REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10341 OF 2011

UHL POWER COMPANY LTD. ..... APPELLANT

VERSUS

STATE OF HIMACHAL PRADESH ..... RESPONDENT

WITH
CIVIL APPEAL NO. 10342 OF 2011

STATE OF HIMACHAL PRADESH ..... APPELLANT

VERSUS

UHL POWER COMPANY LTD. ..... RESPONDENT

J U D G M E N T

HIMA KOHLI, J.

1. Both the present appeals arise from a common judgment dated 24th May, 2011, passed by the High Court of Himachal Pradesh partly allowing Arbitration Appeal No. 2 of 2009 filed by UHL Power Company Limited[1] under Section 37 of the Arbitration and Conciliation Act, 1996[2]. UHL has filed Civil Appeal No. 10342 of 2011 and the State of Himachal Pradesh[3] has filed Civil Appeal No. 10342 of 2011, as both the parties are aggrieved by the impugned judgment.

[1] For short 'UHL'
[2] For short 'the Arbitration Act'
[3] For short 'the State'

2. Though several grounds have been taken by UHL in its appeal to assail the impugned judgment, Mr. Jaideep Gupta, learned senior counsel for UHL has confined his grievance to the disallowance of the pre-claim interest i.e., interest from the date when expenses were incurred by UHL, till the date of lodging the claim. It may be noted that in terms of the award dated 05th June, 2005, the learned Sole Arbitrator had awarded a sum of ₹26,08,89,107.35p. (Rupees Twenty six crores eight lakhs eighty nine thousand one hundred and seven and thirty five paise) in favour of UHL towards expenses claimed along with pre-claim interest capitalized annually, on the expenses so incurred. Further, compound interest was awarded in favour of UHL @ 9% per annum till the date of claim and in the event the awarded amount is not realized within a period of six months from the date of making the award, future interest was awarded @ 18% per annum on the principal claim with interest.

3. Dissatisfied with the award, when the State of H.P. filed a petition under Section 34 of the Arbitration Act, vide judgment dated 16th December, 2008, the learned Single Judge disallowed the entire claim of UHL. The said judgment was challenged by UHL in a petition filed under Section 37 of the Arbitration Act that has been decided by the impugned judgment whereunder, the Division Bench of the High Court has awarded a sum of ₹9,10,26,558.74 (Rupees Nine crores ten lakhs twenty six thousand five hundred fifty eight and seventy four paise) in favour of UHL, being the actual principal amount along with simple interest @ 6% per annum from the date of filing of the claim, till the date of realization of the awarded amount. For declining payment of compound interest

awarded by the learned Sole Arbitrator to UHL, the Division Bench relied on the decision of this Court in ***State of Haryana v. S.L. Arora and Co.***[4], wherein it was held that compound interest can be awarded only if there is a specific contract, or authority under a Statute, for compounding of interest and that there is no general discretion vested in courts or tribunals to award compound interest. It was further held that in the absence of any provision for interest upon interest in the contract, the Arbitral Tribunals do not have the power to award interest upon interest, or compound interest, either for the pre-award period or for the post-award period.

4. By now, the aforesaid aspect has been set at rest by a three-Judge Bench of this Court in ***Hyder Consulting (UK) Ltd. V. Governor, State of Orissa through Chief Engineer***[5], that has overruled the verdict in the case of ***S.L. Arora*** (supra). The majority view is that post-award interest can be granted by an Arbitrator on the interest amount awarded. Writing for the majority, Justice Bobde (as His Lordship then was) has held thus:

> "21. In the result, I am of the view that ***S.L. Arora case [State of Haryana v. S.L. Arora and Co*. (2010) 3 SCC] is wrongly decided** in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the award on the substantive claim does not refer to interest pendente lite awarded on the "sum directed to be paid upon award" and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the pre-award period or for the post-award period. Parliament has the undoubted power to legislate on the subject and provide that the **Arbitral Tribunal may award interest on the sum directed to be paid by the award, meaning a sum inclusive of principal sum adjudged and the interest**, and this has been done by Parliament in plain language."
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> ***[emphasis supplied]***

[4] (2010) 3 SCC 690
[5] (2015) 2 SCC 189

5. While giving a concurring opinion in the aforesaid case, Justice Sapre made the following pertinent observations:

> "31. Coming now to the post-award interest. Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award ... ". Clause (b) uses the words "arbitral award" and not the "Arbitral Tribunal". The **arbitral award. as held above, is made in respect of a "sum" which includes the interest.** It is, therefore, obvious that what carries under Section 31 (7)(b) of the Act is the "*sum directed to be paid by an arbitral award*" and not any other amount much less by or under the name "*interest*". **In such situation. it cannot be said that what is being granted under Section 31(7)(b) of the Act is "*interest on interest*". Interest under clause (b) is granted on the "*sum*" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under clause (a)."**
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> ***[emphasis supplied]***

6. As the judgment in the case of ***S.L. Arora*** (supra), on which reliance has been placed by the Division Bench of the High Court of Himachal Pradesh, has since been overruled by a three-Judge Bench of this Court in the case of ***Hyder Consulting (UK) Ltd.*** (supra), the findings returned by the Appellate Court in the impugned judgment to the effect that the Arbitral Tribunal is not empowered to grant compound interest or interest upon interest and only simple interest can be awarded in favour of UHL on the principal amount claimed, is quashed and set aside. As a result, the findings returned in para 54(a) of the impugned judgment insofar as it relates to grant of the interest component, are reversed while restoring the arbitral award on the above aspect in favour of UHL.

7. Proceeding to the submission made by Mr. Abhinav Mukerji, learned Additional Advocate General for the State for assailing the impugned judgment, we may note that two-fold arguments have been put forth. Firstly, that the Division Bench has gravely

erred in upsetting the findings returned by the learned Single Judge *vide* judgment dated 16th December, 2008 and has failed to appreciate that the Memorandum of Undertaking[6] dated 10th February, 1992, did not merge into the Implementation Agreement dated 22nd August, 1997, as both were distinct documents and that the MoU contained a separate Arbitration clause numbered as Clause 18, whereas the Implementation Agreement contained Clause 20. Secondly, it has been canvassed that the Appellate Court as also the Arbitral Tribunal have committed a grave error in arriving at the conclusion that the Implementation Agreement was prematurely terminated by the State much before the expiry of the prescribed period.

8. Coming first to the argument urged on behalf of the State that the MoU dated 10th February, 1992 did not merge with the Implementation Agreement dated 22nd August, 1997, a perusal of the recitals and the clauses contained in the Implementation Agreement dated 22nd August, 1997, belies such a submission. One of the recitals on the second page of the Implementation Agreement is as follows:

> "WHEREAS the Government in accordance with the policy guidelines of Government of India (hereinafter referred to as "GOI" had entered into Memorandum of Understanding (MOU) (APPENDIX 'A') on February 10, 1992 with the Company to carry out detailed investigations of the UHL-III Hydro - electric Project of 100 MW capacity and located in District Mandi, Himachal Pradesh (hereinafter referred to a "Project") and has submitted, within the stipulated period from the date of signing of the MOU, a Detailed project Report (DPR)."

[6] For short 'MoU'

9. Further, the definition of different words used in the Implementation Agreement form a part of Clause (2). The term "Agreement" has been defined in Clause 2.2 as follows:

> **"CLAUSE 2 DEFINITIONS**
>
> For all purposes of this Agreement, the. various terms shall have the following meanings, except where the context otherwise requires, definitions and other terms expressed in the singular shall, include the plural and vice versa.
>
> 2.1 xxx xxx xxx
>
> 2.2 **"Agreement"** shall mean this Agreement together with all its appendices and annexures and any amendments thereto made in accordance with the provisions herein contained."

10. The very fact that the State admits to having executed the MoU with UHL on 10th February, 1992 and the said MoU has been mentioned as "Appendix A" in the second recital of the Implementation Agreement, as reproduced above, itself demolishes the plea taken by the State that the Arbitral Tribunal and the Appellate Court have erred in returning a finding that the MoU dated 10th February, 1992 did not merge into the Implementation Agreement dated 22nd August, 1997. The aforesaid view is reinforced on a reading of the definition of the word "Agreement" as used in Clause 2.2 of the Implementation Agreement which clearly states that the word "Agreement" wherever used in the Implementation Agreement, shall include all its appendices and annexures. The MoU having been described by the parties as Appendix A to the Implementation Agreement, would have to be treated as having merged with the Implementation Agreement for all effects and purposes. In the light of the aforesaid recitals and clauses

of the Implementation Agreement, this Court endorses the findings returned in para 47 of the impugned judgment, wherein it has been held that a plain reading of the second recital read with Clause 2.2 of the Implementation Agreement suggested that the MoU has merged with the Implementation Agreement and, therefore, the disputes that were referable to arbitration under the Implementation Agreement in terms of Clause 20, were to include disputes arising under the MoU, even though the latter document did contain a separate arbitration clause.

11. No exception can be taken to the observations made by the Appellate Court that the learned Single Judge erred in singularly relying on the contents of Clause 1 of the Implementation Agreement, which states as follows:

> "**CLAUSE 1 STATEMENT OF IMPLEMENTATION OF PROJECT :**
>
> Both the parties i.e. the Government and the company agree that the Project shall be implemented, subject to the terms mentioned in the Agreement, as per the provisions of the DPR as approved by· the Government/ GOI. The parties also agree that the MOU signed on 10.2.1992 shall stand lapsed as on today the twenty second August, 1997."

This Court is in agreement with the Appellate Court that Clause 1 of the Implementation Agreement could not have been read in isolation and when read in conjunction with the second recital and Clause 2.2 of the Implementation Agreement, it is apparent that the MoU was made a part and parcel of the Implementation Agreement. In view of the above, the view taken by the learned Sole Arbitrator that the MoU forms a part of the Implementation Agreement, as has been upheld by the Appellate Court, does not deserve any interference. All the points of dispute between the parties regarding performance of the contractual obligations including claims for damages and expenses

incurred by UHL either arising from the MoU dated 10th February, 1992, or under the Implementation Agreement dated 22nd August, 1997, were referable to arbitration in accordance with Clause 20 forming a part of the Implementation Agreement.

12. The second plea taken by the learned Additional Advocate General the State is that the Appellate Court has erred in setting aside the order of the learned Single Judge and restoring the findings of the Sole Arbitrator on the aspect of pre-mature termination of the Implementation Agreement on the part of the State well before expiry of the prescribed period. For examining this point, Clause 4 of the Implementation Agreement gains significance. The said clause prescribes the starting date of the project and states as follows:

> "**CLAUSE 4 STARTING DATE OF PROJECT.**
>
> 4.1 Within one year from the Effective Date, the Company shall start the construction of the Project after meeting the major requirements, e.g.:-
>
> a) Obtain techno economic clearance from CEA.
>
> b) Obtain environmental clearance from GO!, Ministry of Environment and Forests (MOEF).
>
> c) Identify the purchaser of power and finalise Power Schedules Agreement(s).
>
> d) Commence· detailed designs of Project components/ structures.
>
> e) Finalise selection of Engineering, Procurement and construction (EPC) contractor/ executing agencies, if required.
>
> f) Establish site office and take over the site from Government including the Government land or private land already acquired by Government on lease etc., for the purpose of carrying out preparatory works.
>
> g) Achieve Financial Closure.
>
> Both parties acknowledge that fulfillment of activities enumerated at 4.1(a), 4.l(b) of this clause and clause 16.8 of this Agreement are not totally under the control of the Company, therefore, if the fulfillment of these activities is delayed beyond three 3 months from effective Date, the stipulated period of one year, shall be extended by one month for each month of delay in fulfillment of any of the activities enumerated at 4.1(a), 4.1 (b) and 16.8 provided that the total of the monthly extensions shall not exceed twelve (12)."

13. A plain reading of Clauses 4.1(a) and (b) leaves no manner of doubt that UHL was required to commence construction of the project within a period of one year from the effective date only after obtaining a techno-economic clearance from CEA and an environmental clearance from the Government of India, Ministry of Environment and Forests. However, it was agreed by the parties that since obtaining of the relevant clearances referred to above and under Clause 16.8 of the Agreement whereunder the State was required to discharge certain obligations, were not entirely in the hands of UHL, in the event of any delay beyond a period of three months reckoned from the effective date, the stipulated period of one year contemplated in the Implementation Agreement could be extended, but not beyond the additional period of twelve months. In the light of the aforesaid clauses of the Implementation Agreement, the submission made by learned Additional Advocate General for the State that, under all circumstances, the Implementation Agreement had to be executed within a period of one year and since the provision for extension beyond one year was applicable only to the conditions contemplated in Clause 4.1(a) and (b) and not to those stipulated in Clause 4.1(c) to (g), is found to be unmerited and is turned down. When the parties to the Implementation Agreement were *ad idem* that the period of one year available to UHL to commence the construction activity was to be reckoned after the major requirements prescribed in Clause 4.1 could be obtained, then any argument sought to be advanced to segregate the obligations under different sub-heads of Clause 4.1 only to lay the blame at the door of UHL when the requisite clearances were to be obtained by the State Government

from the Central Government and Centralized Authorities, is devoid of merits, besides being completely unreasonable and illogical.

14. This Court also accepts as correct, the view expressed by the Appellate Court that the learned Single Judge committed a gross error in re-appreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the Implementation Agreement governing the parties inasmuch as it was not open to the said Court to do so in proceedings under Section 34 of the Arbitration Act, by virtually acting as a Court of Appeal.

15. As it is, the jurisdiction conferred on Courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an Appellate Court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In ***MMTC Limited v. Vedanta Limited*** [7], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act has been explained in the following words:

> "11. As far as Section 34 is concerned, the position is well- settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the

[7] (2019) 4 SCC 163

> "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and *Wednesbury* [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."

16. A similar view, as stated above, has been taken by this Court in ***K. Sugumar v. Hindustan Petroleum Corporation Ltd.***[8], where it has been observed as follows:

> "2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

17. It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned Arbitrator proceeds to accept one interpretation as against the other. In ***Dyna Technologies (P) Ltd. V. Crompton Greaves Ltd.***[9], the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus:

> "24. There is no dispute 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. We need to be cognizant of the fact 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

[8] (2020) 12 SCC 539
[9] (2019) 20 SCC 1

> alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."

18. In ***Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited***[10], adverting to the previous decisions of this Court in ***McDermott International Inc. v. Burn Standard Co. Ltd. And Others***[11] and ***Rashtriya Ispat Nigam Ltd. V. Dewan Chand Ram Saran***[12], wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus:

> "9.1 ……..**It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do**. It is further observed by this Court in the aforesaid decision in paragraph 33 that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. **A possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award.** It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.
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> 9.2 Similar is the view taken by this Court in *NHAI v. ITD Cementation (India) Ltd.* (2015) 14 SCC 21, para 25 and *SAIL v. Gupta Brother Steel Tubes Ltd.* (2009) 10 SCC 63, para 29."
>
> [emphasis supplied]

[10] (2019) 7 SCC 236
[11] (2006) 11 SCC 181
[12] (2012) 5 SCC 306

19. In ***Dyna Technologies (P) Ltd.*** (supra), the view taken above has been reiterated in the following words:

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

20. An identical line of reasoning has been adopted in ***South East Asia Marine Engg. & Constructions Ltd.[SEAMAC Limited] V. Oil India Ltd.*** [13] and it has been held as follows:

> **"12.** It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in *Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.* [*Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*, (2019) 20 SCC 1 : 2019 SCC OnLine SC 1656] laid down the scope of such interference. This Court observed as follows : (SCC pp. 11-12, para 24)
>
> > "*24*. There is no dispute 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. *We need to be cognizant of the fact 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.* Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."
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> **13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning.** This Court in *Dyna Technologies [Dyna*

[13] (2020) 5 SCC 164

Technologies (P) Ltd. V. Crompton Greaves Ltd., (2019) 20 SCC 1 : 2019 SCC OnLine SC 1656] observed as under : (SCC p.12, para 25)

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

21. In the instant case, we are of the view that the interpretation of the relevant clauses of the Implementation Agreement, as arrived at by the learned Sole Arbitrator, are both, possible and plausible. Merely because another view could have been taken, can hardly be a ground for the learned Single Judge to have interfered with the arbitral award. In the given facts and circumstances of the case, the Appellate Court has rightly held that the learned Single Judge exceeded his jurisdiction in interfering with the award by questioning the interpretation given to the relevant clauses of the Implementation Agreement, as the reasons given are backed by logic.

22. We, therefore, uphold the decision of the Appellate Court that has restored the findings returned in the arbitral award dated 05th June, 2005 to the effect that the State of Himachal Pradesh had proceeded to terminate the Implementation Agreement before expiry of the prescribed period which could have been extended up to 24 months, reckoned from the "effective date". In the instant case, the State of H.P. had terminated the Implementation Agreement five months prior to the stipulated period by adopting a

distorted interpretation of Clause 4 of the Implementation Agreement, which was impermissible.

23. In view of the above discussion, Civil Appeal No. 10341 of 2011 preferred by UHL is partly allowed to the extent mentioned in para 6 above, while Civil Appeal No. 10342 of 2011 filed by the State of Himachal Pradesh is rejected in toto. Parties are left to bear their own costs.

……CJI
[N.V. RAMANA]

……J.
[A.S. BOPANNA]

……J.
[HIMA KOHLI]

New Delhi,
January 07, 2022.