appointed.

14. Since no resolution applicant submitted a resolution plan, the IRP filed an application under section 33(2) of the IBC, seeking initiation of liquidation proceedings against the appellant no.1. By an Order dated 17.07.2019 the NCLT allowed the aforesaid application to liquidate the assets of appellant no.1

15. Being aggrieved by the judgment dated 16.11.2017 passed by the Ld. Single Judge dismissing the Section 34 petition, the appellants herein preferred an appeal under Section 37 of the Act, 1996 being O.S.A. No**.** 202 of 2019. However, the same came to be dismissed by a Division Bench of the High Court, *inter alia* affirming the order passed by the Ld. Single Judge and the respondent no.2 respectively.

16. In such circumstances referred to above, the appellants are here before this Court with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANTS

17. Ms. Nina Nariman, the learned counsel appearing for the appellant no. 2 vehemently submitted that the interest component of 24% in the loan agreement could be termed as unconscionable and usurious**.** She would submit that the Reserve Bank of India guidelines have repeatedly stressed the need for banks and financial institutions to keep the customers' welfare in mind and not charge excessively high or usurious interest rates. The interest rate of 24% in fact violates these binding guidelines.

18. She relied upon the guidelines on fair practices "for lenders" dated 05.05.2023 to make good her submission as regards unconscionable rates of interest. The learned counsel further submitted that this Court in two of its decisions (i) ***Central Bank of India v. Ravindra and Others*** reported in **(2002) 1 SCC 367** and (ii) ***Sardar Associates v. Punjab and Sindh Bank*** reported in **(2009) 8 SCC 257** respectively, has said in so many words that the RBI guidelines are binding in nature.

19. She further submitted that Section 3 of the Usurious Loans Act, 1918 allows the court to determine what constitutes excessive interest and relieve the debtor of its liability in case the interest component is beyond what is reasonable and deemed to be accessible. She brought to our notice Section 3(b)(i) and Section 3(b)(ii) of the Usurious Loans Act, 1918 respectively.

20. According to her, the Usurious Loans Act, 1918 applies to all statutes, which, given the beneficial intent of the legislation, should be read as including claims in arbitration.

21. The learned counsel further argued that the alleged rate of interest of 24% was never agreed between the parties, since the appellant no. 2 was made to sign on blank documents, and doing so the respondent later manipulated/interpolated the said rate. This according to her amounts to fraud and fraud vitiates all.

22. In such circumstances referred to above, the learned counsel prayed that there being merit in her appeal, the same may be allowed accordingly.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT

23. On the other hand, Mr. Krishnan Venugopal, the learned Senior Counsel appearing for the respondent, vehemently submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned judgment and order.

24. He would submit that it is within the discretion of the arbitrator under Section 31(7)(b) of the Act, 1996 to rely on the rate of interest stipulated in the loan agreements. He would submit that assuming for the moment, without admitting, that the arbitrator has failed to exercise his discretion judiciously, and the interest at the rate of 24% deserves to be reduced appropriately in view of the expressed provision for post-award interest at

the default rate of 18% as provided in Section 31(7)(b) of the Act, 1996 (prior to the 2015 Amendment to the Act, 1996), the respondent in fact could recover much less than it could have even at the mandatory rate of 18% interest.

25. The learned counsel submitted that the respondent initiated arbitration proceedings under the loan agreements and in accordance with the provision of the Act, 1996 owing to the appellant no. 1 company's persistent and deliberate refusal to repay the loans it availed from the respondent cumulatively amounting to INR 1,57,25,000. The loan agreements categorically provided for interest at the rate of 24% p.a. The learned counsel invited the attention of this Court to clause 15 of the loan agreement which expressly provided that the "purpose of the loan" was "to clear bank loan (bridge loan)".

26. He also drew our attention to the letters addressed by the appellant no. 1 company to the respondent dated 28.03.2006 and 03.07.2006 respectively. He would submit that the two letters would clearly indicate that the loans were sought to settle a pre-existing debt owed by the appellant company to the Indian Bank on which it had defaulted. In such circumstances, according to the learned counsel, the loans sanctioned by the respondent could be said to be a high-risk transaction entered into with a defaulting borrower necessitating a higher security and a higher rate of interest.

27. The learned counsel further submitted that the contention raised on behalf of the appellants that the interest rate of 24% awarded by the learned arbitrator was usurious under the applicable State Usurious Statute, namely, the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, has no merit worth the name. In this regard, the learned counsel relied upon the decision of this Court in ***Nedumpilli Finance Company Limited v. State of Kerala*** reported in **(2022) 7 SCC 394** wherein this court is said to have held that the State's statute governing interest rates will have no application to the NBFCs such as the respondent herein. The respondent is a NBFC registered under and solely governed by Chapter III B of the Reserve bank of India Act, 1934.

28. In such circumstances referred to above, the learned counsel prayed that there being no merit in the appeal the same may be dismissed.

D. ANALYSIS

29. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in dismissing the Section 37 appeal filed by the appellants herein, thereby affirming the order passed by the High Court in Section 34 proceedings?

30. It is relevant for us to take into consideration the fact that despite the award, the respondent has not been in a position to recover the full amount

irrespective of the fact whether the interest should be calculated at the rate of 24% or the statutory rate of 18%.

31. In the aforesaid context, we should look into the table set out below as provided by the learned counsel appearing for the respondent:

Principal Awarded	*INR 2,21,08,244/-*
Pre-Award Interest	*24% per annum from 26.03.2009 to 27.12.2014*
Sum (Principal + Pre-Award Interest) Awarded	*INR 5,27,37,550/-*
***Post-Award interest at 24%** on the Sum Awarded (on 27.12.2014) until realisation (calculated until 29.08.2020)*	*INR 12,44,49,060/-*
***Post-Award interest at 18%** (i.e. the statutory interest rate provided under Section 31(7)(b) of the Arbitration Act) on the Sum Awarded (on 27.12.2014) until realisation (calculated until 29.08.2020)*	*INR 10,65,21,183/-*
Total dues actually recovered thus far by Respondent NBFC from the Petitioner Company	*INR 8,27,99,917/-*
Balance monies Awarded but not recovered on the Awarded interest rate of 24%	*INR 4,16,49,143/-*
Balance monies Awarded but not recovered assuming an interest rate of 18% provided under Section 31(7)(b) of the Arbitration Act.	*INR 2,37,21,266/-*

32. The arbitral award in this case was passed on 27.12.2014.

33. Section 31 of the Act, 1996 deals with the form and contents of the arbitral award. Section 31 has 8 Sub-sections. Sub-section (7) is relevant for the

purpose of deciding the present appeal. Sub-section (7) as it stood at the relevant point of time read 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 eighteen per cent per annum from the date of award to the date of payment."*

34. The plain reading of sub-section (7) would make it clear that it is in two parts, the first part i.e., clause (a) deals with passing of an award which would include interest upto the date on which the award is made, while the second part, i.e., clause (b) deals with the grant of interest on the sum awarded by the arbitral tribunal.

35. In the present litigation, we are more concerned with the interpretation of clause (b), which deals with the post-award interest. What clause (b) provides for is that the arbitral tribunal may award interest on the sum adjudged under clause (a). But if no such interest is awarded, then there shall be interest at the rate of 18% on the sum awarded by the arbitral tribunal from the date of the award to the date of payment. The intent behind granting the pre-award interest is to compensate the claimant for

the loss suffered from the time the cause of action arose till the passing of the arbitral award. This is also with a view to ensure that the arbitral proceedings are concluded expeditiously. Similarly, the intent behind grant of post-award interest is to discourage the award-debtor from delaying the payment of the arbitral amount to the award-holder.

36. 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) provides that the arbitrator has the power to award interest at such rate as it deems reasonable, on the whole or on 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. The grant of such interest during the pre-award period is subject to the agreement as regard the rate of interest or unpaid sum between the parties.

37. Clause (b) of Section 31(7) of the Act, 1996 confers discretion upon the Arbitral Tribunal to award interest for the post-award period but that discretion is not subject to any contract. If such discretion is not exercised by the Arbitral Tribunal, then the statute steps in and mandates the payment of interest at the rate specified for the post-award period. While clause (a) gives parties an option to contract out of interest, no such option is available in regard to the post-award period.

38. In ***R.P. Garg v. The General Manager, Telecom Department & Ors.***, reported in **2024 INSC 743**, this Court had the occasion to deal with the question as to whether the appellant was entitled to post-award interest on the sum awarded by the Arbitrator. In that case, the Arbitrator had denied payment of interest under a misplaced impression that the contract between the parties prohibited it. The executing court affirmed the finding of the arbitrator and rejected the prayer. However, allowing the appeal, the District Judge held that the appellant will be entitled to post-award interest. The High Court allowed the revision against the said order and set aside the District Court's order while holding that the contract between the parties did not permit the grant of post-award interest. While allowing the appeal, this Court held that the sum directed to be paid under the arbitral award must carry interest. While taking note of the decision of this Court in ***Morgan Securities & Credits Pvt Ltd. v. Videocon Industries Ltd.*** reported in **2022 INSC 898**, this Court held 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 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)

39. In view of the aforesaid, the interpretation of clause (b) of Section 31(7) of the Act, 1996 is no more res integra. The grant of post-award interest under Section 31(7)(b) is mandatory. The only discretion which the arbitral tribunal has is to decide the rate of interest to be awarded. Where the arbitrator does not fix any rate of interest, then the statutory rate, as provided in Section 31(7)(b), shall apply. In the present case the two agreements itself provided the rate of interest to be 24% p.a. (**See: *Union of India and Anr. v. Sudhir Tyagi*** : **2025 DHC 2621**)

40. In the case of ***North Delhi Municipal Corpn. v. S.A. Builders Ltd.***, reported in **(2025) 7 SCC 132**, this Court has held as 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."*
>
> (Emphasis supplied)

41. In the case of ***Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.,*** reported in **(2023) 1 SCC 602**, this Court has held as 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 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)

42. Thus, it is now well established that unless there is an express bar contained in the agreement, the arbitrator possesses the discretion and has jurisdiction to award interest including the post-award interest. In the case of ***State of Rajasthan and Another v. Ferro Concrete Construction Private Limited***, reported in **(2009) 12 SCC 1**, this Court 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."*
>
> (Emphasis supplied)

43. However, on the point of awarding interest, Section 31(7)(a) of the Act, 1996 stipulates that the arbitrator's discretion while awarding pre-award interest is subject to the agreement between the parties. In the case of ***HLV Limited (Formerly Known as Hotel Leelaventure Pvt. Ltd.) v. PBSAMP Projects Pvt. Ltd*** reported in **2025 INSC 1148**, this Court inter alia held that:

> "***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 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*."
>
> (Emphasis supplied)

44. Contrarily, the pre-amended Section 31(7)(b) of the Act, 1996 statutorily grants post-award interest at 18% p.a., save and except in cases where the arbitral award itself specifies a different rate of interest. This goes on to show that discretion vested on the Arbitral Tribunal at the time of awarding post-award interest in unfettered. It, however, goes without saying that such discretion ought to be exercised judiciously and after a

thorough consideration of all the relevant factors. In the case of ***Morgan Securities & Credits*** (supra) it was held as under:

> *"The arbitrator has the discretion to grant post-award interest. Clause (b) does not fetter the discretion of the arbitrator to grant post-award interest. It only contemplates a situation in which the discretion is not exercised by the arbitrator. Therefore, the observations in Hyder Consulting [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] on the meaning of "sum" will not restrict the discretion of the arbitrator to grant post-award interest. There is nothing in the provision which restricts the discretion of the arbitrator for the grant of post-award interest which the arbitrator otherwise holds inherent to their authority."*
>
> (Emphasis supplied)

45. The nature of transaction between the parties is purely commercial. It is undisputed that the appellants (borrowers) had by way of executing two separate loan agreements borrowed monies from the respondent no.1 (lender), for the purpose of repaying a previously availed loan facility from an Indian Bank wherein the appellants had already defaulted. This by itself evinces the high degree of risk associated with these loan transactions. Accordingly, a high rate of interest was charged to secure the debt. Although the appellants have challenged the rate of interest stated in the loan agreement by inter alia questioning the genuineness of the loan agreements, yet both the courts below have concurrently held after a detailed analysis of the evidence as regards the genuineness of the loan agreement, thereby affirming the rate of interest at 24% p.a. To take a view contrary would amount to re-appreciation of evidence, which is prohibited

under the scheme of the Act, 1996. The proviso to Section 34(2A) of the Act, 1996 explicitly prohibits re-appreciation of evidence. The said provision is reproduced herein below:

> *"**Section 34 Application for setting aside arbitral awards.-***
> *xxx xxx xxx*
> *(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:*
>
> *Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence."*
>
> (Emphasis supplied)

46. The aforesaid statutory bar has been consistently upheld by this Court in ***Swan Gold Mining Ltd. v. Hindustan Copper Ltd.***, reported in **(2015) 5 SCC 739**, ***P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd.*** reported in **(2012) 1 SCC 594**, ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*** reported in **(2019) 15 SCC 131** and ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust Tuticorin and others*** reported in **(2023) 15 SCC 781**. Accordingly, we refrain from entering into the merits of the issue, particularly when the findings of the learned Arbitrator have been concurrently upheld.

47. The conduct of the appellants has consistently been non-committal towards the payment of the loans. The appellants, by way of a letter dated 06.09.2007 addressed to respondent no.1, had assured that they were on a

war footing to repay the loans. However, the same was merely a hollow assurance as the loans remained unpaid. Thereafter, in the year 2008 by way of cheque amounting to Rs.1,89,92,538/- the appellants attempted to settle the loan, but the said cheque bounced on account of insufficient funds. In such circumstances, it is evident that the appellants were in a constant breach of the terms of the loan agreements and did not take adequate steps to repay the loan. Such constant and continuing defaults adversely affected the financial health of the respondent no.1 and deprived the respondent no.1 from its right to use and enjoy monies for several years.

48. Additionally, even after the arbitral award was passed, the respondent no.1 was unable to execute the same, as the appellants failed to comply with the arbitral award and continued to default in their payments. Having been left with no other option, the respondent no.1 initiated the CIRP proceedings against appellant no.1, which also failed. It was only upon the commencement of liquidation proceedings against the appellant no. 1 that the respondent No. 1 was able to recover a portion of its dues. Particularly, the amount recovered from the liquidation process was much less than the amount actually due and payable to the respondent no.1, in terms of the award. Having undergone numerous hardships and going through several round of litigations it will be manifestly unjust to deprive

the respondent no.1 from its rightful entitlements of post award interest at this stage.

I. Whether interest at the rate of 24% as provided in the agreements between the parties could be said to be against public policy?

49. There is no gainsaying that the question as to whether the charging of a high rate of interest in the case of a purely commercial transaction is morally wrong entails a complex web of issues that would be contingent upon a variety of factors and perspectives. Although at first glance, the charging of interest at the rate of 24% could be considered as exploitative, unfair and morally blameworthy, high interest rates reflect the lenders risk of default due to highly competitive and uncertain market conditions, besides the fact that high interest rates might discourage borrowers from taking unnecessary risks. In the commercial world, justifiability or reasonability of high interest rates would depend on the transparency of the terms and conditions of the contract entered into between the lender and the borrower, as well as the informed consent of the borrower. Ultimately, morality is inherently dependent on context, shaped by a complex interplay of cultural norms, as well as individual values. The moral implications of high interest rates are not absolute, rather they must be assessed through a nuanced lens that considers the inter-relationship between economic, social, and regulatory factors.

50. The expression "public policy in the context of challenge to an arbitral award has come to be discussed in plethora of cases. This Court in ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited***, reported in **2024 SCC OnLine SC 2600**, had the occasion to consider the concept of 'public policy', in the background of a challenge to an arbitral award. Referred was a decision of three-Judge Bench of this Court in the case of ***Gherulal Parakh v. Mahadeodas Maiya*** reported in **AIR 1959 SC 781**, wherein the doctrine of public policy was discussed in the context of Section 23 of the Indian Contract Act, 1872, and the position of law was summarized as under:

> *"Public policy or the policy of law is an elusive concept; it has been described as untrustworthy guide, variable quality, uncertain one, unruly horse, etc; the primary duty of a court of law is to enforce a promise which the parties have made and to uphold the sanctity of contracts which formed the basis of society, but in certain cases, the court may relieve them of their duty on a rule founded on what is called the public policy; for want of better words Lord Atkin describes that something done contrary to public policy is a harmful thing, but the doctrine is extended not only to harmful cases but also to harmful tendencies; this doctrine of public policy is only a branch of common law, and, just like any other branch of common law, it is governed by precedents; the principles have been crystallized under different heads and though it is permissible for courts to expound and apply them to different situations, it should only be invoked in clear and incontestable cases of harm to the public; Though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days."*
>
> (Emphasis supplied)

51. Another decision to which reference was made is ***Central Inland Water Transport Corporation v. Brojo Nath Ganguly*** reported in **(1986) 3 SCC 156** wherein this Court observed that the expressions 'public policy', 'opposed to public policy', or 'contrary to public policy' are incapable of a precise definition. It was observed that public policy is not the policy of a particular government, rather it connotes some matter which concerns the public good and the public interest. It was observed as under:

> *"92.... What is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the courts and, similarly, where there has been a well- recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy."*
>
> (Emphasis supplied)

52. This Court in ***OPG Power Generation Private Limited*** (supra) further held as under:

> *"34. In Renusagar Power Co. Ltd. v. General Electric Co.15, a three-Judge Bench of the Supreme Court observed that the doctrine of public policy is somewhat open-textured and flexible. By citing earlier decisions, it was observed that there are two conflicting positions, which are referred to as the "narrow view" and the "broad view". According to the narrow view, courts cannot create new heads of public policy whereas the broad view countenances judicial law making in these areas. In the field of private international law, it was pointed out, courts refuse to apply a rule of foreign law or recognize a foreign judgment or a foreign arbitral award if it is found that the same is contrary to the public policy of the*

country in which it is sought to be invoked or enforced. However, it was clarified, a distinction is to be drawn while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. It was observed that the application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law, and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. It was held that contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required.

35. In fact, in Renusagar (supra), this Court was dealing with the enforceability of a foreign award. For that end, it had to interpret the expression "contrary to public policy" in the context of Section 7(1)(b)(ii) of Foreign Awards (Recognition and Enforcement) Act, 1961. While doing so, it was held that (a) contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required; and (b) The expression 'public policy' must be construed in the sense the doctrine of public policy is applied in the field of private international law. Applying the said criteria, it was held that enforcement of a foreign award could be refused on the ground of being contrary to public policy if such enforcement would be contrary to (a) fundamental policy of Indian law or (b) the interests of India or (c) justice or morality. The Court thereafter proceeded to hold that a contravention of the provisions of the Foreign Exchange Regulation Act would be contrary to the public policy of India as that statute is enacted for the national economic interest to ensure that the nation does not lose foreign exchange which is essential for the economic survival of the nation.

36.What is clear from the above discussion is that for an award to be against public policy of India, a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of a fundamental policy of Indian law, including a law meant to serve public interest or public good.

xxx *xxx* *xxx*

> *52.The legal position which emerges from the aforesaid discussion is that after the '2015 amendments' in Section 34 (2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word 'fundamental' before the phrase 'policy of Indian law' makes the expression narrower in its application than the phrase "in contravention with the policy of India law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that (a) violation of the principles of natural justice; (b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and (c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law. However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii)."*
>
> (Emphasis supplied)

53. In the light of the aforesaid discussion, reverting back to the instant matter, on a plain and grammatical construction of clauses (ii) and (iii) of Explanation 1 to Section 34(2)(b) of the Act, 1996 it cannot be said that the imposition of an exorbitant interest in the background of contemporary commercial practices, would be against the fundamental policy of Indian Law, or against the basic notions of morality or justice. It is well-settled that fundamental policy of Indian law does not refer to violation of any Statue but fundamental principles on which Indian law

is founded. Any difference or controversy as to rate of interest clearly falls outside the scope of challenge on the ground of conflict with the public policy of India unless it is evident that the rate of interest awarded is so perverse and so unreasonable so as to shock the conscience of the Court *sans* which no interference is warranted in the award, whereby interest is awarded by the Arbitrator.

II. Usurious Loans Act, 1918

54. We have no hesitation in saying that there is no merit worth the name in the plea advanced by the learned counsel appearing for the appellants that the transaction in question falls foul of the Usurious Loans Act, 1918. The Usurious Loans Act, 1918 was followed by the Punjab Relief of Indebtedness, 1934 (hereinafter called, the "**1934 Act**"). The said 1934 Act is applicable to the Union Territory of Delhi. Section 2(3) of the 1934 Act defines "loan" to mean "loan whether of money or kind".

55. The Usurious Loans Act, 1918 as followed by the 1934 Act were promulgated in a different era and the power of the Court to adjudicate if the interest on a loan amount is excessive has to give way in view of the plenary powers of the Courts provided under the later enactment, i.e., the Act, 1996.

E. CONCLUSION

56. In the overall view of the matter, we have reached the conclusion that we should not interfere with the impugned order passed by the High Court.

57. In the result, this appeal fails and is hereby dismissed.

……J.
(J.B. Pardiwala)

……J.
(K.V. Viswanathan)

New Delhi.
18th November, 2025.