* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 10.12.2025
Pronounced on: 23.01.2026

\+ **FAO(OS) (COMM) 132/2020 & CM APPL. 26984/2020, CM APPL. 43515/2024, CM APPL. 48931/2025**

PRASAR BHARATI ..... Appellant

Through: Mr.Rajeev Sharma, Sr. Adv. with Mr.Abhishek Birthray and Mr.Kartikeya Tripathi, Advs.

versus

STRACON INDIA LTD & ANR. ..... Respondents

Through: Mr.Ashish Dholakia, Sr. Adv. with Mr.Gautam Bajaj, Mr.Subhoday Banerjee, Mr.Akash Panwar, Ms.Meghna Jandu and Ms.Jasleen Kaur, Advs.

\+ **FAO(OS) (COMM) 179/2020 & CM APPL. 48929/2025**

STRACON INDIA LTD ..... Appellant

Through: Mr.Ashish Dholakia, Sr. Adv. with Mr.Gautam Bajaj, Mr.Subhoday Banerjee, Mr.Akash Panwar, Ms.Meghna Jandu and Ms.Jasleen Kaur, Advs.

versus

PRASAR BHARATI ..... Appellant

Through: Mr.Rajeev Sharma, Sr. Adv. with Mr.Abhishek Birthray and Mr.Kartikeya Tripathi, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. These cross appeals have been filed by the respective parties, challenging the Judgment and Order dated 13.03.2020 passed by the learned Single Judge of this Court in O.M.P. (COMM.) 225/2017, titled ***Prasar Bharati v. Stracon India Ltd. & Anr.*** (hereinafter referred to as, the 'Impugned Order'), whereby the learned Single Judge has partly allowed the application filed by Prasar Bharati under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, the 'A&C Act'), partly setting aside the Arbitral Award dated 26.12.2016 (hereinafter referred to as, the 'Award') passed by the learned Arbitrator.

2. As these are cross appeals, for the sake of clarity we shall refer to Prasar Bharati as the 'Appellant', and Stracon India Ltd. as the 'Respondent'. We may also note that the respondent no.2, that is, Transworld International Inc., is only a *pro forma* party.

Brief background of facts:

3. The Board of Cricket Control in India (in short, 'BCCI'), *vide* an Agreement dated 25.09.1999 (hereinafter referred to as, the 'BCCI Agreement'), had granted to the appellant the broadcasting rights for the cricketing events comprising of domestic and international matches conducted by the BCCI during the term of the BCCI Agreement. Clause 2 of the BCCI Agreement specified the term of the agreement as five years, from 01.10.1999 to 30.09.2004. This Clause also specified that each cricket season/year is the period from 1st October of a year to 30th September of the next year. Clauses 3 and 12

of the BCCI Agreement provided that the BCCI would guarantee to deliver 135 days of International Cricket to the appellant, that is, a minimum of 27 days of International Cricket in each cricket season/year. Clause 12.1 of the BCCI Agreement further provided that if less than 27 days of International Cricket were provided by BCCI in any cricket season/year, the Appellant would be entitled to a pro-rata reduction in the consideration, however, this deducted amount shall be restored to the BCCI if the shortfall in providing 27 days of International Cricket in a year is made up in the next year.

4. After the execution of the BCCI Agreement, a cricket series between India and New Zealand comprising of five One Day Internationals (ODIs) and three Test Matches, totalling 20 days of International Cricket was played in October, 1999. A Production & Marketing Agreement dated 08.10.1999 (hereinafter referred to as, the 'P&M Agreement') was entered into between the appellant and the respondent, whereby, the appellant had granted the marketing rights for the said series to the respondent.

5. After the India-New Zealand Series comprising of 20 days of International Cricket had been played, in January 2000, the appellant invited bids for marketing of airtime in India and overseas "of the cricketing events conducted by BCCI in India for the period starting from 1st January, 2000 to 30th September, 2004". It is the case of the appellant that bids were invited for the remainder days of cricket to be provided by BCCI, that is, 135 – 20 = 115, and an explicit reference to the BCCI Agreement was made in Clause 1.1 of the Tender. A tentative list of nine series was also annexed to the Notice Inviting

Tender ('NIT').

6. The respondent won the bid for grant of overseas rights in response to the said NIT, and thereafter, an Agreement dated 19.02.2000 (hereinafter referred to as, the 'Global Rights Agreement') was entered into between the Parties for the grant of global marketing rights in respect of Domestic and International cricket matches to be conducted by the BCCI upto 30.09.2004, for a consideration of USD 43.5 million.

7. In terms of the Clause 9 of the Global Rights Agreement, 5% of the total consideration was paid by the respondent on 15.02.2000, and the remaining sum had to be paid in five instalments. Respondent was also required to submit an unconditional Bank Guarantee for a value of 15% of the total consideration, on or before 23.02.2004.

8. Clause 4(a) of the Global Rights Agreement stipulated that the appellant shall provide to the respondent, the Cricketing Events as specified in Annexure A of the Agreement. Clause 4(b) of the Agreement also stipulated that the Respondent shall provide a minimum of 27 days of International Cricket in each cricket season.

9. In 2003, dispute was raised by the respondent that there was a doubt regarding the last two series, that is, between India-Pakistan and India-Australia, being played, and therefore, they withheld consideration amounting to USD 6.56 million. On 19.09.2003, the respondent filed O.M.P. No. 375/2003, seeking *interim* protection with respect to the said payment, which was otherwise payable under the Global Rights Agreement on 30.09.2003. *Vide* an order dated 26.09.2003, this Court permitted the respondent to deposit the said

amount in Court, to be disbursed in accordance with the directions of the learned Sole Arbitrator.

10. The dispute was referred to a learned Sole Arbitrator [Justice B.N. Kripal (Retd.)] for adjudication. By an Award dated 31.08.2004, the learned Sole Arbitrator held that the dispute raised by the respondent was premature and should be settled at the stage of final accounting. Therefore, the respondent was not entitled to withhold the consideration amounting to USD 6.56 million.

11. The respondent, claiming that the accounts were to be settled on 31.03.2004, but were not settled by the appellant, again approached this Court by way of O.M.P. No. 438/2004, to secure a sum of USD 2.18 million, payable by it to the appellant as the last instalment under the Global Rights Agreement. The said amount was later deposited by it in Court, in compliance with the order dated 31.11.2004.

12. Though the amount was lying deposited in Court under the above referred orders, the appellant, in December 2004, invoked the Bank Guarantees furnished by the respondent, on account of alleged non-payment of the consideration due.

13. The respondent filed I.A. No. 8713/2004, seeking a restraint on the appellant from encashing the Bank Guarantees.

14. By a consent Order dated 21.02.2005 passed by this Court, the amount of USD 6.56 million deposited by the respondent, was directed to be released to the respondent, while USD 2.8 million was directed to be released to the appellant. By that time, the appellant had also received USD 6.56 million by encashing the Bank Guarantees. By the said consent order, all disputes arising out of the Global Rights

Agreement, including all claims and counter claims, were also referred to Arbitration, which culminated into the Arbitral Award, the subject matter of the challenge in the Impugned Order.

15. Before the learned Sole Arbitrator, the case setup by the respondent was that the appellant was supposed to provide nine series under the Global Rights Agreement, whereas only seven series were provided, and therefore, they were entitled to a pro-rata reduction in consideration amounting to USD 9.72 million. It was further claimed that out of the 27 days of cricket which was to be provided in each cricketing season, there was a shortfall of 12 and 5 days during seasons 1 and 4 respectively, for which they were entitled to USD 5.50 million.

16. The case setup by the appellant before the learned Sole Arbitrator was that the Global Rights Agreement did not specify any minimum number of 'series' to be provided by it; it only provided for the stipulated days of cricket, in context of matches. It was the case of the appellant that since BCCI had to provide 135 days of cricket during the period 01.10.1999 to 30.09.2004, and 20 days of cricket had been already provided by it in October 1999, that is, before the parties had entered into the Global Rights Agreement, only 115 days of cricket was left to be provided by the time the said Agreement was executed with the respondent. The requirement of providing 27 days of cricket was for full cricket season and not a part season. As the agreement was to come into effect from 01.01.2000, that is, in the middle of the cricket season, there had to be a proportionate deduction in the same as well.

17. It is also the case of the appellant that the method of valuation suggested by the respondent was arbitrary. The appellant refuted the contention of the respondent that USD 43.75 million was the consideration for nine series, and that the value of a single series would be USD 4.86 million and that of two series would be USD 9.72 million. It was claimed that the consideration of USD 43.75 million was for all domestic and international matches conducted by the BCCI during the term.

Arbitral Award:

18. The learned Sole Arbitrator, by an Award dated 26.12.2016, held that the deliverables under the Global Rights Agreement were not to be counted in terms of series, but were to be counted in terms of the number of days. The learned Sole Arbitrator further held that 135 days of International Cricket were to be provided by the appellant under the Agreement, while only 118 days had been provided. The learned Arbitrator excluded 10 days of cricket of the India-Australia-New Zealand Triangular Series, on the ground that the said series was not part of the Global Rights Agreement, as it was not mentioned in Annexure-A thereof. The learned Arbitrator, accordingly, held that there was a shortfall of 17 cricketing days, for which he passed an Award for USD 5,509,259 million, equivalent to Rs.37,32,79,843/-, along with interest thereon at the rate of 18% per annum from 19.10.2005 till the date of the Award, in favour of the respondent. The learned Arbitrator further awarded costs of Rs.35,50,000/- in favour of the respondent and against the appellant.

Prior Proceedings:

19. The Award was challenged by the respondent, *vide* O.M.P. (Comm) No. 233/2017, on the limited ground that the learned Arbitrator had wrongly held that the deliverables were not to be counted in terms of series. The said challenge of the respondent was dismissed by the learned Single Judge of this Court, *vide* its judgment dated 31.05.2017.

Impugned Order:

20. By the Impugned Order, the learned Single Judge rejected the contention of the appellant that since BCCI had to provide 135 days of cricket during the period 01.10.1999 to 30.09.2004, and 20 days of cricket had been already provided by it in October 1999, that is, before the parties had entered into the Global Rights Agreement, only 115 days of cricket, based on pro rata, was to be provided by the appellant to the respondent, by holding as under:

> *"58. Petitioner in my view is not right in its contention that the said 20 days were to be excluded and therefore it was obliged only to provide only 115 days in the cricketing season. The Agreement was entered into between the parties on 19.02.2000. It was clearly known to the petitioner on the date of signing the Agreement that 20 days of cricket had been played in the year 1999, yet, when the Agreement was entered into, it was clearly mentioned that 27 cricket days would be provided in each season for the 5 cricket seasons. Had the petitioner intended that these 20 days were to be included, the Agreement would have read otherwise. It is not open for the petitioner at this stage to argue contrary to the terms of the Agreement. My view is further fortified by Clause 12.1 of the Agreement*

> *between the petitioner and the BCCI dated 25.09.1999, where there is a clear provision of carrying forward of cricket days in case of shortfall in a particular cricket season. Thus, this contention of the petitioner has to be rejected. Thus, the respondents were entitled to clear 135 days of Cricketing Events in 5 seasons but this would include the 10 days of Triangular Series. Thus, the part of the Award which has held that respondents are entitled to payment for 17 days of shortfall is set aside. Respondents are only entitled to 7 days of shortfall and are at liberty to raise this claim in accordance with law."*

21. The learned Single Judge also upheld the Award to the extent it dismissed the Counter Claims of the appellant herein, by holding that no patent illegality can be noted in the findings of the learned Arbitrator *qua* the same.

22. The learned Single Judge, however, held that the finding of the learned Arbitrator *qua* the India-Australia-New Zealand Triangular Series as not forming part of the Global Rights Agreement, is patently illegal and cannot be sustained. We quote the relevant paragraphs of the Impugned Order as under:

> *"**54.** Respondents may be right in their contention that the Triangular Series may not have earned as much revenue as was expected from another series between India-Pakistan and India-Australia, but this argument cannot be raised by the respondents at this stage. When the petitioner granted the right to the respondents to market and telecast the Triangular Series, the petitioner should have objected at that stage, instead of telecasting the series and earning revenue therefrom. Thus, in my view, the finding of the Arbitrator allowing the claim of the respondent towards the shortfall of 10 cricketing days is patently*

illegal and cannot be sustained, more particularly in view of the judgment of the coordinate Bench. To this extent, the Award deserves to be set aside."

23. We may also note that the learned Single Judge, while setting aside the Award to the extent it found shortfall of 17 Cricketing Days in favour of the respondent, also reserved liberty with the respondent to agitate their claim of 7 days shortfall in Cricketing Days in accordance with law.

24. Aggrieved of the above, both the parties have filed these cross-appeals.

Submissions by the learned Senior Counsel for the appellant:

25. Mr. Rajeev Sharma, the learned senior counsel appearing for the appellant, submits that the learned Arbitrator has re-written the contract between the parties by holding that 135 days of cricket was to be provided by the appellant to the respondent during the five year period of the Agreement. He submits that the learned Arbitrator has failed to appreciate that 27 days of cricket was to be provided in each 'Cricket Season'. Cricket Season in terms of the BCCI Agreement was from 1st October of a year to 30th September of the next year. As the Agreement between the appellant and the respondent was signed on 19.02.2000, that is, in the middle of a Cricket Season, the 27 days of cricket provided in Clause 4(b) of the Agreement had to be proportionately reduced. He submits that the learned Arbitrator has, in fact, not even considered the plea of the appellant with respect to the proportionate reduction in the number of days of International Cricket

to be provided due to the Agreement being for a part of the Cricket Season. He submits that by not giving any reason for rejection of the said plea, the Award is patently illegal and is liable to be set aside. In support, he places reliance on the judgment of the Supreme Court in ***I-Pay Clearing Services Private Limited v. ICICI Bank Limited***, (2022) 3 SCC 121.

26. He submits that even otherwise, the learned Arbitrator has failed to appreciate that 135 days of cricket was to be provided by the BCCI to the appellant under the BCCI Agreement which was executed on 25.09.1999. Prior to the Global Rights Agreement executed between the appellant and the respondent on 19.02.2000, the India-New Zealand Series had already taken place, therefore, the same, consisting of 20 days, also had to be excluded from the number of days of cricket to be provided. He submits that the learned Arbitrator has, therefore, re-written the Agreement between the parties and for the said reason, the Award is liable to be set aside. In support, he places reliance on the judgment of the Supreme Court in ***PSA Sical Terminals Private Limited v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin & Ors.***, (2023) 15 SCC 781.

27. He submits that the learned Single Judge has erred in rejecting the challenge of the appellant to the Award on the above account only because the challenge of the respondent to the same by way of O.M.P.(COMM.) 233/2017 had been rejected by another learned Single Judge of this Court by its Order dated 31.05.2017. He submits that the said order cannot act as a *res judicata* on the challenge laid by the appellant. He submits that the said challenge of the respondent was

based on the plea that for determining its claim, the learned Arbitrator has wrongly excluded the relevance of the 'series', while laying emphasis on the number of days of cricket to be provided. He submits that the issues were, therefore, different and the said order could not have acted as *res judicata.*

28. The learned senior counsel for the appellant further submits that the submission of the respondent that the appellant, not having challenged the order dated 31.05.2017, is bound by the same, is also fallacious, inasmuch as the said order was in favour of the appellant and there was no occasion for the appellant to have challenged the same, therefore, it cannot act as *res judicata* against the appellant, only due to the appellant not challenging the same. In support, he places reliance on the judgment of the Allahabad High Court in ***Hari Shankar v. Smt. Jag Deyee***, (2000) SCC OnLine All 76, and of this Court in ***S. Waryam Singh Duggal v. Smt. Savitri Devi***, ILR (1984) 1 Del 214.

29. He submits that the learned Arbitrator has erred in appropriating the entire consideration of USD 43.75 million under the Agreement towards International Cricket. He submits that under the Agreement, the said consideration was payable for both, the domestic as also International Cricket, and, therefore, even assuming that there was a shortfall in the number of Cricketing Days, the amount thereof could not be determined simply by the mathematical formula adopted by the learned Arbitrator. He submits that the quantification of the claim granted in favour of the respondent was, therefore, liable to be set aside, which the Impugned Order fails to do.

30. On the rejection of the challenge to the Counter Claim no. 1 of the appellant, the learned senior counsel for the appellant submits that the claim of damages for the delayed payment of the contractual amount by the respondent, was wrongly rejected by the learned Arbitrator by holding that the appellant had not led any evidence in support of the same. He submits that wrongful deprivation of money entitles the party to payment of interest as compensation for the loss caused and no further evidence in support thereof is required. In support, he places reliance on the judgment of the Supreme Court in ***Central Bank of India v. Ravindra and Ors.***, (2002) 1 SCC 367.

31. On Counter Claim no.2, that is, a claim on account of broadcast and marketing of highlights/clippings of BCCI matches by the respondent within India, he submits that the learned Arbitrator has erred in rejecting the said claim by holding that it had been raised as an afterthought. He submits that by the Consent Order dated 21.02.2005 passed by this Court in O.M.P. No.375/2003, all claims and counter claims had been referred to arbitration. The appellant had invoked arbitration regarding the said dispute *vide* Notice dated 19.05.2003, therefore, the Counter Claim raised by the appellant was within time and could not have been rejected only on the ground of delay or as having been waived in any manner.

32. On Counter Claim no.3, the learned senior counsel for the appellant submits that the learned Arbitrator committed an error in dismissing the same on ground of constructive *res judicata*. He submits that it was only in October, 2003, that is, much after the initial arbitration, that the appellant came to know of the breach of the

Agreement committed by the respondent on account of unauthorised audio/video streaming of matches on internet. Therefore, the same could not have been made a subject matter of the earlier arbitration.

33. As regards the reliance on the plea of the appellant in the earlier round of litigation, and that the said right had been given to the respondent by a Letter dated 18.02.2000 and, therefore, was not arbitrable, he submits that the said plea had been rejected not only by the earlier Arbitrator but also by this Court while dismissing the challenge of the appellant to the first Award passed by the first Arbitrator. He submits that the Arbitral Award rejecting the Counter Claim no. 3 was therefore, liable to be set aside.

34. The learned senior counsel for the appellant submits that, in any case, the award of interest at the rate of 18% p.a. in favour of the respondent by the learned Arbitrator is without any reasons and without any evidence on how the said rate has been determined. The same is, therefore, contrary to public policy of India. In support, he places reliance on the judgments of the Supreme Court in ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited & Anr.***, (2025) 2 SCC 417; ***Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited***, (2019) 11 SCC 465; ***Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy & Anr.***, (2007) 2 SCC 720, and of this Court in ***Steel Authority of India Ltd. (SAIL) v. Primetals Technologies India Pvt. Ltd.***, (2020) SCC OnLine Del 2496.

35. He further submits that the plea of the respondent that in the application filed by the appellant under Section 34 of the A&C Act,

there was no challenge to the rate of interest, is not only factually incorrect inasmuch as the said challenge was raised as a ground '(R)' in the Section 34 application, but even otherwise, the same being contrary to public policy, is liable to be set aside in terms of Section 34(2)(b)(i) of the A&C Act. The said challenge can also be raised in the appeal filed under Section 37 of the A&C Act, as held by the Supreme Court in ***State of Chhattisgarh & Anr. v. SAL Udyog Private Limited***, (2022) 2 SCC 275.

36. He submits that only because the appellant had also claimed interest at the same rate, will not provide justification to the learned Arbitrator to award an unreasonable rate of interest and that too without giving any reasons.

37. He submits that similarly, the reliance of the respondent on the pre-amended Section 31(7) of the A&C Act, is ill-founded, inasmuch as the said Section does not do away with the requirement of giving reasons for the award of interest.

38. On the challenge of the respondent to the Impugned Order, he submits that the learned Single Judge has rightly held that the learned Arbitrator had erred in excluding the India-Australia-New Zealand Triangular Series from consideration. He submits that the challenge of the respondent in this regard is ill-founded. He submits that the plea of the respondent that it could not fully commercialise the said Triangular Series is also incorrect, inasmuch as not only was this plea not taken before the learned Arbitrator but also, on facts, it did commercialise the same by entering into the Agreement with Hutch.

Submissions by the learned Senior Counsel for the respondent:

39. On the other hand, Mr. Ashish Dholakia, the learned senior counsel appearing for the respondent, submits that the learned Single Judge has erred in interfering with the Arbitral Award by including the India-Australia-New Zealand Triangular Series in the number of cricketing days provided by the appellant to the respondent. He submits that the said finding is in excess of the jurisdiction vested in the learned Single Judge under Section 34 of the A&C Act.

40. He submits that the view of the learned Arbitrator that India-Australia-New Zealand Triangular Series was outside the Agreement, was a plausible view with which the learned Single Judge has erred in interfering.

41. He submits that the learned Arbitrator found that the said series has no test matches and, therefore, was not a subject matter of the Agreement, which did not include a pure One Day International series. The learned Arbitrator held that the "Series" under the Global Rights Agreement was bi-lateral and having atleast two test matches. He submits that while the BCCI Agreement included Triangular and Quadrangular matches, without mandatory test matches in the series, this was not so in the Global Rights Agreement, which included only bi-lateral series having test matches as well. It was also not mentioned in Annexure-A to the Global Rights Agreement, which mentioned the list of series covered by the Agreement.

42. He submits that the contention of the respondent that India-Australia-New Zealand Triangular Series was part of India-New Zealand Series, was only to answer the submission of the appellant

that this was a standalone series provided under the Agreement and therefore, should be counted as a series provided under the Global Rights Agreement. In fact, while presenting its claim on basis of the number of cricket days provided by the appellant, the respondent had asserted that this series fell outside the scope of the Global Rights Agreement. He submits that therefore, reliance of the appellant on the said submission of the respondent, is ill-founded.

43. He submits that the reliance of the learned Single Judge on the order passed on the application filed by the respondent under Section 34 of the A&C Act, is incorrect, inasmuch as the same merely considered the challenge of the respondent that under the Global Rights Agreement, specified series had to be provided by the appellant and having failed to do so, it was liable to compensate the respondent.

44. He submits that as regards the challenge of the appellant to the finding of the learned Single Judge that in terms of the Agreement, 135 days of cricket had to be provided by it to the respondent, the same is ill-founded.

45. He submits that the learned Arbitrator has rightly held that the obligation of the appellant under the Global Rights Agreement cannot be modified by relying upon the BCCI Agreement executed between the appellant and the BCCI.

46. On the quantification of the damages for non-provision of the number of cricketing days, the learned senior counsel for the respondent submits that it was the own case of the appellant before the learned Arbitrator, as also before the learned Single Judge, that the consideration was for the ‘international matches’. The appellant had

also based its Counter Claim on this submission. He submits that under the Agreement, no list of domestic matches or number of days thereof was provided, and the said plea is now being taken only as an afterthought.

47. Answering the submission of the learned senior counsel for the appellant on the lack of reasons for award of interest at the rate of 18% p.a., the learned senior counsel for the respondent submits that the same was never put to challenge by the appellant in its application under Section 34 of the A&C Act before the learned Single Judge. The same is, therefore, deemed to have been waived by the appellant. He submits that the jurisdiction of this Court in exercise of its power under Section 37 of the A&C Act extends only to examine whether the learned Single Judge has acted beyond its jurisdiction under Section 34 of the A&C Act, and not to decide the matter afresh. He submits that even otherwise the appellant cannot approbate and reprobate, by first itself demanding interest at the rate of 18% p.a. and, thereafter, challenging the same. In support, he places reliance on the judgment of this Court in ***WAPCOS Ltd. v. C&C Energy Private Limited***, 2022 SCC OnLine Del 3498.

48. He submits that Section 31(7) of the pre-amended A&C Act provided for a default rate of 18% interest. The same, therefore, cannot be said to be violative of public policy. In support, he places reliance on the judgments of the Supreme Court in ***Larsen Air Conditioning and Refrigeration Company v. Union of India & Ors.,*** 2023 SCC OnLine SC 982, and ***Sri Lakshmi Hotel (Pvt.) Ltd. & Anr. v. Sriram City Union Finance Ltd. & Anr***., 2025 SCC OnLine SC

2473.

49. As far as challenge to the finding of the learned Arbitrator on Counter Claims of the appellant is concerned, he submits that admittedly two of the series mentioned in the Agreement, that is, India-Australia and India-Pakistan, did not take place. In spite of the same, the respondent deposited USD 6.56 million in Court on 26.09.2003, that is, before the contractual due date of 30.09.2003. The respondent subsequently deposited a further sum of USD 2.18 million for the next instalment. Therefore, not only was the respondent out of pocket but also the appellant was fully secured of the said amount. The appellant, after the first Arbitral Award, filed an application seeking release of the amount so deposited by the respondent. While the same was pending, the appellant invoked the bank guarantees and recovered USD 6.56 million on 24.12.2004, thereby, resulting in the respondent being out of pocket twice-over for the said amount. He submits that, therefore, the appellant suffered no loss and cannot claim interest or damages on the same. Placing reliance on the judgment of the Supreme Court in ***Gurpreet Singh v. Union of India***, (2006) 8 SCC 457, he submits that no interest is payable on the sums deposited in Court.

50. He submits that even otherwise, there is no contractual provision in the Global Rights Agreement entitling the appellant to claim interest on the delayed payments, nor any notice claiming interest on the same was issued by the appellant under the Interest Act, 1978.

51. He submits that the learned Arbitrator and even the learned

Single Judge have found that the appellant had failed to provide the committed number of cricket days to the respondent, therefore, being in default. The appellant, therefore, cannot claim any interest for the amount allegedly remaining outstanding to be paid.

52. He submits that this claim was not raised by the appellant in the first arbitral proceedings and, therefore, the appellant even otherwise was estopped from raising the same before the learned Arbitrator.

53. He submits that the appellant could also have invoked the bank guarantee on 30.09.2003, but waited till 24.12.2004, therefore, its claim was also barred by the doctrine of mitigation of losses, if at all.

54. On counter claim no.2, the learned senior counsel for the respondent submits that the appellant had obtained an injunction against the respondent on an application filed under Section 9 of the A&C Act, being O.M.P. 357/2002, which was vacated by the Division Bench of this Court *vide* Order dated 24.03.2003, for the failure of the appellant to appoint an arbitrator and to commence the arbitration proceedings in this dispute. The appeal was finally dismissed on 21.07.2005 as being infructuous as the Agreement between the parties had expired on 30.09.2004. The Counter Claim was raised only on 22.07.2006, that is, more than 3 years after the alleged cause of action arose in October, 2002, and even the purported Notice dated 19.05.2003, receipt of which was denied by the respondent. The Counter Claim was, therefore, abandoned and was barred by limitation.

55. He submits that merely because, by the Order dated 21.02.2005 passed in OMP 357/2002, the appellant was permitted to raise its

counter claims, a stale counter-claim would not revive. The said reference also cannot constitute an invocation or commencement of arbitration proceedings for such counter claim which even otherwise was barred by limitation.

56. He submits that similarly, as far as the Counter Claim no.3 is concerned, it was the own case of the appellant that such right was granted to the respondent *vide* Letter Agreement dated 18.02.2000 and could not be made a subject matter of arbitration. The said claim was not raised in the first arbitration proceedings and, therefore, the learned Arbitrator correctly applied the principles of constructive *res judicata* for rejecting the same.

57. He submits that even otherwise, the said counter claim was not maintainable as not only the first arbitration, but also the Judgment dated 17.04.2017 passed by this Court in O.M.P. 426/2008, dismissing the challenge of the appellant thereto, upheld the multimedia and internet rights including streaming of the respondent under the Global Rights Agreement.

Analysis and findings:

58. We have considered the submissions made by the learned senior counsels for the parties.

59. Section 34 of the A&C Act states the grounds for setting aside an Arbitral Award. So far as it is relevant, for the grounds on which an Arbitral Award may be set aside by the Court, it reads as under:-

> *"**Section 34. Application for setting aside arbitral awards.***
>
> *****
>
> *(2) An arbitral award may be set aside by the*

Court only if--

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that--

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that--

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.--For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

> *(iii) it is in conflict with the most basic notions of morality or justice.*
> *Explanation 2.--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.*
> *(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:*
> *Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence."*

60. In ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO),*** 2025 SCC OnLine SC 2857, the Supreme Court has explained the restricted jurisdiction of the Court while dealing with an application under Section 34 of the A&C Act, as under:-

> *"**27.** The Arbitration and Conciliation Act, 1996 avows to provide a speedy, cost-effective & efficacious mode of alternative dispute resolution with a policy of minimal judicial intervention. The same is apparent from the legislative intent explicitly mandated under section 5 of A&C Act which envisages an embargo upon the judiciary to interfere in arbitral proceedings save in circumstance expressly stipulated under Part I of the Act. Hence, it is clear that judicial interference is circumscribed with only exception being the statutorily mandated remedies which we find under section(s) 34 and 37 of the A&C Act.*
> ***28.** The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is*

permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited, this court held that an award can be set aside under Section 34 on the following grounds:"(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

29. *When it comes to section 37 of the A&C Act it provides for a limited appellate remedy against an order either setting aside or refusing to set aside an arbitral award passed by civil court in exercise of its power under section 34. This court in MMTC Ltd. v. Vedanta Ltd., at Paragraph 14 observed that interference with an order made under section 37 cannot travel beyond the restrictions laid down in section 34. Further in Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking this court at Paragraph 18 observed that the scope of appellate scrutiny under section 37 is necessarily co-extensive with the parameters mandated under section 34 of the Act and hence the said provision does not enlarge the jurisdiction of the appellate court. Even this court has observed in Hindustan Construction Company Limited v. National Highways Authority of India, wherein one of us (Justice Aravind*

Kumar) was part of the bench at Paragraph 26 that the standard of scrutiny of an arbitral award is very narrow and it is not the judicial review of an award. Further in Paragraph 27 it was observed that awards which contains reasons, especially when they interpret contractual terms, ought not to be interfered with lightly. This court has also observed in Larsen Air Conditioning and Refrigeration Company v. Union of India at Paragraph 15 that the scope of interference in exercise of appellate power under section 37 is even narrower to review the findings of the awards, if it has been upheld or substantially upheld under section 34. ***Hence, it is very well settled that arbitral awards are not liable to be set aside merely on the ground of erroneous in law or alleged misappreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section(s) 34 & 37. It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under section(s) 34 and 37****. This court in Punjab State Civil Supplies Corporation Limited v. Sanman Rice Mills, at Paragraph 12 observed that even when the arbitral awards may appear to be unreasonable and non-speaking that by itself would not warrant the courts to interfere with the award unless that unreasonableness has harmed the public policy or fundamental policy of Indian law. It might be a possibility that on re-appreciation of evidence, the courts may take another view which may be even more plausible but that also does not leave scope for the courts to reappraise the evidence and arrive at a different view. This court in Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited held that the arbitrator is generally considered as ultimate master of quality and quantity of evidence.* ***Even an award which is based on***

> ***little or no evidence would not be held to be invalid on this score. At times, the decisions are taken by the arbitrator acting on equity and such decisions can be just and fair therefore award should not be overridden under section 34 and 37 of the A&C Act on the ground that the approach of the arbitrator was arbitrary or capricious****."*
>
> ***(Emphasis Supplied)***

61. In ***Parsa Kente Collieries Ltd. v. Rajasthan Rajya Viduyt Utpadan Nigam Ltd.,*** (2019) 7 SCC 236, the Supreme Court held that construction of terms of contract is primarily for an arbitrator to decide and 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 so, the interference with the same by a Court exercising jurisdiction under Section 34 of the A&C Act is not warranted. We quote from the judgment as under:

> *"**9.1.** In Associate Builders v. DDA, this Court had an occasion to consider in detail the jurisdiction of the Court to interfere with the award passed by the Arbitrator in exercise of powers under Section 34 of the Arbitration Act. In the aforesaid decision, this Court has considered the limits of power of the Court to interfere with the arbitral award. It is observed and held that only when the award is in conflict with the public policy in India, the Court would be justified in interfering with the arbitral award. In the aforesaid decision, this Court considered different heads of "public policy in India" which, inter alia, includes patent illegality. After referring Section 28(3) of the Arbitration Act and after considering the decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran , it is observed and held*

> *that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if an Arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground.* ***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 para 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****.*
>
> ***9.2.*** *Similar is the view taken by this Court in NHAI v. ITD Cementation (India) Ltd. and SAIL v. Gupta Brother Steel Tubes Ltd."*
>
> ***(Emphasis Supplied)***

62. The Supreme Court, in ***MMTC Ltd. v. Vedanta Ltd***., (2019) 4 SCC 163, while interpreting Section 34 of the A&C Act, reiterated that the Court in exercise of its power under Section 34 of the A&C Act, does not sit as a Court of Appeal and can interfere on the merits of the Award only on very limited grounds. It has held as under:

> *"**10.** Before proceeding further, we find it necessary to briefly revisit the existing position of law with respect to the scope of interference with an arbitral award in India, though we do not wish to burden this judgment by discussing*

the principles regarding the same in detail. Such interference may be undertaken in terms of Section 34 or Section 37 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act"). While the former deals with challenges to an arbitral award itself, the latter, inter alia, deals with appeals against an order made under Section 34 setting aside or refusing to set aside an arbitral award.

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 "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.*

12. ***It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to***

the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. *(See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])*

13. *It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.*

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an

> ***arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings****."*
>
> ***(Emphasis Supplied)***

63. Most recently, the Supreme Court in ***Prakash Atlanta (JV) v. National Highways Authority of India***, 2026 INSC 76, has reiterated that the findings of an Arbitral Tribunal should not be substituted merely because an alternative view on construction of contract is possible. It has held as under:

> *"59. We may now sum up our conclusion as under:*
>
> ***xxx***
>
> *(vi) If an arbitral tribunal's view is found to be a possible and plausible one, it cannot be substituted merely because an alternate view is possible. Construction and interpretation of a contract and its terms is a matter for the arbitral tribunal to determine.* ***Unless the same is found to be one that no fair-minded or reasonable person would arrive at, it cannot be interfered with. If there are two plausible interpretations of the terms of a contract, then no fault can be found if the arbitrator accepts one such interpretation as against the other.*** *To be in conflict with the public policy of India, the award must contravene the fundamental policy of Indian law, which makes it narrower in its application."*
>
> ***(Emphasis Supplied)***

64. We may herein also note that the jurisdiction of the Court under Section 37 of the A&C Act is limited only to examine if the Court from which the appeal arises, has erred in applying the principles applicable to the limited jurisdiction vested in such Court under

Section 34 of the A&C Act. Section 37 of the A&C Act reads as under:-

> *"**Section 37. Appealable orders.***
> *(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:--*
> *(a) refusing to refer the parties to arbitration under section 8;*
> *(b) granting or refusing to grant any measure under section 9;*
> *(c) setting aside or refusing to set aside an arbitral award under section 34.*
> *(2) Appeal shall also lie to a court from an order of the arbitral tribunal--*
> *(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or*
> *(b) granting or refusing to grant an interim measure under section 17.*
> *(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."*

65. The Supreme Court in ***Punjab State Civil Supplies Corpn. Ltd. & Anr. v. Sanman Rice Mills & Ors.***, 2024 SCC OnLine SC 2632, while analysing the scope of Section 37 of the A&C Act, being an appellate provision, has held as under:

> *"**11.** Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. **The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act**.*
> ***12.** It is pertinent to note that an arbitral award is not liable to be interfered with only*

on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

*****

14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner*.*

*****

20. *In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act.* ***The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal****. It is only where the court exercising power under Section 34 has failed to exercise*

its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. ***Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out.*** *It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.*

21. *It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit.* ***Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law****; any provision of the Act or the terms of the agreement.*

(Emphasis Supplied)

66. We shall now apply the above tests to the challenge to the Arbitral Award and to the order of the learned Single Judge laid by the parties.

67. The first challenge of the appellant to the Arbitral Award as also to the Impugned Order of the learned Single Judge is to a finding that in terms of the Global Rights Agreement, the appellant was to provide 135 days of International Cricket to the respondent. The appellant states that the said finding of the Arbitral Tribunal is re-writing the Agreement, inasmuch as it has failed to appreciate that the Agreement was for part of the cricketing season.

68. We are unable to accept the said submission of the appellant.

The Global Rights Agreement between the parties, though executed on 19.02.2000, was for the cricketing events from 01.01.2000 to 30.09.2004. Clause 4 of the Agreement defined cricketing events as under:

> *"4. CRICKETING EVENTS:*
> *For the purposes hereof, Cricketing Events shall mean and include the following:-*
> *(a) The Cricketing Events comprise all Domestic & International Matches played in India conducted by the BCCI during the term, and a list and proposed schedule of both the Domestic and International Matches ("the Matches") is annexed as Annexure A. Any change in schedules/ timings of the Matches will not entitle TWI- STRACON for any claim for damages against Prasar Bharati.*
>
> *(b) The Cricketing Events, as being provided by Prasar Bharati, shall comprise of minimum twenty seven (27) days of international cricket in each cricket season that would be telecast live and the same number of highlights of at least one hour each for each day of the matches."*

69. Unlike the BCCI Agreement, the Global Rights Agreement did not define the term 'Cricket Season'. It did not even state that as the Agreement was being executed in the middle of a Cricket Season, there shall be a proportionate reduction of the number of days of International Cricket for the first season. The definition of Cricket Season from the BCCI Agreement therefore, cannot be imported into the Global Rights Agreement to modify the terms thereof.

70. Clause 9 of the Global Rights Agreement provides for proportionate reduction in the consideration in case lesser number of International Matches are played. It reads as under

"9. CONSIDERATION

9.1 In consideration for the grant of the Rights, TWI-/STRACON shall pay to Prasar Bharati, the amount (hereafter "Consideration") of Forty Three Million Seven Hundred & Fifty Thousand US Dollars. Payable in Dollars, this consideration shall be payable subject to the provisions of clause 9.4 and 9.5 hereof. The consideration shall be payable by TWI-STRACON in the following instalments;

(a) 5% of the Consideration on 15.2.2000 (receipt of which is hereby acknowledged by PRASAR BHARATI).

(b) The remaining balance amount of 90% of the consideration shall be paid in four equal annual instalments each being 22.5% of the consideration as follows:

On or before 30 September 2000 22.5%

On or before 30th September 2001 22.5%

On or before 30th September 2002 22.5%

On or before 30th September 2003 22.5%

(c) The balance 5% of the Consideration shall be paid to PRASAR BHARATI before 30th November 2004, following settlement of the final accounts to be carried out before 31 March 2004.

9.2 The final accounts for each year will be settled before 31st March of each year of the Term, inter alia, taking into account the revenue generated through any extra or additional matches.

9.3 If more or less International matches than specified in Annexure I are played during the term, the following shall apply:

9.4.1 If more international Matches are played, and coverage of such International match is delivered as stipulated in this Agreement, then TWI-STRACON will pay PRASAR BHARATI 50% of the net income from such additional matches. For these

purposes "net income" shall mean sales income actually received by TWI-STRACON, after deduction of any applicable withholding tax and there will be a final reconciliation of amounts owing at the end of the term, as referred to in clause 9.2 above.

9.4.2 If less International Matches are played or coverage of the international matches stipulated in this agreement is not delivered, then the consideration for the Rights will be reduced on a pro rata basis.

9.5 All taxes / levies / charges/ duties whatsoever relating to or arising out of the payment of the Consideration of the share of Net Revenue as aforesaid, by TWI-STRACON to Prasar Bharati shall be totally on the account of and shall be solely borne by TWI-STRACON."

71. Interpreting the terms of the Agreement, the learned Arbitrator, held that the term of the Agreement being five years, a total of 135 Cricketing Days were to be provided. The learned Arbitrator held that merely because the Global Rights Agreement commenced from 01.01.2000, as against the BCCI Agreement which commenced from 01.10.1999, the India-New Zealand Series, which took place in October 1999 (of 20 days), could neither be counted against the Global Rights Agreement nor could the total number of International Matches (of 20 days) be reduced from the Global Rights Agreement. The learned Arbitrator held that the terms of the BCCI Agreement cannot dictate or modify the terms of the Global Rights Agreement. This being a matter of interpretation of the contract, which cannot be stated to be perverse, the same, in exercise of powers under Section 34 of the A&C Act, cannot be interfered with. It was not a case of re-writing the Agreement between the parties but of interpretation

thereof.

72. In fact, applying the same principles for considering a challenge to an Arbitral Award, the challenge of the respondent to the Arbitral Award in form of O.M.P. (COMM.) 233/2017 had been rejected by another learned Single Judge of this Court, *vide* its judgment dated 31.05.2017. We quote from the same as under:-

> *"**33.** In terms of Clause 4(b), it was agreed that the Cricketing Events shall comprise of a minimum of 27 days of international cricket in which cricketing season. It is apparent from the above that the expression "Cricketing Events" would comprise of all domestic and international matches (as specified in Clause 4(a)) played in India and conducted by BCCI. Such cricketing events would comprise of minimum of 27 days of international cricket (in terms of Clause 4(b)).*
> ***34.** The term "Cricketing Events" denotes "Domestic and International Matches" and thus it is clear that Prasar Bharti had agreed to provide matches comprising of at least 27 days of international cricket matches in each cricketing season.*
> ***35.** In terms of Clause 9.3, if more or less international matches were played during the term, the provisions that followed (that is, Clauses 9.4.1 and 9.4.2) would apply. It is relevant to note that Clause 9.3 refers to international matches played during the term, therefore, the question whether more international matches or less international matches were played would have to be considered with reference to the term of the Agreement which comprised of five cricketing seasons. And, the question whether more or less cricket matches were played would have to be ascertained on a cumulative basis and not on an annual basis.*
> ***36.** As stated above, the expression "Domestic and International Matches" has been used to*

define the expression "Cricketing Events" and thus, Clause 9.4.2 could be understood to mean that if the Cricketing Events do not take place or the coverage of the international matches is not delivered then the consideration would be reduced on a pro-rata basis.

37. *As noted above, the arbitral tribunal had come to the conclusion that "the word 'series' is misnomer as it has either to be no. of days of matches or no. of days of international cricket". It is apparent that the arbitral tribunal was of the view that the reduction in the consideration as contemplated under Clause 9.4.2 would have to be considered in reference to the shortfall in providing Cricketing Events as committed under Clause 4(b) of the Agreement; that is, a shortfall in providing an aggregate of 135 days of international cricket during the term. The arbitral tribunal concluded that the shortfall in the number of days of international cricket would also encompass the shortfall in holding of the Cricketing Events as contemplated under Clause 4(a). This view cannot by any stretch be held to be perverse or patently illegal even if it is accepted that an alternate view as contended by the petitioners is possible.*

38. *The word "series" has not been mentioned in the Agreement and the only terms used are "International Matches", "Cricketing Events" and "Domestic and International Matches". Annexure A to the Agreement provides for Cricketing Events. However, Clause 4(a) also indicates that such events were only 'proposed' cricketing events. It is also not disputed that the said list of events was altered as the India v. Sri. Lanka matches were replaced by India v. Zimbabwe matches.*

39. *The arbitral tribunal had also noted that the duration of cricket matches was variable; whilst the duration of one-day international match is only a single day, the duration of test matches would be more than three days. The duration of series would also depend on the*

number of test matches and one day matches.

40. *Considering the above, the arbitral tribunal interpreted the provision of Clause 9.4.2 of the Agreement to stipulate reduction in the consideration agreed in reference to the minimum number of days of international cricket and not "series" as claimed by the petitioners.*

41. *The scope of "Cricketing Events" to be provided to the petitioners is defined in Clause 4 and the language of sub-clauses of Clause 4 of the Agreement clearly indicates that the assurance of minimum number of Cricketing Events is stipulated in Clause 4(b) and not Clause 4(a).*

42. *The arbitral tribunal had considered the above and interpreted the Agreement to stipulate pro-rata reduction in consideration with reference to the minimum number of days of international cricket. This being a plausible view, no interference with the impugned award is warranted."*

73. Though the above order would not act as *res judicata*, inasmuch as there is no concept of merger applicable to a decision on Section 34 of the A&C Act upholding the Arbitral Award, at the same time, it has a value of deference to a subsequent challenge to the same Arbitral Award by the other party.

74. Now coming to the challenge of the respondent on the inclusion of the India-Australia-New Zealand Triangular Series to the number of International Cricket days provided by the appellant, the learned Arbitrator had excluded the said series by holding that the same was not a separate series and was not mentioned in Annexure-A to the Agreement. Once the learned Arbitrator had itself stated that the list of Series provided in Annexure-A to the Agreement was only tentative and cannot govern the rights of the parties, to hold that there will be a

total exclusion to the Triangular Series between India-Australia-New Zealand, rights over which had admittedly been availed of by the respondent, therefore, was a contradiction in the Arbitral Award itself and has rightly been interfered with by the learned Single Judge in the Impugned Order. The learned Single Judge has observed as under:

> *"53. Since the Co-Ordinate Bench has dealt with the issue of series in entirety and upheld the Award to that extent, the only issue that remains to be adjudicated by this Court is the entitlement of the respondents to their claim of shortfall of 17 days under clause 4(b). At the cost of repetition, the Tribunal has allowed the claim on the ground that the 10 cricketing days could not have been provided as these were a part of the Triangular Series, which were not mentioned in the Schedule. Once the Co-ordinate Bench has held in its judgment, which has attained finality, that the list was only a 'proposed' list and there had been an earlier change in the India-Sri Lanka matches, this finding of the Tribunal cannot be sustained. It is significant to note that when the India-Sri Lanka matches were replaced, respondents had not raised any protest and in fact even when the Triangular Series were played, the respondents had telecast the same and exploited the series. They had earned revenue therefrom, without any demur or protest.*
>
> *54. Respondents may be right in their contention that the Triangular Series may not have earned as much revenue as was expected from another series between India-Pakistan and India-Australia, but this argument cannot be raised by the respondents at this stage. When the petitioner granted the right to the respondents to market and telecast the Triangular Series, the petitioner should have objected at that stage, instead of telecasting the series and earning revenue therefrom. Thus, in my view, the finding of the Arbitrator*

> *allowing the claim of the respondent towards the shortfall of 10 cricketing days is patently illegal and cannot be sustained, more particularly in view of the judgment of the coordinate Bench. To this extent, the Award deserves to be set aside."*

75. We see no reason to interfere with the said findings of the learned Single Judge.

76. While making a claim based on number of Series of cricket provided by the appellant to the respondent, it was the own case of the respondent that the India-Australia-New Zealand Triangular Series was a part of the India-New Zealand Series. The learned Arbitrator accepted the same, however, when coming to the question of number of International Matches or Cricketing Events provided under the Agreement, the learned Arbitrator, excluded the same, treating it as a separate Series and also on the ground that as it did not have any Test Matches, it could not be counted against the Agreement. Not only was this finding contradicting the earlier finding of the learned Arbitrator, but introduction of a Series to necessarily have Test Matches, was introducing a new term in the Agreement. This was not a simple case of interpreting the contract, but re-writing the same. We quote from the Arbitral Award as under:-

> *".....I may also note that an alternate argument sought to be advanced by Mr Sharma was that at least eight out of nine series were provided to claimant. It was Respondent's submission that India - New Zealand and India - Australia - New Zealand triangular series were two separate series. To buttress this submission, Mr. Sharma relied upon an agreement between Claimant and Hutch and also a letter from BCCI to*

Respondent stating that the two were different series. In response, Mr. Dayal submitted that the triangular series was an extension of the India- New Zealand series and that in so far as in agreement with Hutch is concerned, the bifurcation was only as regards one day from test matches.

In my view Respondent cannot place reliance on Claimant's agreements with third parties. In any case, once rights have been granted to Claimant for a particular series, Claimant may be well within its rights to further distribute them in whole or in part. Even in cross-examination, Respondent has not been able to establish conclusively as to whether the triangular series was a separate series or not. Claimant's witness denies the suggestions and interpretations given by Respondent (Questions Nos.180 and 181 in cross-examination of Claimant witness).

Q. No.180. I am suggesting to you that the statement in para 25 of your affidavit that the triangular events was a replacement of the already scheduled India New Zealand series of October, 2003 is your assumption and is not based on any records.

Ans. You are not correct. Please refer to the definition of cricketing events on page 5 of the agreement which does not exclude any combination of teams playing in an event. It also refers to Annexure-A as a list and proposed schedule and the Annexure-A does have a proposed schedule for October, 2003 to November, 2003. The triangular series matches with both of this.

Q. 181. I am drawing your attention to the document at page 749 of the respondents documents which is a letter dated 30th September, 2003 written by BCCI to the effect that the India New Zealand series and the tri-series wee two separate events. What do you have to say to that?

Ans. The reference is to a letter from BCCI to Dordarshan which may have a relevance the way the events were described in

Doordarshans agreement with BCCI. It does not impact the definition used by Doordarshan in their agreement with Claimant. This document is marked as Mark X-1 for identification. I accordingly reject the submission of Respondent.

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A series cannot be one match, described as Test Matches. Series could have two or more test matches. A Test Match would ordinarily mean 5 days of international cricket. As to how many Test Matches each of the 7 series were provided to the Claimant has not been shown by the Claimant. These days as I give this Award, there is series between England - India and there are 5 test matches. On the other hand Respondent Prasar Bharati has filed a statement showing the no. of ODIS (One Day International) and no. of days of Test Matches in each series. Prasar Bharati also could not have shown a series between India - Australia - New Zealand which is not part of the series mentioned in the schedule to the agreement, therefore cannot be taken note of. This way Respondent has provided 118 days international cricket to the Claimant.

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It would be seen that last series in the table between India – Australia - New Zealand is not part of the series under the agreement. So 10 days of cricket sought to have been provided to the Claimant has to be ignored. Thus 118 days cricket would appear to have been provided to the Claimant as per the table. There would be thus 17 days of cricket which Respondent - Prasar Bharati has failed to provide to the Claimant (135 days - 118 days = 17 days). Claimant also says that there was shortfall of 17 days of cricket not having been provided to it by the Prasar Bharati. As to how 118 days cricket was provided by the Prasar Bharati to the Claimant, details are given in the aforementioned table. Claimant has not given any details of the days of cricket

> *provided to it. In the circumstances, I would accept the table of the Prasar Bharati showing how 118 days of cricket was provided to the Claimant."*

77. The above quotation would itself show not only the contradiction in the findings of the learned Arbitrator, but as rightly contended by the learned senior counsel for the appellant, a new case *dehors* the contract being made by the learned Arbitrator in favour of the respondent contrary to its own pleadings.

78. Now coming to the issue of giving a monetary value to the less number of International Cricket days provided by the appellant to the respondent, we find no merit in the submission of the learned senior counsel for the appellant that the consideration of USD 43.5 million, being for both, domestic as also International Cricket, could not have been ascribed entirely towards International Cricket by the learned Arbitrator. In this regard, we have already reproduced hereinabove Clause 9 of the Agreement between the parties. The same, in Clause 9.3 thereof, states that if more or less international matches than specified in Annexure-A (wrongly typed as 'I') are played during the term of the contract, there shall be an adjustment as provided in Clause 9.4.1 and Clause 9.4.2 respectively. Clause 9.4.2 states that if less 'international' matches are played or coverage of the international matches stipulated in the Agreement is not delivered, '*then the consideration for the Rights will be reduced on a pro rata basis*'. Therefore, in terms of the Agreement, though rights for both, the domestic as also international matches, were provided by the appellant to the respondent, however, the entire consideration under the

Agreement was ascribed to the international matches. Clause 9.4.2 further stated that if there is a lesser number of international matches provided, the consideration for the Rights, that is, USD 43.5 million shall be reduced on a pro rata basis. This again is a matter of interpretation of the contractual terms by the learned Arbitrator, with which, much less finding any fault, we do agree, and therefore, find no merit in the challenge thereto.

79. The next challenge of the appellant to the Arbitral Award and the findings of the learned Single Judge are to the rate of interest awarded by the learned Arbitrator. In this regard, we may only note that there was no specific challenge to the same made by the appellant in its application under Section 34 of the A&C Act before the learned Single Judge. There appears to be no submission in this regard also made before the learned Single Judge. It is also not denied that the appellant itself had claimed interest at the rate of 18% p.a. on its Counter Claim. Once both the parties were claiming the same rate of interest, we find no error in the learned Arbitrator awarding the same while allowing the claim of the respondent. The plea of the appellant that further reasons were required from the arbitrator for the said rate of interest to be awarded, therefore, does not impress us. While in normal circumstances, the Arbitral Tribunal must give reasons not only for the rate of interest but also for the period for which it is granted, the same rigour may not apply in the facts of the present case where the appellant itself was claiming interest at the same rate.

80. In view of the above, the challenge of the appellant to the order of the learned Single Judge, as far as the claims of the respondent are

concerned, we find no merit.

81. Similarly, we find no merit in the challenge of the respondent to the finding of the learned Single Judge that the 10 cricketing days for India-Australia-New Zealand Triangular series also need to be included while calculating the number of international matches provided by the appellant to the respondent.

82. Now coming to the challenge of the appellant to the rejection of the Counter Claims, the first Counter Claim raised by the appellant was on account of alleged loss occasioned by delayed payment of USD 6.56 million, which was payable by the respondent to the appellant on or before 30.09.2003, but was paid only on 24.12.2004. The learned Arbitrator rejected the said Counter Claim by holding that the appellant had failed to lead any evidence in support of the said claim.

83. In this regard, we find merit in the contention of the learned senior counsel for the appellant that once the claim is of delay in payment of money, the person deprived of the use of money is legitimately entitled, as a right, to be compensated for such deprivation, including in form of interest for the delayed period, however, at the same time, the learned Arbitrator has not based his rejection on the sole basis of the appellant not leading evidence in support of its claim of damages. The learned Arbitrator has agreed with the submission of the respondent that the sum of USD 6.56 million had been deposited by the respondent in this Court, pursuant to the Order of this Court on 26.09.2003, that is, much before the due date of 30.09.2003. Later, the appellant filed an application seeking

release of the said amount, which was not permitted by the High Court, *vide* its Order dated 13.09.2004, while adjourning the said application to 19.01.2005. An application to advance the date of hearing was also dismissed by this Court. Thereafter, the respondent sent a notice to the appellant to settle accounts in terms of the Agreement and, as the appellant failed to do so, filed another application under Section 9 of the A&C Act, being O.M.P. 438/2004. In the said O.M.P., in compliance with the Order dated 30.11.2004 passed by this Court, the respondent deposited USD 2.8 million also in Court. In spite of the same, the appellant invoked the bank guarantee and recovered USD 6.56 million on 24.12.2004.

84. In these peculiar facts, the learned Arbitrator found that the claim of damages for the alleged delayed payment was not maintainable.

85. We do not see any reason to disagree with the said finding of the learned Arbitrator. In any case, appreciation of the evidence and the effect thereof on the claim of a party, unless found to be completely perverse or patently illegal, cannot be interfered with in exercise of powers under Sections 34/37 of the A&C Act.

86. Counter Claim no.2 of the appellant was on account of broadcast and marketing of highlights and clippings of BCCI matches by the respondent within India. The learned Arbitrator rejected the said claim of the appellant by holding that though the appellant itself had raised the said issue, however, it chose not to pursue the same as it did not appoint an arbitrator to adjudicate the same. The learned Arbitrator, therefore, held that the appellant was a by-stander who let

the train cross the station and cannot be allowed to raise this claim at a belated stage.

87. In this regard, we may only note that on an application filed by the appellant under Section 9 of the A&C Act, the respondent, *vide* Order dated 21.02.2003, had been restrained from marketing the clippings and highlights of the matches within India. The respondent challenged the same by way of an appeal, being FAO(OS) 129/2003, and the order of the learned Single Judge was stayed by the Division Bench, *vide* order dated 24.03.2003, noting that the appellant had failed to take concrete steps to appoint an arbitrator. The appellant now contends that it had invoked the arbitration *vide* a Notice dated 19.05.2003, receipt whereof is denied by the respondent. Reference of this notice was not made by the appellant before the learned Arbitrator or even before the learned Single Judge. Though, by an order dated 21.02.2005, the parties were referred to arbitration, allowing them to raise their claims and Counter Claims, the said Counter Claim came to be raised by the appellant only on 22.07.2006, that is, much beyond the period of limitation. It was in these facts that the learned Arbitrator held that the same cannot be allowed to be raised at this belated stage.

88. This again, being a finding of facts, cannot be interfered with by this Court in exercise of its power under Sections 34/37 of the A&C Act.

89. Counter Claim no.3 was raised by the appellant, claiming unauthorised audio/video streaming of cricket matches on internet by the respondent. The learned Arbitrator found that the appellant had contended that these rights had been given to the respondent only by a

Letter dated 18/19.02.2000, which was a separate Agreement and, therefore, not subject to the Arbitration Agreement between the parties contained in the Global Rights Agreement. The learned Arbitrator, therefore, held that the appellant cannot be allowed to approbate and reprobate on the same. The learned Arbitrator further held that the appellant, having not raised this claim in the first arbitration proceedings, the claim would be barred by the principles of constructive *res judicata*.

90. Though the learned senior counsel for the appellant has contended that the appellant came to know of this violation of the Agreement by the respondent only in October, 2003, and that the first arbitrator had held that the dispute arising from Letter dated 18/19.02.2000 were also arbitrable, we are not impressed with the challenge laid by the appellant.

91. As noted hereinabove, the learned Arbitrator has held that the appellant could have raised this claim in the first arbitration proceedings. There is no clear answer to this from the appellant. In fact, it appears that whether the respondent could have exploited its right on the internet was a subject matter of the first arbitration proceedings which culminated into an Award, challenge to which was dismissed by this Court. Invoking of the principles of constructive *res judicata* by the learned Arbitrator, therefore, cannot be faulted, especially in exercise of the powers under Sections 34/37 of the A&C Act.

92. With the above, we conclude the challenge to the Arbitral Award laid by the parties. However, as far as the challenge to the

Impugned Order of the learned Single Judge is concerned, after the passing of the Impugned Award, a further development has taken place which has given rise to a further challenge to the Impugned Order of the learned Single Judge by the appellant.

93. As noted hereinabove, the learned Single Judge has held that the finding of the learned Arbitrator of there being a shortfall of 17 cricketing days, cannot be sustained. The learned Single Judge has held that the ten days of India-New Zealand-Australia Triangular Series also need to be counted under the Global Rights Agreement and therefore, there was a shortfall of only seven days. The learned Single Judge has further held that for the shortfall of 7 days, the respondent would be entitled to avail of its remedies in accordance with law.

94. At the time of the passing of the Impugned Order, the respondent had already filed an application seeking enforcement of the Arbitral Award, being O.M.P. (ENF.)(COMM) 232/2018.

95. A learned Single Judge of this Court, by order dated 15.06.2020, in those proceedings, held that for the 7 days of shortfall, the Award still sustains and for which the appellant has to make payment in terms of the Award. We quote from the order as under:

> *"13. Now coming to the question of quantification of 7 days shortfall, what emerges is that the learned Judge vide deciding O.M.P.(COMM)225/2017 did not deal with the calculation for either 17 days or for 7 days, and therefore, left it to the DH to raise a claim towards the amount payable to it. This is, evidently, for the reason that the award granted compensation on a per day basis and, therefore, the quantification for 7 days shortfall was never really an issue. Therefore, merely because no quantification*

has been done by the learned Judge while upholding a part of the award, it cannot be said that no amount is payable to the DH. In fact, the amount payable to the DH for 7 days shortfall is crystal clear and needs no determination even by this Court, especially in view of the order dated 13.12.2018, read with order dated 18.01.2019 passed in these very proceedings. Para 13 of the order dated 13.12.2018 reads as under:-

> *"13. Therefore, for the moment, I am inclined to direct Prasar Bharti to deposit an amount equivalent to seven (7) cricketing days.*
>
> *13.1 According to Mr. Sharma, if 7 cricketing days is monetized the principal amount would be a sum of Rs.15,37,634.65.*
>
> *13.2 To be noted, the learned Arbitrator has also awarded interest at the rate of 18 per cent.*
>
> *13.3 In my view, for the moment, simple interest at the rate of 9 percent should suffice.*
>
> *13.4 Accordingly, Prasar Bharti is directed to deposit Rs.15,37,634.65 along with interest at the rate of 9 percent for the period referred to in the Award."*

14. As the aforesaid order contained some typographical errors regarding the amount, the same came to be corrected on 18.01.2019, on which date also, the learned counsel for the JD did not dispute the figure of Rs.15,37,634,65/- and accordingly, the JD was directed to deposit a sum of Rs. 15,37,634,65/- along with interest @ 9% p.a. for the shortfall of 7 days, which is the period for which the decree holder's claim has been upheld by the Coordinate Bench. Pursuant to the said order,

the JD has duly deposited a sum of Rs.33,69,94,847/-, seeking release whereof, the present petition has been filed by the DH No. 1.

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18. In the light of the aforesaid discussion, specially the admitted position that the JD is entitled to recover amounts under the 3 arbitral awards from the DH, I am of the view that while withholding a sum of Rs.22,43,55,126/- for the present, it would be appropriate to direct release a sum of Rs. 11 crores in favour of the DH No. 1, out of the sum of Rs.33,69,94,847/- as deposited by the JD. The Registry is accordingly directed to remit to DH No.1, a sum of Rs. 11 crores with proportionate interest accrued thereon, out of the sum deposited by the JD. The aforesaid amount be transferred in Account No. CA 000984321151, Bank: Indian Bank, Branch-Saket, New Delhi, ISFC: IDIB000S097."

96. This has led to a challenge by the appellant, which may be a little confused. On the one hand the appellant submits that the learned Enforcement Court cannot go behind the order of the learned Single Judge and expand its scope in the enforcement proceedings and in this regard, places reliance on the judgments of the Supreme Court in ***Topanmal Chhotamal v. Kundomal Gangaram & Ors.***, (1959) SCC OnLine SC 22, and ***Meenakshi Saxena & Anr. v. ECGC Limited & Anr.***, (2018) 7 SCC 479, and on the other hand, it contends that the learned Single Judge cannot modify the Award and, therefore, the entire Award, that is even for those 7 days, is deemed to have been set aside by the learned Single Judge leaving it open to the respondent to avail of its remedies in accordance with law.

97. As far as the powers of the Executing Court are concerned, it

cannot be disputed that the Executing Court cannot go behind the Decree or expand its scope in the name of interpreting the Decree. However, we would not like to go further into this issue, as no appeal lies under Section 37 of the A&C Act against the order of the Executing Court.

98. On the second part of the challenge, however, by the Order dated 14.09.2020 passed by the Supreme Court in SLP(C) No. 9884/2020, titled ***Prasar Bharati (Broadcasting Corporation of India) v. Stracon India Limited & Anr.***, the Supreme Court has observed that it is open to both the parties to argue all points in the appeals that may be filed against the Impugned Order herein.

99. As the respondent contends that by the Impugned Order, the claim of the respondent for 7 days, on a pro-rata basis, stands sustained by the learned Single Judge, we shall, therefore, have to consider the challenge of the appellant to the Impugned Award on the same basis.

100. In ***Gayatri Balasamy v. ISG Novasoft Technologies Limited***, (2025) 7 SCC 1, the Supreme Court has considered the powers of the Court, under Sections 34/37 of the A&C Act, to modify an Arbitral Award or to severe the severable part thereof which cannot be sustained. By a majority, the Court held as under:

> *"34. To this extent, the doctrine of omne majus continet in se minus-the greater power includes the lesser-applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It*

would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be interdependent or intrinsically intertwined. If they are, the award cannot be set aside in part.
36. The Privy Council, in Ram Protap Chamria v. Durga Prosad Chamria addressed this issue with the following pertinent observations:

> *"18. ... if, however, the pronouncement of the arbitrators is such that matters beyond the scope of the suit are inextricably bound up with matters falling within the purview of the litigation, in that case, the court would be unable to give effect to the award because of the difficulty that it cannot determine to what extent the decision of the subject-matter of the litigation has been affected and coloured by the decision of the arbitrators in regard to matters beyond the ambit of the suit."*

Thus, the power of partial setting aside should be exercised only when the valid and invalid parts of the award can be clearly segregated particularly in relation to liability and quantum and without any corelation between valid and invalid parts.''

101. The Court further clarified the difference between setting aside

and modification of an award, and recognised a limited power of modification of the Arbitral Award, by holding as under:

> *"52. Reference may also be made to the power of recall, which every court possesses, as recognised by this Court in Budhia Swain v. Gopinath Deb. The availability of this power enables the Court to address various situations efficiently, rather than remanding the matter to the Arbitral Tribunal under Section 34(4). Lastly, one may also refer to the power of granting interim relief f the circumstances so warrant.*
>
> *53. The doctrine of implied power is to only effectuate and advance the object of the legislation i.e. the 1996 Act and to avoid the hardship. It would, therefore, be wrong to say that the view expressed by us falls foul of express provisions of the 1996 Act.*
>
> *54. Under Section 152 of the Code, a court executing a decree has the power to correct clerical or arithmetic mistakes in judgments, orders, or decrees arising from any accidental slips or omissions. This Court in Century Textiles Industries Ltd. v. Deepak Jain held that clerical or arithmetical errors may be corrected by the executing court, however, the court must take the decree according to its tenor and cannot go behind the decree."*

102. Hon'ble Mr. Justice K.V. Viswanathan, in his dissenting opinion in the said judgment, however, held that the power to modify the Award cannot be said to be subsumed in the power to set aside, nor can any such power be assumed by invoking inherent powers of the court.

103. Applying the above principles, as laid down in the Majority judgment, to the facts of the present case, the learned Arbitrator, in the

Impugned Award, has held that there was a shortfall of 17 cricketing days and the same was quantified in terms of money on a pro-rata reduction of the consideration under the Agreement. The learned Single Judge held that for 10 days of India-Australia-New Zealand Triangular Series, the Award cannot be sustained and therefore, the total period of shortfall in cricketing days will be only 7 days. This part being severable was, therefore, set aside. The Award for the remaining 7 days, however, stood sustained.

104. As we have already upheld the Impugned Order on this aspect, we are of the opinion that the challenge to the upholding of this severable part of the Arbitral Award has no merit. The quantification of recoverable amount for these 7 days is calculable on basis of the Arbitral Award itself. As noted above, the Arbitral Award had held that the consideration payable under the Global Marketing Agreement was for 135 cricketing days and any shortfall therein will reduce the consideration on a pro-rata basis. Therefore, for the 7 days, applying the pro-rata reduction in the consideration as mentioned by the learned Arbitrator and upheld by the learned Single Judge, the Award remains enforceable against the appellant and in favour of the respondent.

Conclusion:

105. In view of the above, we find no merit in the challenge to the Impugned Order of the learned Single Judge, as laid by the appellant as also the respondent.

106. The appeals are, accordingly, dismissed. The applications are

disposed of as infructuous.

107. There shall be no order as to costs.

NAVIN CHAWLA, J.

MADHU JAIN, J.

JANUARY 23, 2026/ns/***VS***