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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 335 OF 2023**

Nagarjuna Fertilizers and
Chemicals Ltd.
D-No.8-2-248, Nagarjuna Hills,
Punjagutta, Hyderabad-500 082 ... Petitioner

Vs.

Pipeline Infrastructure Ltd.,
Unit No. 703, 7th Floor, Tower-3,
Equinox Business Park,
Off. BKC, Kurla (W),
Mumbai – 400 070 ... Respondent

Mr. Rohaan Cama a/w. Mr. Aseem Naphade, Mr. Anish Karande,
Mr. Pratik Amin, Mr. Divyam Agarwal, Mr. Pratik Poojary, Mr.
Harsh Agarwal, Mr. Kshitiz Jain i/b. Pratik Amin Associates for
the Petitioner.

Mr. Rubin Vakil a/w. Mr. Rishit Badiani, Mr. Ketan Dave, Mr.
Gaurav Gangal i/b/ M/s.A. S. Dayal & Associates for the
Respondent.

CORAM : GAURI GODSE J

RESERVED ON : 6th FEBRUARY 2026

PRONOUNCED ON : 8th JUNE 2026



JUDGMENT :

1. This petition is filed by the original respondent under Section 34 of the Arbitration and Conciliation Act 1996 (“the Arbitration Act”) to challenge the arbitral award passed by the learned sole arbitrator. By the impugned award, the petitioner is directed to pay Rs. 19,26,63,408/- with interest @ 24% from the date of filing of the statement of claim, i.e. 19th November 2019, till the date of the award, i.e. 2nd January 2023. A further interest @ 24% per annum is ordered from the date of the award till its realisation. The claim seeks recovery of the amount towards the monthly ship-or-pay charges as per the invoices raised by the respondent under the contract between the parties.

2. The respondent is the original claimant with whom the petitioner had entered into a Gas Transportation Agreement dated 27th March 2009 (“the said agreement”). The petitioner is a manufacturer and supplier of fertiliser and has a factory unit located in Kakinada, Andhra Pradesh, where it produces urea using natural gas as a raw material. The claimant owns and operates a common-carrier gas pipeline in India that originates in



Gadimoga, Andhra Pradesh, and terminates in Bharuch, Gujarat. The said common carrier gas pipeline is referred to as the pipeline in the proceedings. The said agreement was entered into by the petitioner, Reliance India Limited, and Niko Limited for the purchase of natural gas for the petitioner's factory. The said agreement was executed by Reliance Gas Transportation Infrastructure Limited, which is the predecessor of the claimant as the transporter, and the petitioner as the shipper. Under the said agreement, the claimant agreed to transport natural gas from Gadimoga to Oduru, both in Andhra Pradesh. The terms of the said agreement were extended by consent from time to time, and it was subsisting up to 28th February 2019. Both parties had also executed a side letter agreement dated 9th November 2017 for payment of interest by the petitioner for the delayed payment.

3. The learned arbitrator held that the claimant was entitled to recover the amount towards the invoices, as the petitioner failed to prove that the monthly ship-or-pay charges claimed were not in accordance with the terms and conditions of the contract. The petitioner's arguments that the ship-or-pay charges claimed by the claimant were in the nature of compensation and that the



burden was upon the claimant to prove loss of its earnings were negated by the learned arbitrator. Hence, the learned arbitrator held that the amount claimed was a contractual debt for the period from 14th July 2018 to 28th February 2019 towards the charges as per the terms and conditions of the contract and for the period of the contract that was subsisting.

4. The petitioner had filed a counterclaim seeking a declaration that the claimant had illegally invoked the letter of credit. The learned arbitrator dismissed the counterclaim and allowed the arbitral claim for the invoices raised for the ship or pay charges, along with interest. The grounds of challenge raised in this petition are restricted only to the award passed in the claim filed by the respondent.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

5. Learned counsel for the petitioner (original respondent) relied upon the definitions in the contract to support his submissions that the monthly ship-or-pay charges would not be payable for the period when the gas was not supplied. Learned counsel for the petitioner relied upon the definition of the



'Monthly Ship-or-Pay Payment' and 'Monthly Ship-or-pay Quantity' which reads as under :

'Monthly Ship-or-Pay Payment' shall have the meaning given to such term in Clause 5.2(d).

'Monthly Ship-or-pay Quantity' shall have the meaning given to such term in Clause 5.2(b).

6. Learned counsel for the petitioner also relied upon the definition of 'Transportation Charges' which reads as under:

'Transportation Charges' means the charges payable by Shipper to Transporter in connection with Transportation Services under this Agreement as determined in accordance with Clause 5.1."

7. Clause 5.2(d), 5.2(b) and 5.1 referred to in the aforesaid definitions read as under :

5.1 Transportation Charges:

"(a) Commencing from the Start Date, for each Fortnight during the term of this Agreement, Shipper shall pay to Transporter the "Transportation Charges" in accordance with the provisions of this Clause 5.1.

(b) The Transportation Charges for each Fortnight shall



be equal to the summation for each Day in the Fortnight of the product of:

(i) the Allocated Quantity at the Exit Point on such Day, and

(ii) the applicable Tariff.

(c) The "Tariff" shall mean the maximum tariff rate in INR/MMBtu that Transporter is permitted by Law to charge for the Transportation Services from time to time. The Tariff shall be set forth in Exhibit B which the Parties shall amend from time to time to reflect the Tariff then in effect.

(d) The initial Tariff shall be notified by Transporter within seven (7) days of filing with the relevant Government Instrumentality and shall be the effective Tariff for the purposes of this Agreement prior to the approval of such Tariff. The Tariff as approved shall apply to Transportation Services rendered by Transporter under this Agreement, and Shipper shall pay Transportation Charges at such approved Tariff. If the approved Tariff differs from the foregoing initial Tariff, Transporter shall adjust the difference in amounts paid by the Shipper prior to the approval of such Tariff. For purpose of making an adjustment of any negative difference Transporter shall include such sum as an adjusted item in the following Fortnightly



Invoice and for any positive difference Transporter shall issue a credit note, which amount Shipper may adjust in the following Fortnightly Invoice payment.

5.2 Monthly Ship-or-Pay

(a) For each Month from and after the Start Date (except during the Commissioning Period, during which this Clause 5.2 will not apply), Shipper shall nominate and tender for transportation hereunder a quantity of Gas (as determined at the Exit Point) equal to at least ninety percent 90% of the Monthly Ship-or-Pay Quantity, or Shipper will be responsible to Transporter for payment of the applicable Monthly Ship-or-Pay Payment with respect to any Monthly Ship-or-Pay Deficiency pursuant to this Clause 5.2 (subject to the other terms and conditions of this Agreement).

(b) The "Monthly Ship-or-Pay Quantity" for each Month means a quantity of Gas (expressed in MMBtu) equal to the summation of the Exit Point MDQ for each Day in the relevant Month, minus the following quantities (for each Day of the Month to the extent the following are applicable on any such Day):

(i) any Shortfall Quantities calculated pursuant to Clause 6.1;

(ii) any quantity of Gas that Shipper is unable to



tender or accept for redelivery due to Force Majeure affecting the Shipper's Facilities,

(iii) any quantity of Gas for which Transporter is excused from providing Transportation Services due to Force Majeure affecting Transporter's Facilities;

(iv) any quantity of Gas for which Transporter is excused from providing Transportation Services, or for which Shipper is excused from shipping, pursuant to the Planned Works provisions of Clause 10; and

(v) any quantity of Gas for which Transporter is excused from providing Transportation Services due to curtailment or operational flow orders in accordance with the provisions of the Operating Code.

Provided, however, that if the same quantity of Gas would qualify for subtraction under more than one of Clauses 5.2(b)(1) (v), it shall be subtracted only once, and provided further that, for the avoidance of doubt: (x) the quantities subtracted from the Monthly Ship-or-Pay Quantity under this Clause 5.2(b) shall not, for any given Day in the Month, exceed the lower of DNQ or MDQ for such Day, and (y) the Monthly Ship-or-Pay Quantity cannot be less than zero.



(c) The "Monthly Ship-or-Pay Deficiency" means the difference, if positive, between (i) ninety percent (90%) of the applicable Monthly Ship-or-Pay Quantity in a given Month minus (ii) the aggregate of the Allocated Quantity at the Exit Point in such Month. If such difference is negative, the Monthly Ship-or-Pay Deficiency for such Month shall be zero.

(d) If there is a Monthly Ship-or-Pay Deficiency for a Month, then Shipper shall pay to Transporter an amount (the "Monthly Ship-or-Pay Payment") equal to such Monthly Ship-or-Pay Deficiency multiplied by the applicable Tariff.

(e) For the avoidance of doubt, quantities of Gas tendered by Shipper at the Entry Point that fail to meet the Acceptable Pressure Range shall be treated as Gas that Shipper failed to tender for the purposes of determining the Monthly Ship-or-Pay Deficiency."

8. Learned counsel for the petitioner submitted that in view of Clause 2.2 of the contract, the shipper's obligation with respect to the transportation services was defined. The relevant clause pertaining to the shipper's obligation is provided under Clause 2.2(a) and (b), which reads as under:



“2.2 Shipper's Obligations with Respect to Transportation Services:

(a) In accordance with and subject to the terms and conditions of this Agreement, Services, Shipper shall be responsible for the payment of Transportation in consideration of Transporter's obligations to provide Transportation Charges and, if applicable, Monthly Ship-or-Pay Payments, Unauthorized Overrun Charges, and Imbalance Charges (as well as any other charges as may be applicable with respect to this Agreement).

(b) As a condition to utilising the Transportation Services, Shipper shall comply with the nomination provisions of the Operating Code and of all other applicable terms and conditions of this Agreement and of the Operating Code.”

9. According to the learned counsel for the petitioner, the monthly ship-or-pay charges claimed by the respondent are in the nature of liquidated damages. Hence, the claimant was under an obligation to plead and prove loss of earnings. In the absence of any such pleadings and evidence, the claim in the form of liquidated damages cannot be allowed. Hence, according to the learned counsel for the petitioner, the impugned award is liable



to be set aside on the ground that it suffers from patent illegality which goes to the root of the matter.

10. Learned counsel for the petitioner submitted that the grant of monthly ship-or-pay charges for the period when the gas was not actually supplied and the claimant had earned by using the stock reserved by the petitioner to third parties on payment of charges would amount to unjust enrichment. To support his submissions, learned counsel for the petitioner relied upon the decisions of the learned Single Judge and the learned Division Bench of the Delhi High Court in the case of *Hindustan Petroleum Corporation Ltd. vs. M/s. Dhampur Sugar Mills*¹ and the decision of the Apex Court in the case of *Kailash Nath Associates vs. Delhi Development Authority and Another*².

11. Learned counsel for the petitioner submitted that the findings in the impugned award are contrary to the material on record and constitute a failure to consider the material evidence, thus constituting patent illegality. According to the learned counsel for the petitioner, the capacity of the claimant to supply gas booked by the petitioner or reserved for the petitioner has

¹ OMP(COMM)164/2020 – 6.1.2022 and FAO(OS)(COMM)125/2022 – 15.5.2022

² (2015) 4 SCC 136



been used by the claimant to transport gas to third parties by receiving more than the amount the claimant would have received from the petitioner. Learned counsel for the petitioner points out that as per clause 10(4) of the contract, the shipper, i.e. the petitioner, had to release his gas capacity in favour of other shippers to the extent of capacity booked.

12. By the letter dated 25th August 2018, the petitioner had intimated the claimant, requesting a waiver of the monthly ship-or-pay charges, as the petitioner had not utilised the capacity booked for the petitioner. The claimant responded to this letter by letter dated 19th September 2018; however, the claimant never denied or disputed the petitioner's contention that the gas supplied by Reliance Industries Limited to the claimant was diverted to other fertiliser consumers through the claimant's pipeline. The claimant also did not deny that transportation charges were being recovered by the other fertiliser consumers, and that the tariff earned by the claimant was substantially higher than the claimant would have recovered from the petitioner if, for the disputed period, the gas had been supplied.

13. Learned counsel for the petitioner therefore submitted that



when admittedly the capacity reserved for the petitioner did not remain unutilized, and the claimant had earned profit by using the same capacity, recovering monthly ship-or-pay charges would amount to unjust enrichment by the claimant. Hence, the claim is in the nature of liquidated damages, which cannot be granted in the absence of evidence of loss of its earnings. Learned counsel for the petitioner submitted that the arbitral claim is purely for liquidated damages and it must be proved through evidence. In the present case, the claimant has not shown any loss incurred. Hence, without any loss or damage, the claimant would not be entitled to seek a recovery of the amount from the petitioner, which is in the nature of damages.

14. To support his submissions on the ground of unjust enrichment, learned counsel for the petitioner relied upon the decision of the Delhi High Court in the case of *Sudershan Kumar Bhayana(Deceased) through Lrs. vs. Vinod Seth (Deceased) through LRs*³ and the decision of this court in the case of *Iron and Hardware (India) Co. vs. Shamlal and Brothers*⁴.

15. Learned counsel for the petitioner raised objections to the

³ FAO(OS) 132/2019 & CM o. 32795/2019 dated 27th September 2023

⁴ 1954 Bombay Series (Appellate Civil) 14th January 1954



interest amount awarded by the learned arbitrator. He submits that, by the impugned award, interest is granted for the pre and post-reference periods at 24% per annum. He submits that, in respect of the post-award interest in view of Section 31(3)(b) of the Arbitration Act, unless an award provides for interest on a sum directed to be paid by it, the same shall carry interest @ 2% higher than the current rate of interest prevailing on the date of the award. Hence, the award of 24% p.a. granted for post-award interest would not be sustainable. He relied upon the Apex Court's in *C. K. Sasankan vs. Dhanalakshmi Bank Limited*⁵. He submits that in view of the decision of the Apex Court in the case of *Gayatri Balasamy vs. ISG Novasoft Technologies Limited*⁶, the Section 34 Court would retain the power to modify the interest where the facts would justify such modification. In the present case, since there is no justification for awarding interest @ 24% p.a. for the post-award period, the impugned award would require interference to the extent of modification of the post-award interest granted by the impugned award.

16. Learned counsel for the petitioner therefore submits that,

⁵ (2009) 11 SCC 60

⁶ (2025) 7 SCC 1



without prejudice to the submissions made on the interest part, the impugned award deserves to be set aside on the ground of patent illegality, which goes to the root of the matter. The award needs modification for setting aside the post-award interest granted by the learned arbitrator. He therefore submits that interference in the impugned award is warranted to set aside the award. In the event the award is not set aside, it would require modification to the extent of post-award interest granted @ 24%.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

17. Learned counsel for the respondent (“claimant”) supported the impugned award. He submits that the charges set out in the invoices are in terms of the said agreement and the mechanism for calculating the monthly ship-or-pay charges. The terms and conditions of the contract are covered by the statutory regulatory framework covered under the Petroleum and Natural Gas Regulatory Board Act, 2006 (“said Act of 2006”). The said Act of 2006 provides for the establishment of the Board of Regulation of the Transportation of Natural Gas. The common carrier gas pipeline and transportation rate is covered under the said Act of 2006. The power to fix the tariff, i.e., the charges to be levied by



the gas supplier for the transportation of goods, is also vested in the board under the said Act of 2006.

18. Learned counsel for the claimant therefore submitted that there is no dispute on the charges claimed under the invoices raised by the claimants, which are in terms of the said Act of 2006. The petitioner had requested a waiver of monthly ship-or-pay charges vide its letter dated 31st August 2018. The said request for waiver was rejected by the claimant on 19th September 2018. The said rejection of the request for waiver was never challenged by the petitioner. Hence, the petitioner is not entitled to raise any ground regarding the request for waiver of the monthly ship-or-pay charges.

19. Learned counsel for the claimant submits that the monthly ship-or-pay charges are in the nature of a contractual debt and not damages. Hence, the transportation charges claimed by raising invoices are in terms of the contract, in particular clauses 5.1, 5.2, 8.1, and 8.4. He submits that, in view of clause 6.1, there is a distinction between liquidated damages and monthly ship-or-pay charges. The amount therefore claimed is a contractual debt, in terms of enforcement of the contract. Hence,



there is no question of treating the claim as liquidated damages.

20. To support his submissions, learned counsel for the claimant relied upon the decision of this court in *India Bulls Properties P. Ltd. vs. Treasure World Developers P. Ltd.*⁷ He referred to the Delhi High Court's decisions in *Hindustan Petroleum Corporation Ltd.* He submits that the aforesaid decisions relied upon by the learned counsel for the petitioner did not deal with the aspect of adjudication of the contractual debt. The point of consideration in the said decision was on the theory of 'take or pay' and not 'ship or pay'. Hence, the said decisions would not apply to the facts of the present case.

21. Learned counsel for the claimant submits that the terms and conditions of the contract envisage supply to several shippers at the same time. Hence, clause 2.2. provides for the shipper's obligation, and clause 2.2(b) of the said agreement provides for the shipper to comply with the nomination of provisions of the operating code and of all other applicable terms and conditions. Learned counsel for the claimant refers to the Access Code, the tariff regulations, and the tariff order under the

⁷ 2014 SCC OnLine Bom 4768



said Act of 2006. He submits that, as per clause 1.2 of the operation code, where two or more shippers deliver gas or receive gas from a transporter through the same pipeline, it is the Commingled Point. Accordingly, the “Commingled Shippers” are also defined as a shipper that delivers gas to a transporter or receives gas from a transporter at the Commingled Point. He therefore submits that the methodology for the allocation of the supply of gas is regularised in Clause 8 of the operation code under the said Act of 2006. Hence, the invoices raised by the claimant are in terms of the contract, which is regulated under the said Act of 2006. He therefore submits that the claim is purely enforcement of the contract and not towards any liquidated damages. Hence, there is no question of pleading and proving the loss of earnings.

22. Learned counsel for the claimant relied upon the relevant pleadings in paragraphs 102 and 175 of the statement of the claim. He submits that the claim is raised under the contract for monthly ship-or-pay charges for the capacity reserved for the petitioner, and that the petitioner has not denied it in the statement of defence. Hence, at this stage, the petitioner is not



entitled to seek the setting aside of the award on the ground that it would amount to an award of liquidated damages. Since the monthly ship-or-pay charges comply with the contract's terms and conditions, arguments based on unjust enrichment are irrelevant, as the claim is solely for enforcement of those terms and conditions. Learned counsel for the claimant therefore submits that no interference is warranted in the impugned award in the limited scope of interference under Section 34 of the Arbitration Act.

23. So far as the claim for interest is concerned, learned counsel for the claimant submitted that Section 31(7) of the Arbitration Act provides for the award of interest by the Arbitrator. In the present case, the Letter Agreement dated 9th November 2017 records the agreement between the parties for payment of interest at the rate of 24% p.a. accruing on a daily basis and compounded monthly for the entire delayed period. The learned arbitrator has relied upon the said Letter Agreement and awarded interest in terms thereof for the pre-reference period, i.e., from the respective due dates under the Invoices until the filing of the statement of claim. Further, the learned arbitrator has



granted simple interest at the rate of 24% p.a. for the pendente lite and post-award periods, i.e., from the filing of the statement of claim till payment and/or realisation. There is no ground for modification in the interest rate awarded under the impugned award; hence, the petitioner's reliance on *Gayatri Balasamy* is misplaced.

24. Learned counsel for the claimant therefore submits that the impugned award is within the scope of the specific terms and conditions of the contract. The scope of interference with the arbitral award under Section 34 of the Arbitration Act is well established. The interpretation of the contract is within the exclusive domain of the learned arbitrator, and thus no interference is called for under Section 34 of the Arbitration Act for the purpose of taking a different view by differently interpreting the terms and conditions of the contract.

25. To support his submissions on the ground of the limited scope of interference under section 34 of the Arbitration Act, learned counsel for the respondent relied upon the decisions of the Apex Court in *Ssanyong Engineering and Construction Company Limited vs. National Highways Authority of India*⁸,

⁸ (2019) 15 SCC 131



Parsa Kente Collieries Limited vs. Rajasthan Rajya Vidyut Utpadan Nigam Limited⁹ and Jan De Nul Dredging India Pvt. Ltd. vs. Tuticorin Port Trust¹⁰.

26. Learned counsel for the claimant therefore submits that the legal principles relied upon in the decisions tendered by the learned counsel for the petitioner on the burden of proof of loss of earnings for claiming liquidated damages would not be applicable in the facts of the present case. He submits that the claim is based solely on the terms and conditions of the contract and on its enforcement. Hence, the claim is a contractual debt and not liquidated damages. He therefore submits that the ground of challenge to the arbitral award raised on the ground of liquidated damages would be no ground permissible to interfere with the impugned order in the limited scope of interference under section 34 of the Arbitration Act. The arbitration petition should therefore be rejected.

CONSIDERATION OF THE SUBMISSIONS AND ANALYSIS:

27. I have carefully perused the terms and conditions of the contract. Under the contract, the petitioner is the shipper, and the

⁹ (2019) 7 SCC 236

¹⁰ (2026) SCC OnLine SC 33



claimant is the transporter. According to the claimant, in view of the terms and conditions of the contract, the petitioner is liable to pay the amount due towards the invoices raised for monthly ship-or-pay charges, as per clauses 5.1 and 5.2 of the said agreement, as a contractual obligation.

28. The petitioner addressed a letter dated 29th June 2018 to the claimant, regarding the planned maintenance from 4th July 2018 to 15th July 2018. In response to the said letter, the claimant had intimated that other fertiliser consumers would be informed of the incremental availability of gas during the maintenance period undertaken by the petitioner. As per the terms and conditions of the contract and the said letter dated 29th June 2018, the gas was not supplied for the said period. According to the petitioner, in view of the letter issued for not transporting the gas during the said period, the petitioner was not liable to make payment towards the monthly ship-or-pay charges under the contract.

29. According to the claimant, in view of the terms and conditions of the contract, the benefit for non-payment was limited to the period from 4th July 2018 to 15th July 2018, as per



the letter dated 15th May 2018. However, thereafter, the petitioner was liable to pay the monthly ship-or-pay charges. Accordingly, the claimant raised invoices for the period from 16th July 2018. Since the dispute arose between the parties towards payment of the said amount, the arbitration clause was invoked.

30. The terms and conditions and the definitions relied upon by the learned counsel for the petitioner as referred to in the above paragraphs are not disputed. The claim is for the period excluding the permissible suspension of gas transport supply, as intimated by the petitioner, until the end of the contract period. There is no dispute regarding the calculations of the monthly ship-or-pay charges as per the invoices raised under Clauses 5.1 and 5.2 of the contract. The shortfall and liquidated damages are specifically provided for in Clause 6 of the said agreement. However, the present claim is towards the transportation charges as provided under Clause 5 of the said agreement.

31. So far as the findings recorded by the learned arbitrator are concerned, all the relevant terms and conditions of the contract, as well as the evidence on record, have been examined. The learned arbitrator held that the claim for monthly ship-or-pay



charges is in accordance with the terms and conditions of the contract. Suspension of the supply for a limited period is also provided under the contract. Hence, excluding the permissible suspension period as contemplated under clause 10 of the said agreement, the claimant raised invoices to charge for monthly ship-or-pay, in accordance with the contract's terms and conditions. Hence, the learned arbitrator held that the claim cannot be termed liquidated damages, as it is purely contractual, in view of the invoices raised under the specific terms and conditions for raising such charges provided under the contract. Hence, the claim is allowed on the ground that it is not liquidated damages but a contractual debt.

32. The learned arbitrator held that Regulation 10 of the Access Code framed under the said Act of 2006 deals with the transportation of gas to other organisations, a practice followed by the claimant. The claimant raised invoices in terms of the contract; however, the petitioner never raised any dispute as contemplated under clause 8.4 of the said agreement. Hence, the invoices raised under the contract are accepted as correct, complete, and conclusive, and as never disputed by the



petitioner. It is also held that the claimant had reserved the quantity of gas required to be transported for the petitioner during the subsistence of the said agreement, and thus there is no breach committed by the claimant. The claimant had issued shipper default notice under clause 13.2(a)(i) and (ii) of the said agreement; however, no action was taken for termination or suspension of the agreement. The learned arbitrator also held that it was not even the case of the petitioner that the claimant had committed any breach of the terms and conditions of the said contract.

33. The learned arbitrator has referred to the relevant terms and conditions of the contract and held that whenever the petitioner extended the period of planned maintenance as per clause 5.2 of the said agreement, the petitioner was obligated to pay the monthly ship-or-pay charges as per the invoices raised by the claimant, in terms of clause 5.2 of the said agreement. The learned arbitrator also considered the submissions on Section 74 of the Indian Contract Act and held that it was the petitioner who had sought the benefit of the suspension of the supply on the ground of planned maintenance and had also



extended the said period. Hence, the petitioner was not entitled to raise a claim that the invoices raised by the claimant were in the nature of damages or penalty. Since the concept of liquidated damages was covered under clause 6.2 of the said agreement, the invoices raised under clause 5.2 could not have been termed damages. Thus, the learned arbitrator concluded that the claim was towards enforcement of the terms and conditions of the contract, and therefore it was a contractual debt and not damages.

34. The learned arbitrator, while recording the undisputed facts between the parties, has referred to the Access Code framed under the said Act of 2006, which deals with the transportation of gas to organisations other than the petitioner. The learned arbitrator has observed that during the planned maintenance and the extended period, the claimant has transported gas to other organizations as per the legal regime for supply and transportation of gas as per clause 10 of the Access Code under the said Act of 2006 and has collected charges in accordance with law.

35. This Court in *India Bulls Properties* held that the debt must



be an ascertained or definitely ascertainable amount, and not one that requires adjudication, and that a claim in damages is not a debt. The learned arbitrator relied upon the legal principles settled by this court in the case of *India Bulls Properties* and held that the petitioner, having entered into the said agreement with knowledge of clause 5.2 of the said agreement as regards the liability to pay the monthly ship-or-pay charges the petitioner was not entitled to raise objection to the claim raised to recover the amounts of the invoices in terms of the contract, by contending that it is a claim for damages. The petitioner's action in applying for a waiver of the monthly ship-or-pay charges is also held to indicate that the petitioner was well aware of the obligation to pay them, even if the petitioner was unable to supply gas during the contract period.

36. In the Delhi Court's decision in *HPCL Vs Dhampur Sugar Mills*, the issue concerned a claim arising from a breach of the agreement and the suspension of supply under the agreement. HPCL had treated the same as a default on the part of the respondent to supply the agreed quantity of the material and therefore had imposed a penalty under the 'Take or pay/Supply



or Pay' clause in the agreement. Considering the facts of the said case and the terms and conditions of the agreement, it was held that the clause expressly recorded that it was a true estimate value of damage or loss and that it was clear from the language of the clause that it was in the nature of providing liquidated damages. In view of the different facts of the present case, where the claim is based on the invoices raised in accordance with the contract for enforcement of the terms and conditions of the contract, the decisions of the Delhi High Court relied upon by the learned counsel for the petitioner are not applicable in the present case.

37. The decisions of the Delhi Court in *Sudershan Kumar Bhayana* and of this Court in *Iron and Hardware (India) Co.* deal with a claim for damages for breach of contract. The decision of the Apex Court in *Kailash Nath Associates* summarises the principles for the proof of loss or damage arising out of a breach of contract. Hence, none of these decisions is of any assistance to the petitioner.

38. On the aspect of grant of interest, the learned arbitrator held that the details of interest claimed by the claimant, as



mentioned in the statement of claim, are not disputed by the petitioner. It is held that the interest amount is calculated with respect to the unpaid amount of seven different invoices as mentioned in the claim statement. The rate of interest claimed at 24% on a daily basis and compounded monthly for the entire delayed period from 9th November 2017 to 18th November 2019 is discussed in detail by the learned arbitrator. It is held that, as per the side letter agreement dated 9th November 2017, the parties agreed on a rate of interest of 24% for the delayed payment. The contents of the side letter regarding the application of a 24% interest rate and the claimant's calculations of interest are not disputed; hence, the learned arbitrator has granted the interest as prayed by the claimant.

39. The petitioner's argument that the payment of interest at the rate agreed would apply only up to 28th February 2019, that is, the last day of the agreement period, is not accepted by the learned arbitrator. It is held that, since the claimant is entitled to recover the amounts due under the invoices raised in accordance with the terms and conditions of the contract, the interest claimed for non-payment would apply until the entire



amount is paid. Hence, in view of the agreement between the parties as recorded in the side letter agreement dated 9th November 2017, the learned arbitrator has awarded simple interest at the rate of 24% per annum from the date of filing of the statement of claim till the date of award and further simple interest @ 24% from the date of the award till payment. I have perused the side letter agreement dated 9th November 2017. The findings recorded by the learned arbitrator are in accordance with the contents of the said agreement.

40. It was argued on behalf of the petitioner that the statement of claim at Annexure 126 to the claim statement includes the pre-reference interest amount, which is added to the principal amount claimed; hence, further interest should not have been granted on the said total amount that included the interest. The Annexure 126 to the claim statement includes interest amount for the delay upto 18th November 2019, i.e. the date of filing of the claim. The learned arbitrator has awarded further simple interest on the claim amount, i.e. the invoice amount plus the interest upto the date of filing of the claim. The interest amount in Annexure 126 is as per the said side letter agreement dated 9th



November 2017, which provides for penal interest @ 24% per annum, accruing on a daily basis and compounded monthly, for the entire period of delayed payment.

41. However, the learned arbitrator held that for the grant of further interest, the exact terms of the said side letter agreement dated 9th November 2017 need not be applied. Hence, considering the delay in making the payment towards the invoices raised as per the terms and conditions of the contract and no dispute raised by the petitioner on the particulars of statement for claiming interest, the learned arbitrator found it fit to treat the basic figure of 24% per annum for simple rate of interest to be paid on the basic claim amount as on the date of the filing of the statement of claim till it's realization. The learned arbitrator has not applied the formula for penal interest on a daily basis but has applied only the agreed rate of 24% as simple interest. There is no illegality or perversity in the reasons recorded by the learned arbitrator, and his conclusions are based on the agreement between the parties regarding the delayed payment. He has recorded the reasons for the interest awarded. Thus, there is no ground to interfere with the findings on the



interest awarded by the learned arbitrator.

42. The learned arbitrator has correctly read and interpreted all the terms of the contract and concluded that the petitioner is liable to pay the amount raised in the invoices and, as per the agreed terms, is also liable to pay interest at the agreed rate. Thus, the conclusion arrived at by the learned arbitrator is a possible and plausible interpretation. Only to give a different meaning to the contract, the terms and conditions of the contract cannot be reinterpreted. In view of the well-settled legal principles, such a ground is not permissible to interfere with the arbitral award under Section 34 of the Arbitration Act.

43. In *C. K. Sasankan*, the Apex Court, while considering the scope and ambit of Section 34 of the Code of Civil Procedure for the grant of interest, held that according to the provisions of Section 34 of the Code, interest is to be awarded at a reasonable rate and on the principal amount, by considering the parameters, scope and ambit of the said provision. The Apex Court in *Gayatri Balaswamy* while considering the scope of the power of the court to declare or modify interest with reference to Section 31(7)(a) of the Arbitration Act held that unless otherwise agreed by the



parties, the Arbitral Tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, it is held that Section 31(7)(b) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till the date of payment. It is further held that while exercising such power, the court must be cautious and mindful not to overstep its role by altering the interest rate unless there are compelling and well-founded reasons to do so, as the Court is not acting in an appellate capacity but rather under limited authority.

44. It is a well-established legal principle that unless the award of interest is found to be unwarranted for reasons to be recorded, the Court should not alter the rate of interest awarded by the arbitrator. In the present case, interest is awarded at the rate agreed between the parties. It was a considered view of the learned arbitrator based on the terms and conditions of the



contract.

45. The scope of interference under Section 34 of the Arbitration Act is no longer *res integra*. It is a well-established legal principle that the Court must not lightly interfere with arbitral awards, as is set out in multiple decisions of the Apex Court. The Apex Court in *Ssangyong Engineering and Construction Company Ltd*, clarified the law regarding the permissibility of interference on the grounds of judicial approach, patent illegality, breach of principles of natural justice, contravention of law and perversity. It is now well-established that the Section 34 Court must not lightly interfere with arbitral awards.

46. The Apex Court in *Parsa Kente Collieries*, in the facts of that case, held that considering the overall facts and circumstances of the case and by giving cogent reasons, the learned Arbitrator interpreted the relevant clauses of the contract and the interpretation by the learned Arbitrator was both possible as well as plausible. Therefore, it was held that merely because some other view could have been taken, the High Court was not justified in interfering with the interpretation made by the Arbitrator, which was possible and plausible. It was thus held that



the High Court had clearly exceeded its jurisdiction in interfering with the arbitral award. The Apex Court in *Jan De Nul Dredging India* held that the courts exercising powers under Sections 34 and 37 do not act as a normal court and, therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.

47. The scope of review by the Section 34 Court is well covered in multiple judgments of the Apex Court that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts and that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. It is also settled law that the mandate under Section 34 is to respect the finality of the arbitral award and the party's autonomy to have their dispute adjudicated by an alternative forum as provided under the law. Therefore, in the present case, when the conclusion of the learned arbitrator is based on a possible as well as plausible view of the matter, no



interference with the impugned award is warranted.

48. As discussed in the aforesaid paragraphs, in the present case, the learned Arbitrator has considered the entire evidence and recorded reasons to grant the claim. None of the grounds raised by the petitioner would be covered under the scope of interference under Section 34. Hence, in my view, by applying the standards as set out in the various decisions as discussed above, the arbitral award cannot be interfered with under Section 34 of the Arbitration Act.

49. Hence, for the reasons recorded above, the Arbitration Petition is rejected.

[GAURI GODSE, J.]