IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO. 996 OF 2019

Paharpur Cooling Towers Ltd ...Petitioner

Versus

Siemens Limited ...Respondent

Mr. Siddharth Datta, *Adv. Suhani D. Mr. Siddharth Dey, Ms. Kriti Kalyani & Adv. Siddhant Marathe i/b Shardul A. Mangaldas & Co., for Petitioner.*

Mr. Rashmin Khandekar, *a/w Mr. Chakrapani Misra a/w Mr. Jeevan Ballav Panda a/w Mr. Rahul Kaushik a/w Ms. Ananya Mishra i/b Khaitan & Co. for the Respondent.*

CORAM: **SOMASEKHAR SUNDARESAN, J.**
RESERVED ON: **MAY 5, 2026**
PRONOUNCED ON: **JUNE 8, 2026**

JUDGEMENT :

Context and Factual Background:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***") challenging an Arbitral Award dated February 27, 2019 ("***Impugned Award***") passed by a three-member Arbitral

Tribunal. By the Impugned Award, the Learned Arbitral Tribunal partly allowed a claim to the extent of Rs. 53.53 Crores in favour of the Respondent, Siemens Limited ("***Siemens***"), against which Rs. 51.89 Crores had already been recovered from the Petitioner, Paharpur Cooling Towers Limited ("***Paharpur***"). Paharpur's counterclaims were also allowed to the extent of Rs. 22.48 Crores, thereby holding that Siemens was liable to pay Paharpur a net balance amount of Rs. 20.84 Crores with interest is a rate of 6% per annum was also directed.

2. The Petitioner, Paharpur has mounted a limited attack to the Impugned Award seeking that *Paragraphs 330 to 334* of the Impugned Award relating to invocation of bank guarantees by Siemens and rejection of Paharpur's counter claim for refund of the bank guarantee amount in the sum of Rs. 34.73 Crores along with interest deserves to be set aside. Another line of attack in the Petition is directed against *Paragraphs 301 to 311* of the Impugned Award relating to risk purchase claims and on this account, the award of Rs. 8.17 Crores in favour of Siemens is sought to be quashed and set aside. Finally, the Petition is also directed against *Paragraphs 44 to 79* and *Paragraphs 94 to 103* of the Impugned Award relating to findings of delay and imposition of liquidated damages of Rs. 23.59 Crores.

3. Paharpur is engaged in the business of constructing cooling towers and providing cooling services to various industries. Siemens is a company engaged in the business of manufacturing electronics and electrical engineering products and solutions for power and energy generation. Paharpur and Siemens entered into General Responsibility Agreement ("***GRA***") along with three separate contract agreements (collectively, "***the Agreements***"), all dated December 24, 2010. The aforesaid agreements entailed construction of three natural draft cooling towers at the site of Torrent Energy Ltd.'s ("***Torrent***") power project at Dahej in Gujarat, for which Siemens had a contract to set up the project on a turnkey basis.

4. In the arbitration proceedings, Siemens was the claimant with claims being made against Paharpur, but Paharpur also made counter claims. Claims by each party were partly allowed and the net effect of the Impugned Award is that Siemens is required to pay Paharpur a sum of Rs. 20.84 crore along with interest thereon. It is common ground that the amounts payable by Siemens under the Impugned Award have been paid. Paharpur has accepted the same without prejudice to its contentions in this Petition.

Analysis and Findings:

5. I have heard Mr. Siddharth Datta, Learned Advocate on behalf of the Petitioner and Mr. Rashmin Khandekar, Learned Advocate on behalf of the

Respondent. The limited challenge to the Impugned Award relates to findings in connection with invocation of bank guarantees; invoices for risk purchase; and finding on delay and imposition of liquidated damages. Each of this is dealt with on merits in the following sections:-

Risk Purchase – Paragraphs 301 to 311:-

6. This claim relates to the expense incurred by Siemens in engaging with third parties to be able to complete the work, citing delay by Paharpur to mitigate losses and damage. The primary ground of attack to the arbitral award under this head is that there is no reasoning for adopting a 50% threshold to allow the claim.

7. Paharpur would contend that a sum of Rs. 8.17 Crores has been granted without any evidentiary basis, which makes this portion of the Impugned Award patently illegal and perverse. Originally, in the Statement of Claim, an initial claim of Rs. 29.89 Crores had been made under the head of risk purchases. Paharpur contends that it had admitted to the claim of Rs. 13.54 crores in order to narrow down the dispute between the parties. However, the balance amount of Rs. 16.34 Crores had been seriously disputed in the course of the arbitration proceedings. Paharpur would contend that instead of an evidence-based quantification of the amount awarded, the Learned Arbitral Tribunal has effected an *ad hoc* in principle allowance of 50% of such disputed

risk purchases. There is a failure of Siemens to prove its claim, according to Paharpur, which disentitles Siemens from being granted any compensation. However, the Learned Arbitral Tribunal has simply granted 50% of such amount – without proof that the risk purchases were attributable to the scope of work of Paharpur; without establishing that Paharpur was responsible for a specifically quantified amount of risk purchases, with full particulars and documents in support; and without examination of evidence to correlate each of the purchase orders and invoices relevant to the arbitral proceedings at the trial.

8. Towards this end, Paharpur would contend that there was no pleading in the Statement of Claim to describe or support the claim under the said head. Likewise, the finding in the Impugned Award that there is no way to correlate a huge bunch of invoices filed for the disputed claims to the scope of work of Paharpur, when the overall project was spread over 300 acres of land with more than 40 sub-contractors and 250 suppliers. The absence of negotiation for purchase of risk cover has also been recorded in the Impugned Award, and therefore, Paharpur would contend, the Learned Arbitral Tribunal was conscious of the absence of linkage between the claim and the evidence in question.

9. On the other hand, Siemens has contended that the Learned Arbitral Tribunal was entitled to fashion its remedies and make a rough and ready guesswork, without the need for a minute calculation. Far from the amount awarded being *ad hoc*, the Learned Arbitral Tribunal has, according to Siemens, taken a very logical and reasonable approach to assessing this claim.

10. Siemens would contend that the total expenditure of Rs. 29.89 Crores incurred by it in respect of risk purchases, were entirely related to works carried out by third party contractors on account of Paharpur's breaches and delays. Towards this end, Siemens would contend that it had produced before the Learned Arbitral Tribunal a full list of various third party contractors and each and every invoice aggregating to the sum claimed of Rs. 29.89 Crores. While Paharpur has disputed these invoices on the ground that Siemens had failed to correlate the invoices to the work carried out by Paharpur, namely the construction of the three cooling towers with the project having been carried out over 300 acres with 40 sub-contractors and 250 suppliers, Siemens would contend that each of the invoices had been specifically identified and proved and this has not been contradicted by Paharpur. Paharpur has only sought to ask general questions relating to the number of contractors working at the site without specifically contradicting the invoices and the relevance of the number of contractors in this regard.

11. The mere fact that there were a number of contractors working on different parts of the project, according to Siemens, would not lead to the evidence of the invoices being contradicted. The Learned Arbitral Tribunal being the best judge of the evidence produced before it, Siemens would contend that this Court cannot be called upon to re-appreciate the evidence.

12. As regards the contention that the grant of 50% of the amount claimed by Siemens, the fact that there was no negotiation of the price for any of the items and that the amounts paid were at a rate higher than the government-notified daily wage rates has been factored in by the Learned Arbitral Tribunal. An assessed estimate on the amount to be awarded has been factored in, to arrive at the 50 % benchmark. Therefore, it is contended that it cannot be stated that the 50% threshold was some *ad hoc* arbitrary threshold arrived at by the Learned Arbitral Tribunal. The Learned Arbitral Tribunal's reasoned approach, according to Siemens, would fall within the realm of fashioning remedies, and grant of relief that is subsumed within or reasonably related to the reliefs requested by the parties.

13. When one examines the Impugned Award and the material on record against this backdrop, it is difficult to agree with Paharpur's contentions that the grant of relief in this regard is *ad hoc* and an arbitrary stipulation. The Learned Arbitral Tribunal has examined the submissions made by the parties

and the materials relied upon by them. Learned Arbitral Tribunal has noted that Paharpur had merely denied Siemens' entitlement to claim any amount, mainly on the ground, that Siemens overreached its contractual entitlement in seeking to bring in third parties to carry out the scope of work belonging to Paharpur. Paharpur had contended that Siemen's sole entitlement in the context of delay is to levy liquidated damages and not bring in third party contractors ostensibly to mitigate the delay. The Learned Arbitral Tribunal has, on appreciation of evidence, rejected this contention and proceeded on the basis that the various letters referred to and relied upon by Siemens contemporaneous with the event were risk purchases notices in respect of the disputed invoices.

14. The Learned Arbitral Tribunal specifically noted that Paharpur did not dispute the assertion of Siemens about having addressed various letters to Paharpur in connection with the risk purchases. Therefore, the risk purchases from third party contractors to carry out activity within the scope of Paharpur's work was found in favour of Siemens by the Learned Arbitral Tribunal. While the cost at which materials would be purchased from the third party vendors or work would be done by the third party vendors had not been explicitly set out in such notices, and the rates paid for getting such work done were said to be higher than the Government's benchmark minimum daily wage rate, the Learned Arbitral Tribunal appreciated the fact that Paharpur

was seriously lacking in manpower and, despite opportunities, had not arranged for manpower.

15. Upon a careful examination of the manner in which the Learned Arbitral Tribunal has assessed and articulated its reasons for grant of 50% of the disputed amounts, I am not satisfied that a case has been made out to term such measurement of the grant of relief as an *ad hoc* and arbitrary grant. Equally, it is apparent that Paharpur was not totally in the dark about the veracity of the amount claimed under this head. Paharpur may have taken a view that agreeing to risk purchases to the extent of Rs. 13.54 Crores would resolve the matter but the claim before the Learned Arbitral Tribunal was of the entire amount of ₹29.89 crores. Paharpur agreeing to a payment of Rs. 13.54 Crores only narrowed the gap and even in such narrowed gap, the Learned Arbitral Tribunal has taken a reasonable and plausible approach for purposes of arriving at a broad estimate of the discounting on the residual disputed amount.

16. In my opinion, the approach of the Learned Arbitral Tribunal would fit within the declaration of the law by the Supreme Court in numerous cases on the provision of reasons by an Arbitral Tribunal. It is only when there is no reasoning at all that the standard of patent illegality on the face of the award would be attracted. If reasons are indeed accorded, unless there are illogical

reasons that no reasonable person would provide, there is a wider leeway to Arbitral Tribunals to provide reasons for its adjudication. In the facts of the case, the Learned Arbitral Tribunal has recorded the articulation by the parties of their respective stances, and for good reason, the Learned Arbitral Tribunal has discounted the amount claimed, attributing such discounting to the admitted absence of negotiation of price in the risk purchase contracts and the admitted payment for manpower in excess of state-notified benchmark. This cannot be assailed as absence of reasons and patent illegality.

17. Indeed, if an Arbitral Tribunal were to simply, without any reasoning, effect a 50:50 breakup in what is often referred to as rough and ready *panchayati* justice, Courts would need to interfere. The case in hand is not one such and on a careful examination of the specific paragraphs sought to be impugned, i.e. Paragraphs 301 to 311, in my opinion, a case for finding its contents to be arbitrary or perverse is not made out. Therefore, this facet of the challenge, in my opinion, deserves to be rejected.

Delay and liquidated damages - Paragraphs 44 to 79 & 94 to 103:

18. Under this head, the challenge made by Paharpur is broken up into two components – *first*, a challenge to Paragraphs 44 to 79 of the Impugned Award and *second*, a challenge to Paragraphs 94 to 103. The former set of paragraphs deal with delay on the part of Paharpur in execution, to conclude that,

Paharpur was responsible for the delay to the extent of at least 100 days. The contents of the latter set of paragraphs relate to Siemens' claim for levy of liquidated damages in terms of Clause 2.1 of the GRA to conclude at Paragraph 103 that Siemens was entitled to liquidated damages in the sum of Rs. 23.59 crores, namely, 20% of the total aggregate contract price.

19. Paharpur's contention in relation to the analysis and findings on delay is that the Learned Arbitral Tribunal having come to a conclusion that both parties were responsible for some delay, has failed to apportion the delay appropriately to the respective parties. Paharpur would contend that the findings on liquidated damages and the award of the maximum liquidated damages for the delay is negated by the finding that both parties were responsible for delay. Put differently, a party that has itself been held to be liable for some component of the delay cannot be granted liquidated damages in the entirety under the liquidated damages clause. Therefore, the finding is assailed as perverse and patently illegal and unintelligible. Paharpur would contend that an unquantified period of delay is attributable to Gammon India Limited, another sub-contractor. Without any evidence being led to quantify the delay attributable to Gammon India, the Learned Arbitral Tribunal has arrived at a finding of a minimum delay of 100 days being attributable to

Paharpur, which makes the Impugned Award patently illegal for being unintelligible in terms of the law declared in ***OPG Power***[1].

20. Siemens would counter these submissions by contending that the Learned Arbitral Tribunal was only required to give a finding with respect to whether Paharpur had caused a delay of not less than 100 days. If that is clear, the delay on the part of Siemens is irrelevant. The Learned Arbitral Tribunal, Siemens would contend, has articulated its approach to the delay quite reasonably. The basis of the standard adopted by the Learned Arbitral Tribunal is the agreed provision in Clause 2.1 of the GRA, which provides for imposition of liquidated damages. Siemens would contend that analysis of the contemporaneous Minutes of Meetings held between the parties has led to the Learned Arbitral Tribunal adjudicating and arriving at the date of the hand-over and thereby assessing the delay on the part of Paharpur.

21. Dealing with Paharpur's contention that it was not possible to commence the work of cooling towers at the concerned site on account of defective work done by Gammon India, the Learned Arbitral Tribunal has rejected the same on the premise that Siemens had been voicing its concern about the slow progress of work and Paharpur's failure in not deploying adequate machinery and manpower right since August 2011, and there is no

[1] *OPG Power Generation (P) Private Limited v. Enexio Power Cooling Solutions (India) Private Ltd* - *(2025) (2) SCC 417.*

contemporaneous dispute or attribution to the reasons for the delay at that stage. The Learned Arbitral Tribunal also noticed that while certain reservations had been expressed by Paharpur about the contents of the Minutes of Meetings held between the parties, the challenge to the contents of the Minutes of Meetings had been given up at the final hearing. Therefore, Siemens would contend that even on the Gammon India issue, based on evidence provided by the parties, the Learned Arbitral Tribunal has fairly adjudicated that all the rectifications necessitated from Gammon had been carried out within time. Paharpur itself has raised a concern about non-completion of rectification only in one respect and therefore, the Learned Arbitral Tribunal has fairly adjudicated that while some delay should be attributed to Siemens by reason of delay on the part of Gammon India, the question of apportionment of delay had in fact been addressed, to arrive at a conclusion as to whether a delay of not less than 100 days is attributable to Paharpur.

22. The quantification by the Learned Arbitral Tribunal of such delay, Siemens would contend, is an adjudicated finding based on appreciation of evidence and unless there is a reasonable basis to show that completely irrelevant material was relied upon or that relevant material was ignored, or indeed that the reasons are such that no rational person would ever provide

them, the Section 34 Court should not interfere with the adjudicated findings of an Arbitral Tribunal.

23. As regards the computation of liquidated damages, Siemens would contend that analysis of undisputed Minutes of Meeting and contemporaneous correspondence between the parties is the solid evidence based on which the assessment of delay of at least 100 days has been arrived at by the Learned Arbitral Tribunal. Clause 2.1 of the GRA provides for liquidated damages at the rate of 0.02% of the contract price per day and caps such damages at 20% of the contract price. Therefore, the test adopted by the Learned Arbitral Tribunal was to consider whether a delay of at least 100 days is attributable to Paharpur. Once that threshold has been met, no fault could be found for the Learned Arbitral Tribunal having granted liquidated damages and that too based on ample evidence and a fair assessment of the causes of the delay and the adjudication of the period of the delay.

24. On this count, Siemens would point out that the parties had agreed upon and provided the hand-over dates and, therefore, the contention by Paharpur that liquidated damages could not have been awarded without a start date being identified by the Learned Arbitral Tribunal is unfair and inaccurate. It is in reliance on the dates provided by none other than Paharpur itself that the calculation of the delay is something that cannot be altered.

25. Having considered the contentions of the parties and having examined the material on record and the manner of assessment and adjudication of the same by the Learned Arbitral Tribunal, in my opinion, the approach of Paharpur under this head appears to be approach of creating reasonable doubt, which is the criminal standard rather than the civil standard of preponderance of probabilities. What the Learned Arbitral Tribunal ought to assess and adjudicate is what a reasonable man acting reasonably, would conclude on the basis of the evidence on record and the assessment of the submissions made to the Tribunal. A careful reading of the contents of the impugned paragraphs, namely Paragraphs 44 to 79 and Paragraphs 94 to 103, would lead to reasonable conclusion that the Learned Arbitral Tribunal cannot be faulted or accused of adopting any irrational, arbitrary or unreasonable approach to the adjudication before it.

26. The attribution of delay to Siemens on account of inadequate work carried out by Gammon has been squarely dealt with by the Learned Arbitral Tribunal. The fact that new milestone dates were decided and much of the delay even after the agreement on fresh milestone dates did take place, is something that is fairly writ large in the analysis provided by the Learned Arbitral Tribunal. In summary, in my opinion, no case is made out for disturbing the findings of the Learned Arbitral Tribunal on the facet of delay and liquidated damages.

27. In these circumstances, the law on liquidated damages, even adopting the principles reiterated and articulated in ***Kailash Nath***[2], would indicate that there has been an assessment of the damage suffered and the delay caused. Once it is fairly adjudicated that there was a proven shortage in the deployment of machinery and manpower by Paharpur, the consequential delay and the cause for the delay, as adjudicated in the facts of the case by the Learned Arbitral Tribunal, meets the threshold of reasonableness.

28. The Section 34 Court must be reluctant to accept an invitation to re-appreciate evidence in the garb of assessing perversity and patent illegality. Having gone through the relevant portions of the Impugned Award with a fine tooth comb, the contentions in this regard, under this head, do not lend themselves to acceptance and I am not inclined to hold that the Learned Arbitral Tribunal has inappropriately adjudicated the issues.

Invocation of Bank Guarantees – Paragraph 330 to 334:

29. The core grievance of Paharpur in connection with the adjudication of invocation of eight bank guarantees for a total sum of Rs. 34.73 Crores is that the Tribunal has dismissed the same as an "academic issue" since Siemens was entitled to amounts in excess of the security held by it. Paharpur would contend that this issue had, in fact, gone up to the Supreme Court, which by an

[2] *Kailash Nath Associates v. DDA* - ***(2015) 4 SCC 136***

order dated November 6, 2015 (Exhibit 'E' Page 439 of the Petition) explicitly required this issue to be dealt with. Quite apart from the finding that no useful purpose would be served on assessing the impact of the amounts wrongly recovered in mid-2014, the Impugned Award on this count is assailed as being patently absurd, illogical and unintelligible.

30. Paharpur would contend that the set-off of such amount would show, on the face of the Impugned Award, that the wrongful invocation of the bank guarantees was a material issue to be decided. It is important that the said amount was over and above Rs. 17.16 Crores that had already been wrongly deducted from the invoices payable to Paharpur, and an additional Rs. 17.71 Crores held as retention money. Moreover, Rs. 4.76 Crores had also been wrongfully withheld towards under unpaid invoices of Paharpur. According to Paharpur, if at the final set off, Siemens had to pay Rs. 24.30 crores as a refund to Paharpur, it is obvious on the face of the Impugned Award that the invocation of the bank guarantee has allowed a "triple recovery" by reason of illegal retention, unilateral deduction, wrongful withholding of payments, and invocation of bank guarantee, all totalling to Rs. 74.36 crores.

31. Since the Learned Arbitral Tribunal does not even refer to the vital evidence, namely the testimony of Siemens' witness which purportedly failed to dislodge the testimony of Paharpur's witness on the fraudulent intent in

invoking the guarantees, the Impugned Award, according to Paharpur, constitutes a perversity for not dealing with vital evidence. Paharpur would also submit that the counter claim in respect of the bank guarantee amounts along with interest at the rate of 18 % from the date of wrongful invocation, has not been dealt with appropriately by the Learned Arbitral Tribunal. If the adjudication resulted in Paharpur's favour then the set-off, as effected by the Learned Arbitral Tribunal, would have had the impact of interest, making the counter claim succeed to an amount higher than that allowed in the claim of the Respondent.

32. Paharpur would also contend that instead of adjudicating upon the issue, the Learned Arbitral Tribunal has whimsically equated the advance payment guarantees with the performance bank guarantee treating them as one and the same, which is an impossible interpretation and completely ignores their distinctiveness and separate purposes under the Agreements. If there is no default under the Advance Payment Guarantee, such guarantee could have never been invoked. If there is no failure in the performance of the contract, there could be no invocation of the Performance Bank Guarantee. Therefore, the net submission by Paharpur is that the claim for wrongful invocation of guarantees to the extent of Rs. 34.73 crores has remained unadjudicated, and yet the Learned Arbitral Tribunal has arbitrarily treated it as funds available with Siemens for adjustment under various heads.

33. In this regard, Siemens would contend that to begin with, there was no question of the Supreme Court having issued any direction to the Learned Arbitral Tribunal to determine the issue of wrongful invocation of bank guarantees. The Supreme Court came into the picture by reason of a criminal complaint filed by Paharpur against challenging the invocation of bank guarantees and alleging fraud in the matter. Proceedings to quash such criminal complaint under Section 482 of the Criminal Procedure Code filed by Siemens were allowed, and eventually reached the Supreme Court. The observation by the Supreme Court in this context was that whether or not the bank guarantees were rightly or wrongly invoked is a matter to be decided in the arbitration proceedings, and not in criminal proceedings. This was a distinction of whether the dispute was civil or criminal and not a direction as characterised by Paharpur. Therefore, it would be wrong to hold that the Impugned Award is patently illegal for failure to obey directions of the Supreme Court.

34. Siemens would also contend that the Learned Arbitral Tribunal has returned a categorical finding, based on interpretation of the instruments before it, that the advance bank guarantee was to also operate as a performance guarantee. The Learned Arbitral Tribunal concluded that Siemens' invocation of the Performance Bank Guarantee and the Advance Bank Guarantee was not motivated by any *mala fide* intent and that Paharpur

has been given full credit for the entire value of the amounts received by Siemens after such invocation of the bank guarantee. Therefore, the submission by Siemens is that the attack to the Impugned Award on this premise is misconceived and is also motivated by bad faith to keep the pot boiling to enable prosecution of criminal proceedings relating to the invocation of the bank guarantees.

35. Against this backdrop, I have carefully examined the contents of Paragraphs 330 to 334 of the Impugned Award and the relevant material on record. The interpretation of the terms of the contract between the parties and the treatment of an advance payment guarantee as a performance bank guarantee cannot be dismissed as perverse. The advance payment guarantee was meant to be kept valid until provisional acceptance had been achieved. If the advance bank guarantee had been only to secure the unadjusted amount of the advance payment, the Learned Arbitral Tribunal reasoned, the contract would have explicitly provided so, and the advanced payment guarantee would have stood discharged. That not being the case, and the parties having agreed to keep the advance payment guarantee fully valid even after the entire advance amount was adjusted, the Learned Arbitral Tribunal held, in my opinion, reasonably, that the advance payment guarantee was to operate as a performance bank guarantee as well.

36. In my opinion, this analysis is a reasonable and commercially commonsensical interpretation of a commercial contract. It would not be open for this Court to substitute one plausible view taken by the Learned Arbitral Tribunal with another plausible view that is canvassed as being more acceptable and more logical. Suffice it to say, however, that Paharpur's contention that the Learned Arbitral Tribunal has whimsically equated the Performance Bank Guarantee and the Advance Bank Guarantee is not a tenable criticism. The reasoning for which the Learned Arbitral Tribunal has equated the two is indeed logical and does not make out a case for constituting a view that no reasonable person would have taken.

37. As regards the contention that the direction of the Supreme Court had been sidestepped, I am afraid, the submission is unacceptable. I have carefully examined the contents of the Supreme Court Order dated November 6, 2015. The Supreme Court has specifically recorded that, admittedly, the legality of the invocation of the bank guarantee was subject matter of arbitration between the parties and, even while such civil proceedings were pending, Paharpur launched a criminal complaint against Siemens and its officials, claiming that the invocation of bank guarantee was a criminal offence. This was interfered with by the Calcutta High Court and the Supreme Court found no reason to interfere with the judgment of the Calcutta High Court. In that context, the

Supreme Court indicated that whether or not the guarantees were rightly invoked is a matter to be decided in the arbitration proceedings.

38. Therefore, when such an observation is made by the Supreme Court in the course of quashing proceedings under Section 482 of the Criminal Procedure Code, suffice it to say that the observation is to identify whether what is essentially a civil dispute has been brought within the ambit of criminal proceedings. Therefore, the contention that the Impugned Award runs counter to a direction or a mandamus issued by the Supreme Court would be untenable and is liable to be rejected.

39. Indeed, the Learned Arbitral Tribunal has squarely returned a finding of the absence of *mala fides* in such invocation. It is in this context that the Supreme Court had indicated that, should a finding be returned in the arbitration proceedings that the invocation was illegal, then whether such invocation was prompted by criminal motive is a separate question that may then be considered in accordance with law. Such a situation has, in fact, not arisen and has been squarely repelled with logical reasoning by the Learned Arbitral Tribunal. In these circumstances, this ground of attack to the Impugned Award is also rejected.

40. In this context, when the Learned Arbitral Tribunal uses the phrase "academic" for the analysis of whether the amounts received upon invocation

of the bank guarantee, all that the Learned Arbitral Tribunal has done is hold that no useful purpose would be served directing refund of the bank guarantee amounts with interest on those amounts, and in the same breath has also directed payment of the awarded amounts with interest from the date of accrual of the cause of action.

41. The Learned Arbitral Tribunal has, in a commonsensical manner and in a commercially logical and reasonable manner dealt with the competing claims of the parties. The contention that if the set-off is being given for the bank guarantee, the Learned Arbitral Tribunal ought to have also considered interest on the bank guarantee is again a facet that does not lend itself to acceptance because whether or not to grant interest and on what facets to grant interest falls squarely in the domain of the Learned Arbitral Tribunal. After adjudication of merits, with full opportunity being given to the parties to make their contentions, the Learned Arbitral Tribunal has in fact returned a square finding that there was no *mala fide* intent in the invocation of the bank guarantee. This finding, again, is reasonable and plausible, and puts paid to the contention that there was criminal malintent in the invocation of the bank guarantee. This may not be palatable to Paharpur, but it would not translate into the approach or the findings by the Learned Arbitral Tribunal being perverse and patently illegal.

42. Therefore, in my opinion, nothing contained in Paragraphs 330 to 334 lends itself to interference as prayed for by Paharpur in this Petition. In my opinion, no case has been made out for segregating this component of the Impugned Award and quashing and setting it aside.

Conclusion:

43. In these circumstances, each of the three grounds of assault to the Impugned Award do not convince me to make an intervention in exercise of jurisdiction under Section 34 of the Act. In my opinion, the unanimous award passed by the learned arbitrators does not deserve to be interfered with. The Petition is therefore ***dismissed***.

44. In view of my findings under each of the heads of assault to the Impugned Award, I have not set out any analysis as to whether any of the individual components of the Impugned Award sought to be interfered with, could have at all been successfully segregated and quashed, without disturbing the rest of the Impugned Award, by applying the principles laid down in ***Gayatri Balasamy***[3] on the matter of partial modification of an arbitral award. That issue not being germane any more in view of my findings above, this facet of the matter is not being commented upon.

[3] *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* - ***(2025) 7 SCC 1***

45. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]