

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 398 OF 2024

BETWEEN:

M/S VISION EARTHCARE PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT:
PRESENTLY AT FLAT NO.202,
PLOT NO.17
BUILDING NO.4, MANDAKINI
COSMOPOLITAN CHS
SECTOR 19A, NERUL,
NAVI MUMBAI - 400 0705
THANE, MAHARASHTRA
REPRESENTED BY ITS CEO
DR. CHANDRASHEKAR SHANKAR

...APPELLANT

(BY SRI MAHESH ARKALGUD SRIKANTH, ADVOCATE)

AND:

1. M/S EMPARALA GLOBAL RESOURCES
PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED
OFFICE AT: NO.5, 3RD FLOOR,
5TH MAIN, 18TH CROSS
MALLESHWARAM,



BENGALURU - 560 003
REPRESENTED BY ITS MANAGING DIRECTOR
SRI E. LOKANATHA NAIDU

2. HON'BLE MR. JUSTICE S.R. SOMASHEKHARA (RETD.)
HON'BLE ARBITRAL TRIBUNAL
C/O ARBITRATION AND CONCILIATION
CENTRE - KARNATAKA
3RD FLOOR, EAST WING,
KHANIJA BHAVAN
RACE COURSE ROAD,
ENGALURU 560001

...RESPONDENTS

(BY SRI N. SHARATH, ADVOCATE FOR R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT R/W SECTION 37(1)(C) OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO SET ASIDE THE JUDGMENT DATED 24.07.2024 PASSED BY THE LEARNED SINGLE JUDGE IN COM AP NO.31/2024 PASSED BY THE LXXXV ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU, IN COM.A.P. NO.31/2024 AND CONSEQUENTLY SET ASIDE THE ARBITRAL AWARD PASSED IN A.C. NO.523/2022 AND ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

1. The above appeal is filed under Section 13(1A) of the Commercial Courts Act, 2015 [**CC Act**] read with Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], calling in question the judgment dated 24.07.2024 passed in Com.AP.No.31/2024 [**impugned judgment**] by the LXXXV Addl. City Civil And Sessions Judge, Bengaluru [**Commercial Court**] as well as the arbitral award dated 17.11.2023 passed in AC.No.523/2022 [**impugned award**].

2. Vide the impugned award, the appellant was ordered to pay the respondent (claimant) a sum of ₹15,00,00,000/- (Rupees Fifteen Crores only) as liquidated damages; a sum of ₹5,85,00,000/- (Rupees Five Crores Eighty Five Lakhs only) by way of interest from 14.03.2019 till the date of claim petition; and interest at 12% p.a., on ₹20,85,00,000/- (Rupees Twenty Crores Eighty Five Lakhs only) from the date of the claim petition till its realization.

Background facts:

3. The respondent is engaged in construction and other activities including the construction and maintenance of Sewage

Treatment Plants [**STPs**]. The appellant is the patent holder in Soil Biotechnology (**SBT**) and Camus Biotechnology (**CSBT**). The parties entered into an agreement/Memo of Understanding (**MOU**) dated 12.11.2016 [**first agreement**]. Due to various reasons the parties have entered into another agreement dated 07.07.2017 [**second/said agreement**]. The present disputes pertain to the second agreement.

4. Under the terms of second agreement, the respondent was required to promote and market SPT/CSBT; build vibrant marketing execution; facilitate in bringing orders for use of SBT/CSBT, etc. The appellant was required to bring the technical expertise; train the marketing and project team; quality control and quality assurance etc. The parties had agreed to share the revenue of the projects executed by them in the manner specified in the second Agreement. The details of the revenue sharing are not set out since the same is not a subject matter of the present dispute.

5. The second Agreement was valid for a period of 15 years subject to renewal for a further period. However, the appellant by notice dated 14.09.2018 terminated the said agreement. The respondent replied to the said notice. The respondent alleged that the appellant attempted to absolve itself of its obligations under the

said agreement. The respondent thereafter initiated arbitral proceedings seeking for various reliefs including liquidated damages and interest for wrongful termination, etc. The arbitral Tribunal held that the termination of the second agreement by the appellant is not justified. Accordingly, it awarded damages and interest as noticed above.

6. Being aggrieved, the appellant preferred an application under Section 34 of the A&C Act before the Commercial Court. The Commercial Court by the impugned judgment dismissed the said petition. Being aggrieved, the present appeal is filed.

7. The primary contention urged on behalf of the appellant is that the arbitral tribunal ought not to have awarded damages as stipulated in the said agreement in the absence of the respondent demonstrating that it had actually suffered the said damages. It is further contended that the award of interest by the arbitral tribunal is also patently illegal.

8. Per contra, learned counsel for the respondent justified the award of the arbitral tribunal and further contended that requisite averments for the award of damages having been made in the

claim petition, the award of damages by the arbitral tribunal as well as interest is just and proper.

9. In the claim petition, the claimant had averred regarding the execution of the first agreement as well as the second agreement. At para No.7 of the claim petition the respondent/claimant has listed out the projects tendered/awarded due to its efforts of marketing in terms of the said agreement. The list of projects which are on going/to be commenced have also been listed out in the said para No.7. The claimant has specifically averred with regard to the total capacity of the projects, the amount payable to it from the said projects as also the projects that have been awarded to the appellant for use of its technology due to the efforts of the claimant. It is further specifically averred at para No.11 of the claim petition that huge amounts have been invested by the respondent as a result of which contracts have been awarded to the appellant for the use of technology patented by it. That the product of the appellant was extensively marketed by the respondent and recognition was brought to the same. It is hence, averred that the appellant terminated the agreement in an attempt to absolve itself of the obligations contained under the agreement.

10. The appellant, in the statement of objections filed to the claim petition has specifically contended that it was forced into entering into the second agreement. It alleged various wrong doings on the part of the respondent. The appellant had also made a counter claim in its statement of objections.

11. The arbitral Tribunal framed the following issues for its consideration:

- "1. Is the MOU dated 07.07.2018 obtained by force, undue influence and fraud as pleaded by the Respondent in para 3.9 of the statement of objections?
2. Is it legal unenforceable as pleaded in para 19.2 of the statement of objections?
3. Whether the Claimant proves that the Respondent has breached the contracted by unilaterally terminating the MOU dated 07.07.2017 as pleaded in para 21 of the claim petition?
4. Whether the Claimant proves that it is entitled to a sum of Rs. 15 Crores as liquidated damages due to such breach?
5. Whether it proves that it is entitled to Rs.5,85,00,000/- by way of interest from 14.03.2019 to 14.10.2022?
6. Whether it is entitled to future interest at 12% p.a. till the date of realisation?
7. Whether the Respondent proves that it is entitled to a sum of Rs.2,07,91,875/- as its share of the revenue?
8. Whether it proves that it is entitled to a sum of Rs.1 crores towards financial/business loss and also litigation expenses?

9. Whether it is entitled to current and future interest at 18% p.a. till payment in full?
10. Is the counter claim not as per law as pleaded by the Claimant in its reply?
11. Is the counter claim barred by limitation as pleaded by the Claimant in its reply?
12. What award or order?"

12. It is pertinent to note that issue No.1 with regard to undue influence and fraud, was answered in the negative.

13. While considering issue No.3, the arbitral tribunal noticed that no documentary evidence had been produced apart from the emails exchanged between the parties [Ex.R16 - email dated 08.07.2023; Ex.R19 - email dated 28.05.2018; Ex.R-20 - email dated 14.06.2018]. The arbitral tribunal held that the said emails did not aid the case of the respondent. The Tribunal also considered the oral evidence and held that the appellant did not establish any breach of the terms and conditions of the said agreement so as to justify termination of the said agreement.

14. It is pertinent to notice the termination clause in the agreement, which reads as under:

"a) This MOU after expiry of the term stipulated in Clause V supra, gets automatically terminated.

b) In the event either party shall be in default as to any of the terms or provisions of this MOU and shall continue in default for a period of 15 days, after giving by the other party a Written Notice of existence of such default, or shall become insolvent, bankruptcy or in any way affecting the operation of its business or shall discontinue the business for any reason, then in such case, the other party shall have to the right as its option either to continue the business or to terminate this MOU by giving the other party written notice of its intention to terminate, however such termination shall not effect any rights and obligation accrued at the time of such termination.

c) By mutual consent and by seeking written consent to terminate confidentiality and other clauses will survive termination or else if VEC share of revenue is less than ₹20 Lacs per year in three consecutive financial years."

15. Clause (a) of the termination clause stipulates that the agreement gets terminated after expiry of its term. The same is not applicable in the present fact situation. Similarly, clause (c) of the termination clause contemplates mutual termination which is also inapplicable.

16. Clause (b) of the termination clause stipulates that in the event of breach, a notice in writing was required to be given as to the existence of such a breach and the other party was entitled to an option, either to continue the business or to terminate the agreement by giving a written notice of its intention to terminate.

17. In the present case, no such events have transpired since the appellant vide notice dated 14.09.2018 (Ex.P4), terminated the agreement and called upon the respondent to, *inter alia*, pay various amounts, cease and desist from representing them, etc. To the said notice dated 14.09.2018, the respondents issued a reply dated 01.10.2018 (Ex.P5), in detail denying and disputing that there was any breach on its part. It was specifically stated that the respondent was willing to abide by the terms and conditions of the agreement. Subsequently, since the appellant did not respond to the said reply, the respondent vide its notice dated 09.12.2019 (Ex.P6) invoked the arbitration clause and commenced the arbitration proceedings. Hence, the finding of the arbitral tribunal that the appellant had not justified the termination of the agreement is based on material available on record.

18. With regard to issue No.4 i.e., whether the respondent/claimant was entitled for liquidated damages of ₹15,00,00,000/- (Rupees fifteen crores), the arbitral tribunal held as under:

"54. Therefore, whether in this case it was difficult or impossible for the claimant to prove damage or loss is the next question. It is to be noticed that the time gap between the date of the Agreement (07.07.2017) and the date of termination (14.09.2018) is just one year two

months and seven days. The period provided in the Agreement is 15 years (vide Clause V). Therefore, what could have been earned by the claimant over the remaining period of nearly 13 and odd years cannot be estimated at all. It is precisely for this reason, the parties have provided for payment of liquidated damages. The very object of making a provision in a contract for liquidated damages is, that in the very nature of certain transactions, it would be difficult or impossible to prove the actual loss or damage. Further in my opinion, having regard to the period of this Agreement which is fairly long, viz., 15 years and having regard to the nature of technology employed for this project, Rs.15,00,00,000/- is certainly a reasonable sum. Clause XIX(e) provides that in the event of breach of any clause or provisions by either party, the other party (the aggrieved party) shall be entitled to liquidated damages. As rightly submitted by Sri Sharath N breach of clause XIV(b) regarding termination is also a breach contemplated by XIX(e) which entitles the Claimant to seek liquidated damages.

55. What remains for consideration is the contention of Sri C.K.Dharaneeswaran that this stipulation is in the nature of penalty. Nowhere in the statement of objections, such a stand is taken. It is only during the course of arguments such a submission was made. A reading of Clause XIX(e) to my mind does not suggest that the stipulation is by way of penalty. I am therefore of the opinion that the claimant is entitled to liquidated damages of Rs.15,00,00,000/- and accordingly answer Issue No.4 in the affirmative."

19. In this context, the relevant clause pertaining to dispute resolution in the said agreement reads as under:

"e) In the event of breach of any clause/provisions herein above by either party, the other party (the aggrieved party) shall be entitled to liquidated damages to the tune of Rs..... within 6 months after breach notice;

1. In first 5 years period Rs.15 Crores.

2. In second 5 years period Rs.20 Crores.
3. In third 5 years period Rs.25 Crores."

20. As noticed above, the claimant at para No.7 of the claim petition has averred that it has facilitated and worked in bringing orders for implementation of the technology patented by the appellant, both by private negotiations or by participating in tender, through its goodwill and expertise. The respondent has also enumerated the projects tendered/awarded pursuant to the marketing efforts of the respondents; the list of projects which have been completed; which are on going; which are to be commenced, together with the value of the same have been enumerated. The respondent has also averred at para No.11 of the claim petition that it has made huge investments while representing the appellant and its patented technology and has incurred losses due to the termination of the agreement by the appellant. The respondent has also stated that, in terms of the said agreement, the appellant having taken the respondent into confidence in bringing several contracts, is attempting to absolve itself of obligations under the MOU.

21. In the statement of objections filed before the arbitral tribunal, the appellant has justified the termination. However, there is no

denial as to the projects that have been enumerated in the claim petition. There is also no denial by the appellant of the averment by the respondent/claimant regarding incurring of expenses. It is pertinent to note that while traversing the averments made at paragraph 7 of the claim petition, the appellant has merely made various allegations that the payments to it from various contracts have been stopped at the instance of the respondent/claimant.

22. The averments made in the claim petition have been reiterated in the affidavit by way of examination-in-chief by PW.1. PW.1 has not been cross-examined with regard to the projects that have been listed in paragraph 7 of the claim petition, which have also been stated at paragraph 6 of the affidavit by way of examination-in-chief. However, it is relevant to note paragraphs 38 and 43 of the cross-examination of PW.1, which are as under:

"38. It is true that in respect of the projects mentioned at serial No.18 to 21 and 23 to 25 it is the respondent which negotiated and carried on the project. I now say that in respect of the project at serial No.18 we negotiated. It is false to suggest that in respect of these 7 projects the respondent got them because of proximity of Shankar with tenders.

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43. I cannot say either exactly or even approximately the amount that may be due from the contractors in respect of projects executed. It may be that the respondent would have got approximately a sum of

₹722 lakhs if these projects had been executed by us and the respondent. It is false to suggest that since no amount is due to us in from the respondent in respect of 34 projects we did not claim any specific amount in the claim petition. It is false to suggest that we have no documents to show that we incurred any loss in respect of Ex.P1. It is false to suggest that we have no document to show that we have suffered loss to an extent of ₹15 Crores. It is false to suggest that since we have not suffered any loss, we have not produced any documents. It is false to suggest that there was no agreement either as per Ex.P1 or as per any document to show that the respondent had to pay interest to us. It is false to suggest that since there is no such document we have not produced."

23. It is clear that the appellant has merely cross-examined to the extent of revenue that has been/was to be generated from the projects as mentioned by the respondent. It is not the case of the appellant that, the projects as stated by the respondent, have been secured by the appellant out of its own efforts and without any assistance of the respondent/claimant.

24. It is forthcoming that the appellant has not denied the *factum* of the said projects being executed by them. It is not the case of the appellant that the said projects have been awarded independent of the efforts made by the respondent.

25. At this juncture, it is relevant to notice the judgment of the Supreme Court in the case of *Kailash Nath Associates v. Delhi Development Authority*¹, wherein it is held as under:

"43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

¹ (2015) 4 SCC 136

43.6. The expression “whether or not actual damage or loss is proved to have been caused thereby” means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction *before* agreement is reached, Section 74 would have no application."

(emphasis supplied)

26. The Division Bench of Delhi High Court in the case of ***Sudershan Kumar Bhayana (Deceased) their LRS. Vs. Vinod Seth (Deceased) their LRS.***² after noticing the judgment of the Supreme Court in the case of ***Kailash Nath Associates*** (*supra*), held as under:

"41. It is well settled that there are three essential ingredients that are required to be pleaded and established by a party claiming damages. First, that there is a breach of the Contract by the counterparty. Second, that the party complaining of such breach has suffered an injury as a result of the breach of the contract by the counterparty. And third, that the injury suffered is proximate and a direct result of the breach committed.

44. Absent any pleadings that the owners had suffered damages or incurred loss on account of the delay in construction of the work, a claim of damages would not be sustainable. In addition, as noted above, admittedly there is no evidence or material on record to establish that the owners had suffered any loss or the quantum

² 2023 SCC OnLine Del 6097

of such loss. The owners have simply relied on Clause 7 of the Collaboration agreement.

45. It is material to note that there is also no averment that the penalty as contemplated under Clause 7 of the Collaboration Agreement is a genuine pre-estimate of damages. on Agreement."

(emphasis supplied)

27. Another Division Bench of the Delhi High Court in the case of ***Indian Oil Corporation Ltd. Vs. Standard Casting Pvt. Ltd.***,³

after noticing various judgments held as under:-

"30. It is a well-settled principle of law governing liquidated damages that the mere existence of a clause stipulating such damages does not, by itself, entitle a party to claim compensation under the IC Act. The party seeking to enforce such a clause must satisfy certain essential conditions, and in the absence thereof, no damages can be awarded.

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32. The above conclusions in Kailash Nath Associates (supra) make it abundantly clear that where a sum is specified in a contract as liquidated damages payable upon breach, only reasonable compensation can be awarded, and such compensation cannot exceed the amount so stipulated. Furthermore, where it is possible to prove actual damage or loss, such proof cannot be dispensed with. The Hon^{ble} Supreme Court further held that it is only in situations where loss or damage is difficult or impossible to quantify that the liquidated amount specified in the contract, if representing a genuine pre- estimate of probable loss, may be awarded.

33. It therefore follows that in all cases, whether or not actual loss can be proved, some form of substantiation or evidence is always required from the party claiming

³ 2025 SCC OnLine Del 8393

such damages. The liquidated damages stipulated in a contract represent merely the upper ceiling of compensation that may be awarded; they do not become automatically payable upon breach. When it is possible to establish the actual loss, the claimant must adduce cogent evidence demonstrating the extent of the loss suffered as a direct consequence of the breach.

34. However, in cases where it is impracticable or impossible to precisely quantify the loss, the claimant must still establish that the liquidated damages specified in the contract constitute a "genuine pre-estimate of loss" made by the parties at the time of entering into the agreement. This requires showing, with reasonable probability, that the stipulated figure was intended to reflect a fair and bona fide estimate of potential loss, and not imposed as a penalty. A mere bald or general assertion without any evidentiary foundation cannot satisfy this requirement.

35. Thus, a mere generalized claim that loss might have been incurred due to reasons such as delay or default is insufficient. Courts will not grant damages based solely on vague or unsubstantiated assertions. The burden of proof lies squarely upon the party claiming liquidated damages to demonstrate either the actual loss suffered, or that the stipulated amount was, at the time of contracting, a reasonable and genuine pre-estimate of likely loss based on objective grounds.

36. In the present case, the record leaves no room for doubt that IOCL has neither pleaded nor produced even the slightest material to demonstrate its entitlement to damages. There is not a single document, statement, or averment that indicates any actual loss suffered by IOCL on account of the alleged delay. In such circumstances, the finding of the learned District Court warrants no interference.

37. It is a settled principle of law that a party claiming damages must, at the very least, lay the foundational pleading and provide some evidence to show the occurrence of loss or the basis for claiming compensation. IOCL has failed to discharge even this elementary obligation. The absence of any such pleading or proof renders its claim wholly speculative.

The law does not permit a party to seek damages as a matter of course or to cast a negative burden on the opposite party to prove that no loss was caused.

38. Unless the claimant first establishes a prima facie case of loss, no question arises of calling upon the other side to disprove it. Therefore, in the absence of even the minimal factual foundation or supporting evidence, IOCL's claim for damages stands on untenable grounds, and the learned District Court was fully justified in setting aside the Arbitral Awards."

(emphasis supplied)

28. Having regard to the settled proposition of law as noticed above, it is clear that the claimant had averred in detail regarding the projects that it was instrumental in securing pursuant to the said agreement. The details of the projects together with the value thereof, have been specifically averred. There is no denial of the same in the statement of objections filed by the appellant. The cross-examination of PW.1 does not in any manner dilute the case of the respondent/ claimant with regard to it having been instrumental in securing the contracts as averred. It was not the case of appellant before the arbitral Tribunal that it had secured the contracts as averred in the claim petition without the aid/assistance of the respondent.

29. The termination clause in the agreement clearly stipulates that, if the agreement is terminated within the first five years, liquidated damages of ₹15,00,00,000/- has to be paid.

30. As noticed above, the details available with the claimant regarding the contracts that have been awarded, which have been completed, which are ongoing and which are to be commenced have been stated. The said details have not been disputed by the appellant in its statement of objections.

31. It is contended on behalf of the respondent that the respondent/claimant having set out the requisite averments at paragraphs 7 and 11 of the claim petition and PW.1 also having spoken to the same in the course of his evidence, the burden was on the appellant to demonstrate that no loss occurred for the breach, which has not been done. In support of the said contention, reliance is placed on the judgment of the Supreme Court in the case of ***Oil & Natural Gas Corporation v Saw Pipes Ltd.***⁴, wherein, *inter alia*, it has been held as under:

"64. It is apparent from the aforesaid reasoning recorded by the arbitral tribunal that it failed to consider Sections 73 and 74 of the Indian Contract Act and the ratio laid down in Fateh Chand's case wherein it

⁴ (2003) 5 SCC 705

is specifically held that jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; and compensation has to be reasonable. Under Section 73, when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss caused to him which the parties knew when they made the contract to be likely to result from the breach of it. This Section is to be read with Section 74, which deals with penalty stipulated in the contract, inter alia [relevant for the present case] provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, whether or not actual loss is proved to have been caused, thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. Section 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach. Therefore, the emphasis is on reasonable compensation. If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to reasonable compensation for the loss suffered. But if the compensation named in the contract for such breach is genuine pre- estimate of loss which the parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him. Burden is on the other party to lead evidence for proving that no loss is likely to occur by such breach."

(emphasis supplied)

32. The learned counsel for the respondent also relies upon the judgment of the Supreme Court in the case of ***Construction and Design Services v. Delhi Development Authority***⁵

⁵ (2015) 14 SCC 263

"14. There is no dispute that the appellant failed to execute the work of construction of sewerage pumping station within the stipulated or extended time. The said pumping station certainly was of public utility to maintain and preserve clean environment, absence of which could result in environmental degradation by stagnation of water in low lying areas. Delay also resulted in loss of interest on blocked capital as rightly observed in para 7 of the impugned judgment [*DDA v. Construction & Design Services, U.P. Jal Nigam*, RFA (OS) No. 35 of 2010, decided on 10-2-2012 (Del)] of the High Court. In these circumstances, loss could be assumed, even without proof and burden was on the appellant who committed breach to show that no loss was caused by delay or that the amount stipulated as damages for breach of contract was in the nature of penalty. Even if technically the time was not of essence, it could not be presumed that delay was of no consequence. Thus, even if there is no specific evidence of loss suffered by the respondent-plaintiff, the observations in the order of the Division Bench that the project being a public utility project, the delay itself can be taken to have resulted in loss in the form of environmental degradation and loss of interest on the capital are not without any basis."

33. Although, it is the vehement contention of the learned counsel for the appellant, that the damages have not been proved, the said agreement specifying a sum of ₹15,00,00,000/- being liquidated damages payable for the first five years in the event of termination; the claimant having averred in detail regarding the contracts that have been awarded and which are also going to be awarded; which has not been denied by the applicant, the contention of the appellant is not liable to be accepted.

34. The respondent/claimant having adequately demonstrated the number of projects that it is stated to have secured for the use of the technology of the appellant, the appellant has not placed any material on record to either controvert the same or to establish that no damages have ensued by virtue of the termination.

35. The Tribunal, after noticing the termination clause and the legal position as held in the case of ***Kailash Nath Associates*** (*supra*) has after evaluating the material on record has awarded damages of ₹15,00,00,000/-. The Tribunal also noticed that the remaining unexpired period of the agreement was 13 years, which is a long one. Hence, the said finding cannot be stated to be patently illegal warranting interference by this Court.

36. With regard to interest, the claimant has claimed interest at 12% from the date of breach i.e., from 14.03.2019 to 14.10.2022 in a sum of ₹5.85 crores (Rupees Five Crores Eighty Five Lakhs). The claimant has also claimed future interest at 12%.

37. The Tribunal has awarded, apart from a sum of ₹15,00,00,000/- (Rupees Fifteen Crores) towards damages, a sum of ₹5.85 crores (Rupees Five Crores Eighty Five Lakhs) by way of interest (calculated at 12% on ₹15 crores) from 14.03.2019 till

11.10.2022 (the date of the claim petition); interest at 12% on ₹20.85 crores (Rupees Twenty Crores Eighty Five Lakhs) from the date of claim petition till realization.

38. There is no rate of interest mentioned in the agreement. In the claim petition, the claimant has sought for interest at 12% p.a. The appellant in the counter claim made in the statement of objections (which has been denied by the arbitral Tribunal) has sought for the said counter claim amount together with interest at 18% p.a.

39. With regard to the period for which the interest is claimed, the arbitral Tribunal held as under:

"60. Claimant has sought interest at 12 per cent per annum from 14.03.2019 to 14.10.2022 and a sum of Rs.5,85,00,000/- is claimed. Why the dates are chosen as 14.03.2019 and 14.10.2022 needs to be stated. Clause XIX(e) of Ex.P1 provides that liquidated damages will have to be paid within six months after breach notice. It was on 14.09.2018 notice of termination was issued. This termination as per the claimant is itself a breach of Ex.P1 and I have accepted that contention. Six months from 14.09.2018 would be 14.03.2019.

61. The outer limit is taken as 14.10.2022 by the claimant, probably for purposes of easy calculation. It is because the claim petition is filed on 11.10.2022 just three days prior to 14.10.2022. I have checked the correctness of the calculation made by the claimant. It would be a period of 43 months from 14.03.2019 to 14.10.2022. If interest at the rate of 12% per annum is calculated on Rs.15,00,00,000/- for 43 months it would

be Rs.6,45,00,000/-. Claimant itself has limited it to Rs.5,85,00,000/-. Therefore, it could be awarded and for purposes of convenience we can taken it as interest from 14.03.2019 to 11.10.2022 the date of claim petition and not 14.10.2022 as mentioned in the claim petition. the difference will not be much."

(emphasis supplied)

40. It is forthcoming from the aforementioned that, in terms of the said agreement, the respondent was entitled to claim damages six months after the notice of termination. Accordingly, the notice (Ex.P4) having been issued on 14.09.2018, six months after the said date has been stated as 14.03.2019. The claim petition was filed on 11.10.2022. Hence, as stated by the claimant, the interest was calculated for a period of 43 months. Further, interest was also claimed from the date of the claim petition. Accordingly, the Tribunal has awarded interest as noticed at paragraph 37 above.

41. It is necessary to notice the legal position with regard to the award of interest. Section 31(7)(a) and (b) of the A&C Act, reads as under:

"31. (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).”

42. The Supreme Court in the case of ***Pam Developments (P) Ltd., v. State of W.B.***⁶ after noticing its earlier judgments held as under:

"23. The power of the Arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest under Section 31(7) of the Act is fairly well-settled. The judicial determinations also highlight the difference in the position of law under the Arbitration Act, 1940. The following propositions can be summarised from a survey of these cases:

23.1 Under the Arbitration Act, 1940, there was no specific provision that empowered an Arbitrator to grant interest. However, through judicial pronouncements, this Court has affirmed the power of the Arbitrator to grant pre-reference, pendente lite, and post-award interest on the rationale that a person who has been deprived of the use of money to which he is legitimately entitled has a right to be compensated for the same. When the agreement does not prohibit the grant of interest and a party claims interest, it is presumed that interest is an implied term of the agreement, and therefore, the Arbitrator has the power to decide the same.

⁶ (2024) 10 SCC 715

23.2. Under the 1940 Act, this Court has adopted a strict construction of contractual clauses that prohibit the grant of interest and has held that the Arbitrator has the power to award interest unless there is an express, specific provision that excludes the jurisdiction of the Arbitrator⁴ from awarding interest for the dispute in question.

23.3 Under the 1996 Act, the power of the Arbitrator to grant interest is governed by the statutory provision in Section 31(7). This provision has two parts. Under sub-section (a), the Arbitrator can award interest for the period between the date of cause of action to the date of the award, unless otherwise agreed by the parties. Sub-section (b) provides that unless the award directs otherwise, the sum directed to be paid by an arbitral award shall carry interest at the rate of 2% higher than the current rate of interest, from the date of the award to the date of payment.

23.4 The wording of Section 31(7)(a) marks a departure from Arbitration Act, 1940 in two ways: first, it does not make an explicit distinction between pre-reference and pendente lite interest as both of them are provided for under this subsection; second, it sanctifies party autonomy and restricts the power to grant pre-reference and pendente lite interest the moment the agreement bars payment of interest, even if it is not a specific bar against the Arbitrator.

23.5 The power of the Arbitrator to award pre-reference and pendente lite interest is not restricted when the agreement is silent on whether interest can be awarded or does not contain a specific term that prohibits the same.

23.6 While pendente lite interest is a matter of procedural law, pre reference interest is governed by substantive law. Therefore, the grant of pre-reference interest cannot be sourced solely in Section 31(7)(a) (which is a procedural law), but must be based on an agreement between the parties (express or implied), statutory provision (such as Section 3 of the Interest Act, 1978), or proof of mercantile usage."

(emphasis supplied)

43. The Supreme Court in the case of ***Interstate Construction v. National Projects Construction Corpn. Ltd.***,⁷ after noticing its earlier judgments in the case of ***Pam Developments (P) Ltd.***, (*supra*) as well as in the case of ***North Delhi Municipal Corporation v. S.A. Builders Ltd.***⁸ has held as under:

"40. Thus, what Section 31(7)(a) has done is that there is now a statutory recognition of the power of the arbitral tribunal to grant pre-reference interest from the date on which the cause of action arose till the date on which the award is made. There was a vacuum in the Arbitration Act, 1940 as there was no such provision for granting pre-reference interest. It was through judicial pronouncements that such power of the arbitrator to grant pre-reference interest was conferred. Now under Section 31(7)(a) of the 1996 Act, such power is statutorily recognized.

41. Let us revert back to clause (a) of sub-section (7) of Section 31 of the 1996 Act. A careful and minute reading of this provision will make it clear that the arbitral tribunal has the discretion to include in the sum awarded interest at such rate as it deems reasonable on the whole or any part of the money awarded for the whole or any part of the period from the date on which the cause of action arose till the date on which the award is made. We may exclude that part of the sentence 'on the whole or any part of the money' from our analysis since this is not relevant to the controversy. If we exclude this portion, what then becomes discernible is that the arbitral tribunal has the discretion to include in the sum awarded : firstly, interest at such rate as it deems reasonable; and secondly, 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. This would mean that the arbitral tribunal can exclude a period from the date on which the cause of action arose till the date on which the award is made for the purpose of

⁷ (2026) 2 SCC 780

⁸ (2025) 7 SCC 132

grant of interest, as has been done in the present case. It would also mean that the arbitral tribunal can grant interest 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. It can be a composite period or the said period can be further subdivided, as done in the present case i.e. from the date of cause of action to filing of the claim and from the date of filing of the claim till the date of the award excluding the period when the appellant was found to be remiss. It would also mean that there can be one rate of interest for the whole period or one or more rates of interest for the sub-divided periods as has been done in the instant case. In our opinion, this would be the correct approach to interpret Section 31(7)(a), given the scheme of the 1996 Act.

42. That being the position, we are of the view that the Division Bench had fallen in error by holding that the arbitral tribunal had no jurisdiction to award interest for two periods i.e. pre-reference and pendente lite when the statute provides for only one period viz. from the date when the cause of action arose till the date of the award. The view expressed by the High Court is not the correct interpretation of Section 37(1)(a) of the 1996 Act as explained by us supra as well as in Pam Developments Private Limited (supra) and S.A. Builders Ltd. (supra)."

(emphasis supplied)

44. The Tribunal, while considering the award of interest, held as under:-

"56. These two issues relate to the entitlement of the claimant to interest and therefore they are taken up together, though they are for two different periods. It must be borne in mind that the statutory provision regarding interest in the Arbitration and Conciliation Act is different from the Section 34 CPC. We are governed by Section 31(7) A reading of Section of the Arbitration and Conciliation Act. 31(7)(a)&(b) would show that for two periods interest can be awarded by the Tribunal; first from the date of cause of action to the date of award and second, from the date of award to the date of

payment. If this is split up into three periods it would be from the date of cause of action to the date of claim petition, from the date of claim petition to the date of award and from the date of award to the date of payment.

57. Interest for the period from the date of cause of action to the date of award as per Clause (a) is the discretion of the Tribunal, subject to any agreement between the parties. Ex.P1 does not contain any clause regarding interest. Therefore, it is in the discretion of the Tribunal. Claimant has claimed interest at 12 per cent per annum and that in my opinion is reasonable.

58. As per Clause (b) a direction can be given by the Tribunal for payment of interest from the date of award to the date of payment. If no such direction is given, then automatically interest at the rate of 2% higher than the current rate of interest is what the claimant would be entitled to. Therefore, direction can also be given for award of interest for this period. In my opinion, 12% per annum as claimed is reasonable."

(emphasis supplied)

45. Since the rate of interest has not been mentioned in the agreement, the Tribunal awarded interest at 12% p.a., by holding that the same was reasonable. Accordingly, the interest prior to the date of the claim petition has been quantified at a sum of ₹5,85,00,000/- (Rupees Five Crores Eighty Five Lakhs).

46. Regarding future interest, the Tribunal has awarded interest from the date of the claim petition till the date of payment at the same rate of 12% p.a. The said interest has been awarded on ₹20,85,00,000/- (₹15,00,00,000/- + ₹5,85,00,000/-) (Rupees Twenty Crores Eighty Five Lakhs).

47. The award of interest as noticed above, cannot be stated to be patently illegal.

48. Accordingly, the above appeal is dismissed as being devoid of merit.

49. All pending applications are also disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

nd/-BS/vmb