REPORTABLE

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

ARBITRATION APPEAL NO. 1 OF 2022

MWC Market Services Pvt. Ltd. a private limited, a Company incorporated and registered under the Companies Act, 1956 and having its registered office at Nirlon House, 3rd Floor, Dr. Annie Besant Road, Worli, Mumbai – 400030.

... Appellant

- Versus –

1. The State of Manipur represented by the Chief Secretary to the Government of Manipur, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

2. The Principal Secretary Finance, Government of Manipur, Imphal -795001, Manipur, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

3. The Director of Lotteries, Government of Manipur, Imphal – 795001, Manipur, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

4. The Commissioner Finance, Government of Manipur, Finance Department, Imphal – 750001, Manipur, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

5. The Deputy Secretary (Finance), Government of Manipur, Imphal – 795001, Manipur, Old Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

... Respondents

With
MC(ARB.A.) No. 1 of 2022
(Ref:- Arbitration Appeal No. 1 of 2022)

1. The State of Manipur represented by the Chief Secretary to the Government of Manipur, Imphal – 795001, Manipur.
2. The Principal Secretary, Finance, Government of Manipur, Imphal – 795001, Manipur.
3. The Director of Lotteries, Government of Manipur, Imphal – 795001, Manipur.
4. The Commissioner Finance, Government of Manipur, Finance Department, Imphal - 795001.
5. The Deputy Secretary (Finance), Government of Manipur, Imphal – 795001.

..... *Applicants/Respondents*

- Versus -

MWC Market Services Pvt. Ltd., a private limited company incorporated and registered under the Companies Act, 1956 and having its registered office at Nirlon House, 3rd Floor, Dr. Annie Besant Road, Worli, Mumbai – 400025 and 43, Kalpataru Square, 4th Floor, Kondivita Lane, Off Andheri Kurla Road Andheri East Mumbai, Maharashtra – 400059.

.... *Opposite Party/Appellant*

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR
HON'BLE MR. JUSTICE A. BIMOL SINGH

For the appellant : Mr. S. Bhandari, Advocate along with Mr. K. Pradeep, Advocate

For the respondents : Mr. GN Sahewalla, Senior Advocate instructed by Mr. Debojit Senapati, and Ms. N. Elizabeth, Advocates

Judgment/order reserved on: 27.04.2026.

Date of judgment & order : 30.05.2026.

JUDGMENT & ORDER
[CAV]

[M. Sundar, CJ]

[1] The following abbreviations/short forms/reference for convenience are used in this order:

Sl. No.	**Abbreviation/Short Form/reference for convenience**	**Full Form/Expansion**
1.	A&C Act	Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996)
2.	MGR	Minimum Guarantee Revenue
3.	AT	Arbitral Tribunal
4.	Appellant	MWC Market Services Pvt. Ltd. a private limited, a Company incorporated and registered under the Companies Act, 1956 and having its registered office at Nirlon House, 3rd Floor, Dr. Annie Besant Road, Worli, Mumbai – 400030.
5.	MWC	
6.	State	All respondents collectively

7.	CPC	The Code of Civil Procedure, 1908 (5 of 1908)
8.	said Contract Act	The Indian Contract Act, 1872 (9 of 1872)

[2] At the outset, as a matter of procedural detail, this Court notices that there is a difference in the description of the appellant company in the short and long cause-title in the memo of appeal and the section 34 petition. In this Court, in the short and long cause-title, the description of the appellant reads as follows:

> *'MWC Market Services Pvt. Ltd. a private limited, a Company incorporated and registered under the Companies Act 1956 and having its registered office at Nirlon House, 3rd Floor, Dr. Annie Besant Road, Worli, Mumbai 400030.'*

In the section 34 Court, the petitioner company has been described as follows:

> *'MWC Market Services Pvt. Ltd. a private limited Company incorporated and registered under the Companies Act 1956 and having its registered office at Nirlon House, 3rd Floor, Dr. Annie Besant Road, Worli, Mumbai 400030.'*

Ideally, the Registry should have raised an objection but considering the stage of the matter, this Court deems it

appropriate to write that the description of parties will be as in the award of the AT which is a decree by itself.

[3] This order will now dispose of captioned Arbitration Appeal which was presented in this Court on 24.05.2022.

[4] Captioned appeal was first listed before this Division Bench presided by one of us (Justice M. Sundar) on 25.09.2025. In this first listing, both sides sought an adjournment on the ground that counsel and senior counsel from both sides have to travel for hearing and a short adjournment order was made. The matter stood over to 05.11.2025 which was the first productive hearing before this Division Bench. On 05.11.2025 the following proceedings were made:

> ***'05.11.2025***
>
> *[1] Captioned main appeal is a statutory appeal under Section 37 of 'the Arbitration and Conciliation Act, 1996 (26 of 1996)' {hereinafter 'A and C Act' for the sake of brevity}.*
>
> *[2] Captioned appeal has been filed assailing an order dated 24.02.2021 made by a Section 34 Court (District Judge, Imphal East) dismissing a Section 34 petition and confirming an arbitral award dated 30.06.2012 made by an Arbitral Tribunal (AT) constituted by a*

former Hon'ble judge of the High Court (sole Arbitrator).

[3] Mr. S. Bhandari, learned counsel for the appellant and Mr. Debojit Senapati, learned State counsel for respondents 1 to 5 (collectively State) are before us in the physical court. Learned State counsel is led by learned senior counsel Mr. G.N. Sahewalla who is before us on the V.C. platform.

[4] At the outset, both sides fairly agreed that the former Hon'ble judge of High Court who, as sole arbitrator (AT) rendered the award dated 30.06.2012 can be deleted from the array of respondents. Therefore, applying Vinay Heavy Equipments procedure {Zonal General Manager, Ircon International Limited Vs. Vinay Heavy Equipments reported in 2007 SCC OnLine SC4 and Zonal General Manager, Ircon International Limited Vs. Vinay Heavy Equipments reported in (2015) 13 SCC 680} put in place by Hon'ble Supreme Court, as also the sublime philosophy underlying Section 42-B of A and C Act and with the consent of both sides, R6 (respondent No. 6) is deleted from the array of parties. To be noted, Vinay Heavy Equipments procedure is buttressed by Judgment Jogendrasinhji Vikaysinhji principle which says that only a Tribunal which is to defend its own orders will normally be impleaded in proceedings assailing orders made by a Tribunal. It is further to be noted that Jogendrasinhji caselaw citation is (2015) 9 SCC 1.

[5] As regards the trajectory the matter has taken, it appears to have a chequered history. The genesis is a contract dated 05.04.2001 which is a contract for appointing the appellant as exclusive sole selling agent for Manipur State Online Lotteries, this contract ran into rough weather, the arbitration clause in the contract was triggered, a sole arbitrator was appointed by a Section 11 Court (Gauhati High Court) in and by an order dated 24.05.2002, this arbitration proceedings culminated in a consent award dated 26.07.2002 with a correction dated 26.08.2002, the consent award further culminated in an agreement dated 20.11.2002 with an addenda dated 02.08.2003, this agreement again ran into rough weather triggering the arbitration clause again leading to second round of arbitration proceedings which culminated in an award dated 30.06.2012 about which there is allusion supra. This award went against the contractor, the contractor as protagonist of Section 34, moved the Section 34 Court and 'the Section 34 Court in and by order dated 24.02.2021' ('impugned order' for convenience) dismissed the 34 petition confirming the arbitral award and that has led to the captioned statutory appeal which is before us.

[6] As regards the statutory appeal, Mr. Bhandari, learned counsel for appellant and Mr. G.N. Sahewalla, learned senior counsel for State very fairly submitted that the 34 Court had applied the pre 23.10.2015

regime and there is no disputation that the pre 23.10.2015 regime applied for the Section 34 legal drill.

[7] As regards the appeal, learned counsel for appellant submitted that he would predicate his arguments on 3 (three) points and they are as follows :

i) Public policy;
ii) patent illegality (to be noted only patent illegality qua judicial pronouncement (Saw Pipes) and not 34 (2)A as it is pre 23.10.2015 regime);
iii) Section 28(3).

[8] Learned counsel for appellant also very fairly submitted that he would confine his challenge to damages of a little over 10 crores which the contractor has been multed with vide the impugned arbitral award which has been confirmed by the Section 34 court.

[9] Both sides requested for scheduling on a date for productive hearing/arguments.

[10] List on 12.11.2025.'

[5] Thereafter, post non-productive listings on 12.11.2025 and 04.12.2025 hearing continued and proceedings made in the listing on 04.02.2026 reads as follows:

'04.02.2026

[1] Read this in conjunction with and in continuation of earlier proceedings.

[2] In the hearing today, Mr. S. Bhandari, learned counsel along with Mr. K. Pradeep, learned counsel on record for sole appellant continued his submissions. As regards respondents (State), Mr. G.N. Sahewalla, learned senior counsel instructed by learned State counsel on record Mr. Debojit Senapati along with Mrs. Nongthongbam Elizabeth are before this Court.

[3] Mr. Bhandari stated with clarity and specificity that though the entire arbitral award was assailed before the Section 34 Court, he would now abridge his campaign (against the arbitral award and the Section 34 court order) in the captioned appeal and restrict the same to compensation mulcted on the contractor vide arbitral award, being compensation in a sum of Rs. 10,19,48,111/-.

[4] To be noted, the captioned appeal is being heard out on the above basis on the aforementioned short point.

[5] In the course of hearing, it came to the light that discussion and dispositive reasoning qua aforementioned short point is articulated in paragraphs 150 to 162 of the arbitral award. The undisputed facts are that there was a modification on 20.11.2002 i.e.,

modification to original contract by which sub-clause 4 was added to Clause X of the original contract (to be noted, Clause X of the original contract is captioned 'Indemnity') wherein and whereby the first draw should have been held by the contractor within 6 (six) months from 20.11.2002 i.e., by 20.05.2003. There is no disputation or contestation (factually) that (a) the first draw was not held on or before (20.05.2003) and (b) the last date 20.05.2003 was extended from time to time and vide the last extension, the last date was frozen as 01.12.2003.

[6] It is also to be noted that the Arbitral Tribunal has mulcted the contractor with compensation inter-alia by construing clause X.4 of the original contract as a liquidated damages clause.

[7] The arguments will continue tomorrow. In the interregnum, Registry to requisition all the records from the Court of the learned District Judge, Imphal East pertaining to Arbitration Case No. 1 of 2012/10 of 2013 (MWC Market Services Pvt. Ltd. –Versus- State of Manipur and 5 Others).

[8] Registrar (Judicial) is directed to send special messenger to the Section 34 Court right away and get the entire records today evening so that the same is available in the hearing tomorrow.

[9] List as part-heard matter tomorrow.

[10] List on 05.02.2026.'

[6] The afore-referred two proceedings made in the listings on 05.11.2025 and 04.02.2026 shall now be read as an integral part and parcel of instant order. This also means that short forms/abbreviations used in the afore-referred proceedings will continue to be used in the instant order and in any event in the opening paragraph of this order, a tabulation giving an adumbration of the abbreviations/short forms/reference for the sake of convenience used in instant order and the expansions/long forms of the same has been set out.

[7] The afore-referred two proceedings dated 05.11.2025 and 04.02.2026 capture the crux and gravamen of the matter. To put it differently, these two proceedings set out the kernel of the captioned matter particularly the bone of contention. The legal perimeter within which legal tussle *qua* the bone of contention will perambulate has also been clearly drawn/set out with consent of both sides *inter-alia vide* paragraphs 6 and 7 of afore referred proceedings dated 05.11.2025. Be that as it may, this Court is of the considered opinion that it is necessary to extract and reproduce clause X of the primary contract dated 05.04.2001.

Clause X was modified on 04.09.2022. Modification of Clause X on 04.09.2022 was *vide* a separate communication/agreement and Clause 10.4 of paragraph 5 of this separate agreement modifies Clause X of primary contract. Clause X, Clause 10.4 added to Clause X on 04.09.2022 and Schedule – I thereat read as follows:

CLAUSE X

INDEMNITY

10.1 The Sole Selling Agent shall be responsible for and shall indemnify the State against any claims, losses, charges, amounts, dues payable or claimed by any distributors, agents, staff, suppliers or sub-contractors appointed or engaged by the Sole Selling Agent.

10.2 The Sole Selling Agent shall hold harmless and indemnify the State against any liability in respect of any act, error or omission by the Sole Selling Agent or by any such person referred to in Clause 10.1 in discharging its responsibilities to the Sole Selling Agent which is in violation of any law.

10.3 The State shall indemnify the Sole Selling Agent against any claims, losses, costs, charges or expenses incurred by the Sole Selling Agent in respect of action lawfully undertaken by the Sole Selling Agent under this Agreement.

5. Add a new clause in Clause X of the said Agreement as under:

10.4 The Sole Selling Agent shall commence the first draw within the period specified in Schedule I of this modification failing which compensation of Rs. 35 (thirty-five) crores shall be paid to the State by the Sole Selling Agent. In the event of failure to make payment of Rs. 35 crores, the agency shall stand terminated.

SCHEDULE 1

1. The 1st para of Clause B 2 remains the same.

1.1 The 2nd Para of clause B 2 of the Schedule 1 to the said Agreement shall be re-written as under:

"The Sole Selling Agent shall pay to the State in respect of each year in which a Lottery is operating, calculated from the date on which the Lottery commences operation, the minimum guaranteed revenue to the State as set out below:

Sr.No	**Year**	**Minimum Guaranteed Revenue (Rs in crores)**
1	1st Year	
1	1st Year	35(thirty five) crores + Rs. 5 (Five) crores for social causes
2	2nd Year	45(forty five) crores + Rs. 5 (Five) crores for social causes
3	3rd Year	50(fifty) crores + Rs. 5 (Five) crores for social causes
4	4th Year	55(fifty five) crores + Rs. 5 (Five) crores for social causes
5	5th Year	60(sixty) crores + Rs. 5 (Five) crores for social causes
6	6th Year	66(Sixty six) crores + Rs. 5 (Five) crores for social causes
7	7th Year	74(Seventy Four) crores + Rs. 5 (Five) crores for social causes
8	8TH Year	82(Eighty two) crores + Rs. 5 (Five) crores for social causes
9	9th Year	90(Ninety) crores + Rs. 5 (Five) crores for social causes
10	10th Year	100(hundred) crores + Rs. 5 (Five) crores for social causes

1.2 All other remaining provisions of Paragraph 2 of Clause B2 of Schedule 1 to the said Agreement clause shall remain in full force.

1.3 Add the following as 3rd para at the end of clause B 2 of Schedule 1 to the said Agreement.

" The Agent shall furnish security in the form of a running and irrevocable Bank Guarantee of a nationalized bank to the satisfaction of the State for an amount of Rs. 6 crores (Rupees six crores), to the State in favour of the Secretary Finance Department, Government of Manipur, Imphal one week before the commencement of sale of Lottery tickets for the first draw of lottery towards securing of the payment of sale proceeds of lottery tickets and any other charges as may be determined by the State Government under the terms of the Agreement. The Bank Guarantee shall be valid for the duration of the Agreement and shall be liable to be invoked by the State Government for failure to deposit the sale proceeds of lottery tickets and any other charges or dues payable by the Agent or for breach of any of the terms and conditions of the Agreement entered into between the Parties.

2. Clause B 3 of the Schedule I to the said Agreement shall be re-written as under:

" The sole selling agent shall bear and make total payment of Sales Tax, Surcharge on ST Turnover Tax pertaining to the sale of Lottery Tickets in each and every State and shall present the account of all payments to the relevant taxation authorities and the Director, Manipur State Lottery. In case of default in payment of such taxes, the State shall recover such amounts from the Bank Guarantee provided by the Sole Selling Agent. The Sole Selling agent shall indemnify the State from any liability of sales tax, surcharge on sales tax, turnover tax on account of sale of On Line Lotteries.

3. Clause 4 of the Schedule 1 to the said Agreement shall be re-written as under:

" The cost of printing tickets for the sale of on-line lottery tickets shall be borne and paid by the Sole Selling Agent. The sole selling agent shall indemnify the State from any liability of cost of printing tickets."

4. Clause C of the Schedule I to the said Agreement shall be rewritten as under:

The Sole Selling Agent shall be obliged to commence sale of the On-Line Lottery tickets well before the 1st draw to be held within a period of Six months from the date of execution of this modified agreement subject however, to the State making any laws or rules and regulations that maybe necessary for the operation of the Lottery, and other media draws of the Online Lottery, and to the provisions of Clause 16 of the said Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed and sealed on the date and year first written above.

[8] As would be evident from paragraph 5 of afore-referred 04.02.2026 proceedings, the appellant vastly descoped its challenge to the arbitral award made by AT and consequently challenge to Section 34 Court order. Consequently, captioned appeal is now restricted (descoped) to challenge to paragraphs 150 to 162 of the arbitral award. This Court, for the sake of ease of reference, deems it appropriate to extract and reproduce these paragraphs 150 to 162 of the arbitral award and the same read as follows:

> [150) I have also analysed the Counter Claim made under Serial No. 1 by the Respondent claiming an amount of Rs. 35,00,00,000/- (Rupees Thirty Five Crores) for compensation arising from failure to start the first draw within the stipulated

time. This Claim is based upon Clause 5 of the Modified Agreement dated 20.11.2002 whereby, the parties had agreed to insert Clause 10.4 to the Original Agreement dated 05.04.2001. Clause 5 of the Modified Agreement dated 20.11.2002 is extracted herein below:-

> "10.4 The Sole Selling Agent shall commence the first draw within the period specified in Schedule I of this modification ***failing which compensation of Rs. 35 (thirty-five) crores shall be paid to the State by the Sole Selling Agent. In the event of failure to make payment of Rs. 35 crores, the agency shall stand terminated.***"

151) I have already held in my finding with regard to Issue No. 9 at paragraph 82 above that the Claimant was under an obligation to commence sale of online lotteries well before the first draw to be held within six months from the date of execution of the Modified Agreement i.e. 19.05.2003 being six months from 20.11.2002.

152) The Claim under Clause 5 of the Modified Agreement dated 20.11.2002 has been rightly agreed to by the Claimant in their reply to the Counter Claim as a liquidated damages Clause. At paragraph 8 of the Preliminary Objections the Claimant stated thus:-

> "That under Clause 5 of the agreement dated 20.11.2002 the respondents right to claim any compensation for loss or damages has been mutually agreed therein. This clause is in the form of a penalty clause and/or in the form of a

liquidated damages clause. This amount has been restricted to a predetermined amount of Rs. 35 crores. Under law as well as in equity the respondents cannot have a right to claim anything more than Rs. 35 crores. The claimant submits that even otherwise the claim of Rs. 35 crores of the respondents is not sustainable."

Clause 5 of the Modified Agreement dated 20.11.2002 read with Schedule I of the Modified Agreement whereby Clause C of Schedule I to the Original Agreement dated 05.04.2001 was modified is as under:-

"The Sole Selling Agent shall be obliged to commence sale of the On-Line Lottery tickets well before the 1st draw to be held within a period of Six months from the date of execution of this modified Agreement subject however, to the State making any laws or rules and regulations that maybe necessary for the operation of this Lottery, and other media draws of the Online Lottery, and to the provisions of Clause 16 of the said Agreement."

153) RW-1, Shri A.R. Sharma during his cross-examination was asked as under:

"Q. How can the State Government claims Rs. 35 crores from the Claimant for delay in holding the first draw?

A. The State Government granted extension of time for the first draw but did not waive the penal provision."

In reply to another question as to why on 05.05.2003, the Government did not make any demand of Rs. 35 crores on the Claimant, the said witness answered that "since the lottery draws were not yet started and in the interest of both the parties no demand was made then".

The said witness denied the suggestion that the Government of Manipur had waived their right to claim compensation of Rs. 35 crores.

Even CW-1 Bharat Seth in his cross-examination dated 24.09.2005 admitted that "as per the Modified Agreement the first draw was to be made within six months from the date of the Modified Agreement subject to conditions mentioned in the said Agreement."

153) Of some relevance would be the cross examination of RW-3, Sri Th. Chittaranjan Singh who was the Director (Lotteries), Manipur from 03.05.2002 to 27.08.2003 and prior thereto was holding the office of Joint Director (Lotteries), Manipur from 01.03.2001 to 02.05.2002. During his cross-examination on 23.07.2006 by the counsel of the Claimant, the said Witness was asked as to the norms/standards in awarding Government contracts involving public revenue by the State of Manipur. The relevant questions and the answers are extracted herein below:-

"Q. Thus the Manipur Government adhere to any norms, standards in awarding government contracts involving public finance/public revenue, seeking public participation?

A. Yes – There are norms for floating of tenders set forth in the Delegation of Financial Power Rules laid down by the Government of Manipur.

Q. Since when these norms are operating?

A. I do not exactly remember the year from when it is operating. But there have been amendment from time to time."

Q. When the Government of Manipur entered into negotiating for appointment with the Claimant culminating into appointment of the Claimant as the Sole Selling Agent of the Government of Manipur on On-Line Lotteries vide contract agreement dated 05.04.2001, thus norms must have been very must in existence?

A. Yes.

Q. Can you now indicate the reasons impelling e Government to depart from the normal procedure of inviting tenders and instead resorting to private negotiation with one party?

A. I became Joint Director (Lotteries) on 01.03.2001 and I was authorized to sign the Agreement on 05.04.2001. Accordingly, I signed the Agreement. The decision of appointment of the Claimant as Sole Selling Agent was taken at the higher level of the Government. I am not in position to state the reasons in appointing the claimant as Sole Selling Agent through private negotiations."

154) Thus, from the said cross-examination, even the Senior Officer of the Government of Manipur (RW-3) had stated that

he was not in a position to state the reasons of for not awarding the contract in question namely appointment of Sole Selling Agent for Manipur On-Line Lottery by calling for public tenders and the said witness had deposed that the decision was taken at the higher level of the Government and he is not in a position to state the reasons in appointing the Claimant as the Sole Selling Agent through private negotiations. Be that as it may, the fact remains that the Claimant was appointed as the Sole Selling Agent by the Respondent State through private negotiations and the Respondent State reposed immense faith in the capacity and capability of the Claimant to execute the contract.

155) Thus, Clause 5 of the Modified Agreement dated 20.11.2002 is a liquidated damages Clause with a sum named in the contract as the amount to be paid in case of such breach in terms of Section 74 of the Indian Contract Act, 1872. The language of the said Clause is clear and unambiguous and the quantum of damages in case of not commencing the first draw within the stipulated period specified/predetermined. The language of Clause 5 of the Modified Agreement dated 20.11.2002 does not admit of any exception and is crystal clear and categoric. Therefore, in my considered view, the Counter Claim of the Respondent as per Sl. No. 1 which is based on Clause 5 of the Modified Agreement dated 20.11.2002 is maintainable being in the nature of a liquidated damage Clause under Section 74 of the Indian Contract Act, 1872 and therefore, the amount claimed as per Clause 5 of the Modified Agreement dated 20.11.2002 commends to be granted partially in favour of the Respondent.

156) The Hon'ble Supreme Court of India in ***ONGC Ltd. Vs. Saw Pipes***[23] had after considering Sections 73 and Section 74 of the Indian Contract Act, 1872 held at paragraph 46 as under:-

> "46. From the aforesaid sections, it can be held that when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss which naturally arises in the usual course of things from such breach. These sections further contemplate that if parties knew when they made the contract that a particular loss is likely to result from such breach, they can agree for payment of such compensation. In such a case, there may not be any necessity of leading evidence for proving damages, unless the court arrives at the conclusion that no loss is likely to occur because of such breach. Further, in case where the court arrives at the conclusion that the term contemplating damages is by way of penalty, the court may grant reasonable compensation not exceeding the amount so named in the contract on proof of damages. However, when the terms of the contract are clear and unambiguous then its meaning is to be gathered only from the words used therein. In a case where agreement is executed by experts in the field, it would be difficult to hold that the intention of the parties was different from the

language used therein. In such a case, it is for the party who contends that stipulated amount is not reasonable compensation, to prove the same."

157) While interpreting a liquidated damages clause like Clause 5 of the Modified Agreement dated 20.11.2002 whereby Clause 10.4 was inserted to the Original Agreement dated 05.04.2001, one has to keep in mind the intention of the parties at the time of executing the contract. Clause 5 of the Modified Agreement dated 20.11.2002 would trigger immediately on the failure to commence the first draw within the period specified in Schedule – I namely the period of six months w.e.f. 20.11.202. In ***Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning & Manufacturing Co. Ltd***[24], the Constitution Bench of the Hon'ble Supreme Court while interpreting a liquidated damages clause had held at paragraph 11 as under:-

"Again the right to claim liquidated damages in enforceable under Section 74 of the Contract Act and where such a right is found to exist no question of ascertaining damages really arises. **Where the parties have deliberately specified the amount of liquidated damages there can be no presumption that they, at the same time, intended to allow the party who has suffered the breach to give a go-by to the sum specified** and claim instead a sum of money which was not ascertained or ascertainable at the date of breach."

158) The evidence on record and the documents and pleadings establishes that the Claimant has breached the terms of the contract and failed to deliver. The termination of the contract by the Claimant has also been held to be illegal and contrary to the terms and stipulations contained in the contract executed between the parties. The said action of the Claimant has caused tremendous loss of revenue to the State of Manipur. The Claimant despite having being conferred a bounty by award of the contract of such a huge magnitude through negotiations without a public tender failed to deliver. For the Claimant, it was a clear misadventure and it appears from the material on record that it did not have the wherewithal and the expertise to implement the project. The Claimant miserably failed to implement and in the process the venture of Manipur On-Line Lottery failed thereby giving a jolt to the public revenue. Therefore, the Claimant must be saddled with damages to compensate the Respondent State for its acts of omission/commission and its miserable failure to implement the project, by committing breach.

159) There is no material, to suggest or infer waiver by the Respondent of the liability to pay the quantified compensation under Clause 5 of the Modified Agreement dated 20.11.2002 as contended by the Claimant. With the Claimant having failed to commence the first draw within the stipulated period, Clause 5 of the Modified Agreement dated 20.11.2002 was triggered with all its vigour rendering the Claimant liable to pay compensation to the State Government.

160) Though, Clause 5 of the Modified Agreement dated 20.11.2002 specified an amount of Rs. 35 crores as compensation/pre-estimate of damage on the failure of the Claimant to commence the first draw within the period specified in Schedule – I thereof i.e. six months from 20.11.2002 without any exceptions, I am not inclined to grant the full amount of compensation specified therein, in view of the facts and circumstances of the case. The Respondent was found extending the dates of compliance by the Claimant. The said extensions may have been accentuated by reasons which in the opinion of the Officers of the Respondent were to ensure implementation by the Claimant and to work out the contract. Yet the fact remains that the Respondent did grant extensions to the Claimant on its failure to meet the Schedule. I have already held that such extensions cannot and will not take away the right of the Respondent to claim compensation/damages for breach committed by the Claimant. Yet, taking a holistic view, I deem it appropriate to impose damages on the Claimant for an amount of Rs. 10 crores which in the facts and circumstances of the case, the evidence and the material on record is a reasonable compensation.

161) Having considered the material on its entirely and the law governing the grant of damages and the conduct of the parties particularly keeping in view the fact that the Claimant had committed the breach of its obligations, it would be in the fitness of things to direct the Claimant to pay damages to the tune of Rs. 10 crores alongwith interest @ 12% per annum from the date of the Award. The said amount would be a

reasonable compensation in the facts and circumstances of the present case.

162) Therefore, the Counter Claim of the Respondent is partly allowed only to extent of the Counter Claim made in Sl. Nos. 1 and 4 and accordingly, the Claimant is directed to pay an amount of Rs. 19,48,111/- towards Counter Claim No. 4 and Rs. 10,00,00,000/- towards counter claim No. 1 totalling to Rs. 10,19,48,111/- (Rupees Ten Crores Nineteen lakhs Forty Eight Thousand One Hundred and Eleven only). The remaining Counter Claims are rejected.
There shall be no order as to Costs.]

[9] Before proceeding further, this Court deems it appropriate to broadly set out the details of claim (*vide* claim statement dated 30.03.2005) and counter claim (*vide* counter claim statement dated 12.06.2005) before the AT. Before the AT, the appellant i.e., contractor i.e., the Company which is also being referred to as MWC made a total claim of ₹ 2,316.90 crores under as many as 8 heads *viz*., ₹ 98.84 crores towards investment incurred by MWC and its sub-agent; ₹ 1,659.66 crores towards loss of business, loss of profit and loss of future profits; ₹ 434.09 crores towards compensation/damages for purported breaches by State and not permitting MWC to sell pre-printed paper lottery as per modified agreement dated 20.11.2002; ₹ 16.5 crores

towards compensation for loss of damages suffered due to the purported delay in not being able to start full commercial launch of on-line lottery; ₹ 8.64 crores towards total amount of revenue paid by MWC in good faith in advance and amount *qua* bank guarantee that was revoked being ₹ 90.71 crores towards consequences as regards purported breaches of State, more particularly by the retail distributors; ₹ 0.17 crore towards costs/expenses and hundred crores towards what has been described as 'tremendous loss of business reputation and good will'. MWC also claimed *Pendente lite* and future interest. State on its part, *vide* counter claim dated 12.06.2005, claimed a sum of ₹ 1,787.71 and odd crores under as many as 10 heads and the summary of these 10 heads including 18% per annum interest as can be culled out from the counter claim is as follows:

Sl. No.	**Particulars of the Claim**	**Amount (Rs.)**
1.	Compensation arising from failure to start the first draw within stipulated period.	35,00,00,000
2.	Monthly instalments due	27,97,20,000
3.	Consequential loss of revenue caused due to termination of Agency Agreement owing to unilateral abandonment of the draw.	679,02,80,000
4.	Additional liability on account of revision in the cost of construction of infrastructure site of draw.	19,48,111
5.	Unclaimed prize money from 31/08/2003 to 08/11/2003.	52,696

6.	Avoidable expenditure incurred by the Government.	2,34,738
7.	Rent on Guest House for running office for the period 10/10/2003 to 31/01/2005 – 17 months & 21 days @ Rs. 3748 per month.	66,340
8.	Electricity Bill for the period 07/09/2003 to 28/01/2004.	1,12,430
9.	Loss of Goodwill of the State Government/Respondents.	10,00,00,00,000
Sub-Total		17,60,24,14,315
10.	Interest @ 18%	27,47,49,900
Total Amount recoverable from Claimant:		17,87,71,64,215

[10] The above has been set out for the limited purpose of comprehensively capturing facts as it unfurled before the AT but in the light of the vast descoping of the legal perimeter of the appeal by both sides, it will suffice to advert only to counter claim of State under the first and fourth heads, namely claim in a sum of ₹ 35 crores (1st head) towards compensation arising from failure to start the first draw within the stipulated period and a claim of ₹ 19,48,111 (4th head) towards additional liability on account of revision in the cost of construction of infrastructure site of draw.

[11] As would be evident from paragraphs 150-162 of the arbitral award of the AT, AT has awarded a sum of ₹ 10 crores as against ₹ 35 crores with regard to the first head of counter claim and entire sum of ₹ 19,48,111/- towards 4th head of counter claim

of State totaling to ₹ 10,19,48,111/-. This award totaling a little over ₹ 10.19 crores undisputedly turns on Clause X (indemnity clause) of primary contract dated 05.04.2001 as modified *vide* Clause 10.4 added to the same on 04.09.2002 read with Schedule-I thereto more particularly paragraph 4 of Schedule-I which is clause (c) of Schedule-I. There is no disputation that as per clause X of primary contract as modified, the reckoning date *qua* 6 months is 20.11.2002 and 6 months elapsed on 20.05.2003. The first draw admittedly was not held on or before 20.05.2003 and it was ultimately held on 01.12.2003 but the bone of contention is, while the appellant contractor MWC contends that there was extension of time, State contends that the extension of time was only with regard to MGR (Minimum Guarantee Revenue) and therefore, it does not absolve the contractor of its contractual obligation to have held the first draw on or before 20.05.2003. This is the epicenter of the bone of contention on facts. In law, the issue is, AT has proceeded on the basis that afore-referred modified indemnity clause is a liquidated damages clause. This is contested on the further legal ground that even in a case of liquidated damages, injury has to be proved but there was absolutely no evidence before the AT. To be noted, it is nobody's case that damage is incapable of proof in the instant case.

According to appellant, fundamental policy of Indian law i.e., contract law is clear that liquidated damages should also be proved/computed on settled principles *vide* ***Fateh Chand –vs- Balkishan Dass [1963 SCC OnLine SC 49]{rendered by a Constitution Bench}, Maula Bux –vs- Union of India [(1969) 2 SCC 554], Kailash Nath Associates –vs- Delhi Development Authority & Anr. [(2015) 4 SCC 136]*** and it is the further contention of the appellant contractor MWC that liquidated damages should also be a reasonable compensation as per fundamental policy of Indian law as articulated *vide* ***Sir Chunilal Mehta & Sons –vs- Century Spinning and Manufacturing Co. Ltd. [1962 SCC OnLine SC 57].*** This, according to the appellant, is clearly contravention of the fundamental policy of Indian law and therefore, arbitral award is in conflict with public policy of India. The case of the appellant is that this argument/ground falls under Section 34(2)(b)(ii) of A&C Act read with clause (ii) of explanation (1) thereat. It is the further case of the appellant contractor that the AT has not decided the case in accordance with terms of the contract and has not taken into account the terms of the contract and trade usages applicable to the transaction. This, in codified language means that there is infraction of sub-section (3) of Section 28 of A&C Act.

According to appellant, this contravention of public policy and not deciding in accordance with terms of the contract by taking into account usages applicable to the transaction is also a case of patent illegality. To be noted, as the case at hand is governed by the pre 23.10.2015 regime of A&C Act, patent illegality, would not be patent illegality within the meaning of Section 34(2A) of A&C Act as there was no sub-section (2A) of Section 34 prior to 23.10.2015. However, Hon'ble Supreme Court in ***Oil & Natural Gas Corporation Ltd. –vs- Saw Pipes Ltd. [(2003) 5 SCC 705]*** has added patent illegality as one of the grounds of challenge under Section 34. It is necessary to set out the distinction *qua* patent illegality *vide* **Saw Pipes** and patent illegality within the meaning of sub-section (2A) of Section 34 of A&C Act post 23.10.2015 regime as post 23.10.2015, patent illegality ground is circumscribed by a proviso which says that award shall not be set aside on the ground of mere erroneous application of law or by reappreciation of evidence. As regards State, State contends that extension of time is only *qua* MGR. Therefore, there is clear violation of timeline with regard to first draw and in this view of the matter, the award of compensation of ₹ 10 crores for failure to start first draw and additional liability amount of ₹ 19,48,111 towards revision of cost of construction of infrastructural site of

draw is justified is contention of the State. State, placing reliance on ***Construction & Design Services –vs- Delhi Development Authority [(2015) 14 SCC 263]*** contends that the burden of proving that no loss was likely to be suffered is on the party committing breach but the appellant did not discharge its burden is further contention of State. Reliance was also placed on ***UHL Power Company Limited –vs- State of Himachal Pradesh [(2022) 4 SCC 116]*** to contend that interpretation of the contract is exclusively within the domain of AT and therefore there could be no interference in a Section 37 legal drill.

[12] As the captioned matter turns heavily on Section 34(2)(b)(ii) of A&C Act and patent illegality in the pre 23.10.2015 regime, this Court deems it appropriate to set out the trajectory and context of then provisions by referring to ***Superintending Engineer, National Highways -Vs- Gowpatt Associates, represented by its Proprietor MR. P. Arun Kumar*** case reported in **2019 SCC OnLine MAD 4092** authored by one of us (M. Sundar, J). In **Gowpatt**, an arbitral award was tested on four grounds and two of the four grounds are S.34(2)(b)(ii) and S.34(2A). The relevant sub-paragraphs of paragraph 9 of **Gowpatt** are as follows:

'9. DISCUSSION AND DISPOSITIVE REASONING:

(a) Captions to senior and junior O.Ps say that the respective O.Ps have been filed under Section 34 of A and C Act. Adverting to this, learned Solicitor submitted that grounds on which instant O.Ps are predicated fall under Section 34(2)(a)(iv) and Section 34(2)(b)(ii) read with clauses (ii) and (iii) of Explanation-1 thereto. However, in the course of arguments, as submissions touched upon patent illegality also, this court made it clear that impugned awards will be tested under section 34(2-A) also. If these provisions of law are translated as grounds on which instant O.Ps are predicated, they would read as follows:

(i) Impugned awards contain decisions on matters beyond the scope of submission to arbitration by dealing with disputes which do not fall within the terms of 'submission to arbitration'.

(ii) Impugned awards are in conflict with public policy as they are in contravention with the fundamental policy of Indian law;

(i) Impugned awards are in conflict with public policy of India as they are in conflict with the most basic notions of morality or justice;

(iv) Impugned awards are vitiated by patent illegality appearing on the face of the award.

(b) With regard to aforementioned four grounds on which instant O.Ps are predicated, while the first ground, i.e., ground (i) should be tested within the contours of section 34 of A and C Act, second and third grounds, i.e., grounds (ii) and (iii) are circumscribed further by Explanation 2 to section 34(2)(b)(ii), which makes it clear that while so testing, it shall not entail a review on the merits of the dispute. Likewise, 4th ground, i.e., ground (iv) regarding patent illegality will be circumscribed by proviso therein, wherein and whereby a mere erroneous application of law cannot lead to patent illegality appearing on the face of the award and there shall be no reappreciation of evidence.

(c) ……..
(d) ……..
(e) ……..
(f) ……..

(g) ……..
(h) ……..
(i) ……..
(j) ……..
(k) ……..
(l) ……..
(m) ……..
(n) ……..
(o) ……..
(p) ……..

(q) Having carefully considered these submissions, this Court is of the considered view that a perusal of the language in which section 34(2)(b)(ii) and sub-clause (ii) of Explanation 1 thereto is couched reveals that an arbitral award being in contravention with the fundamental policy of Indian law still forms part of the expression 'conflict with the public policy of India', occurring in section 34(2)(b)(ii) of A and C Act. Therefore, the elucidation of Hon'ble Supreme Court with regard to what is 'fundamental policy of Indian law' can certainly be pressed into service, but when it is applied in the post 23.10.2015 scenario, application of these principles by this Court while testing impugned awards will be clearly controlled and restricted by Explanation 2 which clearly says that such test shall not entail a review of impugned awards on the merits of the dispute. To be noted, this has already been alluded to by this Court supra.

(r) ……..

(s) As this Court is only applying principles as elucidated, but within restrictions brought in post 23.10.2015 (to be noted, instant O.Ps were argued based on Section 34 of A and C Act as it exists post 23.10.2015), further discussion in this regard and delving more into this aspect of the matter may not be necessary.

(t) Learned counsel Mr. Sharath Chandran, submitted that amendments to A and C Act which were brought in with effect from 23.10.2015 flow from Report No.246 of the Law Commission of India which was submitted to the Government on 05.08.2014. It was the pointed submission of learned counsel that post submission of Report No.246 on

05.08.2014, Law Commission of India submitted a supplementary to Report No.246 in February, 2015. Adverting to this supplementary to Report No.246 which was placed before this Court, it was submitted that Explanation 2 to section 34(2)(b)(ii) and proviso to section 34(2-A) were incorporated only to ensure that the expression 'fundamental policy of Indian law' is narrowly construed.

(u) From the discussion and narrative thus far, it emerges clearly that section 34(2)(b)(ii) and section 34(2-A) as originally recommended in Report No.246 in August of 2014 read as follows :

"**Section 34(2)(b)(ii)**:

S.34(2)(b)(ii) the arbitral award is in conflict with the public policy of India.

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

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

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

(c) it is in conflict with the most basic notions of morality of justice.

Section 34(2-A):

(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 re-appreciating evidence."

(v) A perusal of aforesaid supplementary to Report No.246 of Law Commission of India reveals that section 34(2)(b)(ii) and section 34(2-A) as recommended in February 2015 are as follows :

"**Section 34(2)(b)(ii)**:

S.34(2)(b)(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:

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

(b) it is in contravention with the fundamental policy of India

(c) 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.

Section 34(2-A) :

(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 re-appreciation of evidence."

Gowpatt was carried in appeal by way of an intra-Court appeal by State and intra-Court appeal was dismissed by an order dated 24.03.2021 made in O.S.A. No. 197 and 198 of 2019. The matter was further carried to Hon'ble Supreme Court *vide* SLP No. 16040-16041/2021 and the Hon'ble Supreme Court dismissed the SLP by a speaking order. This Court is acutely conscious that dismissal of SLP which is at pre-leave stage does

not attract doctrine of merger even if SLP dismissal is by a speaking order but the contents of speaking order will serve as binding precedent. Conscious of this position, this Court has adverted to relevant paragraphs of **Gowpatt** for the limited purpose of setting out the context/perimeter of the legal drill and writing that even pre 23.10.2015 judgments and ratios can be appropriately considered when it comes to challenge to arbitral awards predicated on S. 34(2)(b)(ii) and S.34(2A) albeit conscious of the statutory narrowing down of the former ground and introduction of latter in codified form with a proviso thereat.

[13] As would be evident from **Gowpatt**, scope and meaning of public policy *vide* S.34 (2)(b)(ii) was made narrow by substituting Explanations I and II in place of the sole explanation to S.34(2)(b)(ii) on and from 23.10.2015. In the case at hand, we are dealing with a pre 23.10.2015 regime and therefore, this S.37 Court deems it necessary to set out S.34(2)(b)(ii) together with the explanation thereto (inclusive of S.75 and S.81) as it stood prior to 23.10.2015. This Court does so and the same is as follows:

CHAPTER VII
Recourse Against Arbitral Award

> 34. Application for setting aside arbitral award.- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) ……

(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.- Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

75. Confidentiality.- Notwithstanding any contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

81. Admissibility of evidence in other proceedings.- The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,-

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

(b) admissions made by the other party in the course of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

[14] Before proceeding further, this Court deems it appropriate to capture the position that before Section 34 Court, the entire arbitral award was put to challenge and that led to the order of Section 34 Court which is challenged in the captioned Section 37 Appeal. Be that as it may, in the light of the vast descoping, about which there is allusion elsewhere *supra* in this order, this Section 37 Court will now confine the legal drill at hand to ₹ 35 crores counter claim of State for failure to start first draw within the stipulated period and claim of ₹ 10,19,48,111/- additional liability *qua* cost of construction of infrastructural site of draw. To be noted, AT awarded ₹ 10 crores towards former and entire ₹ 10,19,48,111/- towards latter.

[15] Further, this Court deems it appropriate to write that it is conscious of the obtaining legal position that Section 34 is not an appeal and Section 37 though an appeal *qua* Section 34 order, is not an appeal *qua* award of AT. To put it differently, Sections 34 and 37 Courts in testing an arbitral award are not appellate Courts to embark upon a legal drill akin to Section 96 of CPC. The legal drill at hand is not even a revision or a full-fledged review. This Court is clear in its mind that the legal drill at hand is merely a limited challenge to an arbitral award which failed in

the Section 34 Court. Section 34 Court returned a verdict that the award does not fall foul of Section 34. Challenge to an arbitral award can be predicated only on 8 grounds adumbrated in Section 34 namely, 5 grounds *vide* Section 34 (2) (a); 2 grounds *vide* Section 34(2) (b) and 1 standalone ground i.e., Section 34(2A). To be noted, in the case on hand, Section 34(2A) does not arise as it is a case of pre 23.10.2015 regime of A&C Act but 'patent illegality' was nonetheless available as a ground of challenge. The legal drill at hand is to examine whether the challenge to arbitral award fits in nay snugly fits into any one of the 8 grounds, whether Section 34 Court erred in saying that it does not fall foul of the grounds adumbrated under pre 23.10.2015 Section 34 and patent illegality. The award will be dislodged if it falls foul of Section 34 and if it does not, the award will be sustained. These 8 grounds can be described as 8 pigeonholes, though there was no sub-section (2A) prior to 23.10.2015, this Court continues to refer to 8 pigeonholes as patent illegality was still available as one of the grounds in a challenge to an arbitral award *vide* **Saw Pipes** i.e., ratio/law laid down by Hon'ble Supreme Court in ***Oil & Natural Gas Corporation Ltd. –vs- Saw Pipes Ltd. [(2003) 5 SCC 705]*** which added patent illegality as one of the grounds of challenge.

[16] Besides the afore-referred 8 pigeonholes, the law is well settled that if any other provision of the A&C Act is violated or subjected to infraction, that would sound that death knell for the arbitral award. In the case at hand, this Section 37 Court has *inter-alia* examined two pigeon hole/s namely, contravention of public policy of Indian law *vide* Section 34 (2)(b)(ii) and patent illegality *vide* Section 34 (2A). Besides these two pigeonholes, this Section 37 Court has also examined contravention of Section 28(3) A&C Act i.e., whether AT has not decided in terms of contract {Clause X indemnity clause in this case} taking into account the trade usages applicable to the transaction.

[17] This Section 37 Court now embarks upon discussion and dispositive reasoning. AT has proceeded on the basis of pleadings, more particularly paragraph 8 of the preliminary objection of the claimant and proceeded on the basis that claimant (appellant in this appeal) i.e., MWC has taken the position that clause (X) as amended/modified is a liquidated damages clause which is in the form of a penalty clause. This Court refrains itself from going into the question as to whether interpretation of the term of the agreement by AT is correct as that is the exclusive domain and jurisdiction of AT but the question is whether the

finding is otherwise correct and a plausible finding. If the finding granting ₹ 10 crores as against the claim of ₹ 35 crores and ₹ 19,48,111/- towards additional liability towards construction of site of draw is otherwise correct and if it is a plausible finding, the arbitral award will be sustained. If it is incorrect, i.e., in conflict with public policy of India and if it is not a plausible finding, this Court will interfere. To be noted, **UHL Power Company** principle i.e., in **UHL Power Company** case law alluded to *supra* -Hon'ble Supreme Court made it clear that interpretation of terms of an agreement is exclusive domain of AT provided, the finding is otherwise a correct and a plausible finding. It is also to be noted, **UHL Power Company** was pressed into service by State.

[18] In the case at hand, a careful perusal of paragraphs 150 – 162 of the arbitral award makes it clear as daylight that there was absolutely no evidence on the side of State *qua* ₹ 35 crores claim towards damages. The extensions may have been accentuated by reasons which in opinion of officers of the State was to ensure implementation is the finding of AT but the question as to whether first draw beyond extension has caused legal injury to State has not been considered by AT. Therefore,

the argument of learned senior counsel for State before the Section 37 Court that a careful perusal of letter dated 26.09.2003 (Exhibit D25), letter dated 01.08.2003 (Exhibit CC38) read with another communication dated 30.10.2003 (Exhibit CC44) will make it clear that extension was only for MGR and not for first draw is a complete non-starter.

[19] This takes this Court to the question as to whether liquidated damages could have been arrived at as a consolidated sum of ₹ 10 crores as against a claim of ₹ 35 crores with no evidence and whether it is in conflict with public policy of India.

[20] As already alluded *supra*, even construing Clause X of primary contract has amended, as a liquidated damages clause in the nature of a penalty, the public policy of India more particularly *qua* Contract Law, as articulated by Hon'ble Supreme Court in **Fateh Chand, Maula Bux and Kailash Nath** makes it clear that liquidated damages should be computed on settled principles and it should be proved as Section 74 of said Contract Act only dispenses with actual proof and not proof altogether and it cannot be an arbitrary estimate more so when the contracting party complaining of having suffered breach has not chosen to lead any evidence. This is clearly in conflict with

public policy of India as an arbitrary ₹ 10 crores as opposed to a ₹ 35 crores liquidated damages claim cannot be awarded giving a complete goby to **Fateh Chand, Maula Bux and Kailash Nath principles** which are clear working mechanisms of damages *qua* Section 74 of 'Indian Contract Act 1872 (9 of 1872)' {hereinafter 'said Contract Act' for the sake of brevity}. To put it differently, even a claim *vide* Section 74 of Indian Contract Act has to be proved and there cannot be an award without any evidence much less an arbitrary sum of ₹ 10 crores when the claim is ₹ 35 crores.

[21] In this regard, before embarking upon the question as to what has been held by courts to be conflict with public policy of India, it is necessary to make it clear that if there had been some evidence before the AT and if AT had awarded ₹ 10 crores liquidated damages based on such evidence, this Court would have readily applied **Hodgkinson** principle. **Hodgkinson** principle is law laid down by an English Court in ***Hodgkinson -vs- Fernie*** reported in ***140 ER 712.*** This **Hodgkinson** principle has been recognized by Indian Courts and it has been recognized in **Associate Builders** *vide* paragraph 41 which reads as follows:

> '**41.** This, in turn, led to the famous principle laid down in *Champsey Bhara Co. v. Jivraj Balloo Spg. and Wvg. Co. Ltd.*[23], where the Privy Council referred to *Hodgkinson*[22] and then laid down: (IA pp. 330-32)

"The law on the subject has never been more clearly stated than by Williams, J. in the case of *Hodgkinson v. Fernie*[22]: [CB (NS) p.202 : ER 330-32]

'The law has for many years been settled, and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and of fact ..... The only exceptions to that rule are cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think firmly established viz., where the question of law necessarily arises on the face of the award or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established.'

* * *

Now the regret expressed by Williams, J. in *Hodgkinson v. Fernie*[22] has been repeated by more than one learned Judge, and it is certainly not to be desired that the exception should be in any way extended. An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound. Here it is impossible to say, from what is shown on the face of the award, what mistake the arbitrators made. The only way that the learned judges have arrived at finding what the mistake was is by saying: 'Inasmuch as the Arbitrators awarded so and so, and inasmuch as the letter shows that then buyer rejected the cotton, the arbitrators can only have arrived at that result by totally misinterpreting Rule 52.' But they were entitled to give their own interpretation to Rule 52 or any other article, and the award will stand unless, on the face of it they have tied themselves down to some special legal proposition which then, when examined, appears to be unsound. Upon this point, therefore, their Lordships think that the judgment of Pratt, J was right and

the conclusion of the learned Judges of the Court of Appeal[24] erroneous."

This judgment has been consistently followed in India to test awards under Section 30 of the Arbitration Act, 1940.'

22 (1857) 3 CB (NS) : 140 ER 712

23 AIR 1923 PC 66 : (1922-23) 50 IA 324: 1923 AC 480 : 1923 All ER Rep 235 (PC)

24 Jivraj Balloo Spg. and Wvg. Co. Ltd. v. Champsey Bhara and Co., ILR (1920) 44 Bom 780. The judgment of Pratt, J. may be referred to at ILR p.787.

[22] In the case at hand, as already alluded to *supra*, there is no evidence at all with regard to damages and therefore, the question of applying **Hodgkinson** principle and writing that AT is the best Judge of the quality and quantity of evidence before it does not arise.

[23] Reverting to what has been held by courts to be in conflict with public policy of India in the context of testing an arbitral award, this Court deems it appropriate to respectfully refer to ***Central Organisation for Railway Electrification*** case rendered by Hon'ble Supreme Court and reported in **(2024) INSC 857**. This judgment is widely referred to as **CORE-II**. In **CORE-II**, Hon'ble Supreme Court held that disregarding orders of Superior Courts of India or the binding effect of a Superior Court will attract Section 34(2)(b)(ii) *albeit vide* Clause (ii) of Explanation-1, which was introduced on and from 23.10.2015 but

in the light of **Gowpatt**, Core – II can be respectively followed. The question in the legal drill at hand is, whether judicial precedents viz., **Fateh Chand, Maula Bux and Kailash Nath** rendered by the highest court and the binding effect of the same have been given a goby. In **CORE-II**, Hon'ble Supreme Court reiterated the ratio in ***OPG Power Generation Private Limited -vs- Enexio Power Cooling Solutions India Private Limited and another*** reported in ***(2024) SCC OnLine SC 2600***. The relevant paragraph in **CORE-II** is paragraph 158 and the same (together with footnotes thereat) reads as follows:

> `**158.** This Court has construed the expression "public policy of India" appearing under Section 34 to mean the "fundamental policy of Indian law".[293] The concept of "fundamental policy of Indian law" has been held to cover compliance with statutes and judicial precedents, adopting a judicial approach, and compliance with the principles of natural justice.[294] In **OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited**,[295] this Court explained the concept of "fundamental policy of Indian law" thus:
>
> > "The expression "in contravention with the fundamental policy of Indian law" by use of the word 'fundamental' before the phrase 'policy of Indian law' makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law",

> which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that (a) violation of the principles of natural justice; (b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and (c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law." '

293 Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 [34]; NHAI v. P Nagaraju, (2022) 15 SCC 1 [39]

295 2024 SCC OnLine SC 2600

A further careful perusal of what would be covered within the expression of 'conflict with public policy of India' makes it clear that it also means that an arbitral award which contravenes any of such fundamental principles that provide the basis for administration of justice and the enforcement of law in this country will fall foul of Section 34. Hon'ble Supreme Court made it clear that without intending to make an exhaustive enumeration and only with the intention of making an

enumeration of illustrations held that disregarding orders of Superior Courts in India or the binding effect of the judgment of the Superior Court will clearly be a case of contravention with Fundamental Policy of Indian Law and Explanation – 1 to Section 34(2)(b)(ii) was added on and from 23.10.2015 in the light of **Gowpatt** as Section 34(2)(b)(ii) was broader prior to 23.10.2015, this proposition can safely be applied to Section 34(2)(b)(ii) as it stood prior to 23.10.2015 also.

[24] To be noted, in **CORE-II** relying on ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*** reported in ***(2024) 7 SCC 197***, Hon'ble Supreme Court held that most basic notions of morality and justice concept of public policy will include bias but in the case on hand, we are not concerned with bias. In **Fateh Chand** which is a Constitution Bench declaration of law, it was made clear that as regards Section 74 of said Contract Act damages/penalty clause merely dispenses with proof of 'actual loss or damage' and it does not justify award of compensation when no legal injury has occurred as a result of alleged breach. In the instant case, it is nobody's case that damages are of nature that it cannot be proved and therefore, the question of dispensing with proof of damages does not arise. Likewise in **Maula Bux,**

Hon'ble Supreme Court explained the expression 'the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation' occurring in Section 74 of the Contract Act and held that where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him.

[25] Therefore, without testing the correctness or otherwise of AT construing Article X of the primary contract (as modified subsequently) as a liquated damages/penalty clause, even if it is construed as a liquidated damages/penalty clause, legal injury should have been established and it should have been proved. For the sake of specificity, it is made clear that this Section 37 Court is refraining itself from going into the question of whether AT was correct in construing Article X of the primary contract as liquidated damages/penalty clause as interpretation of a contract will clearly be the exclusive domain of AT, if **UHL** principle is applied. However, as already alluded to *supra*, **UHL** principle itself makes it clear that interpretation of terms of an agreement will remain in exclusive domain of AT when the findings are otherwise also correct besides being a plausible

finding which does not deserve any interference in a Section 37 legal drill. In the case at hand, the finding regarding damages is based on no evidence, no proof and therefore, it is not even a plausible finding as it has been given by completely disregarding judicial precedents *viz.,* **Fateh Chand, Maula Bux and Kailash Nath** which made it clear that even in cases of liquidated damages, legal injury should be established and damages should be proved on settled principles.

[26] **Fateh Chand**, on facts, is a dispute between proposed vendor and proposed vendee *qua* an immovable property. The disputation was, who committed breach, vendor or vendee and whether forfeiture as per contract between proposed vendor and proposed vendee can be sustained in the light of Section 74 of said Contract Act. In this factual backdrop, adverting to Section 74 of said Contract Act, a Constitution Bench of Hon'ble Supreme Court while making a declaration of law made it clear that Section 74 of said Contract Act is an attempt to eliminate sometimes elaborate refinement made under English common law in distinguishing stipulations providing for payment *qua* liquidated damages and stipulations in the nature of penalty. The declaration of law is also very clear that as regards Section

74 of the said Contract Act, it merely dispenses with proof of *'actual loss or damages'* and it does not justify the award of compensation when no legal injury at all has resulted as a consequence of breach. The relevant paragraphs in **Fateh Chand** are paragraphs 8 and 10 and the same read as follows:

> **'8.** The claim made by the plaintiff to forfeit the amount of Rs. 24,000/- may be adjusted in the light of Section 74 of the Indian Contract Act, which in its material part provides:
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> > "When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case maybe, the penalty stipulated for."
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> The section is clearly an attempt to eliminate the sometime elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties: a stipulation in a contract *in terrorem* is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by

enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty.

9. ……

10. Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases *(i)* where the contract names a sum to be paid in case of breach and *(ii)* where the contract contains any other stipulation by way of penalty. We are in the present case not concerned to decide whether a contract containing a covenant of forfeiture of deposit for due performance of a contract falls within the first class. The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according, to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of "actual loss or damages"; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach.'

[27] Thereafter, afore-referred declaration of law made by a Constitution Bench in **Fateh Chand** was considered by a 3 (three) member Bench of Hon'ble Supreme Court in **Maula Bux. Maula Bux,** on facts is a case where an individual entered into a contract for supply of potatoes to military and deposited a specified sum as security for due performance of the contract. Alleging persistent default in making regular and full supplies, State rescinded the contract, the individual supplier launched a suit against State seeking a decree for the amount deposited. The Trial Court, while holding that State was justified in rescinding the contract, held that there can be no forfeiture of the deposited amounts as State did not suffer any loss in consequence of the default committed by the supplier. On appeal, the jurisdictional High Court (Allahabad High Court) modified the decreetal amount and individual carried the matter to Hon'ble Supreme Court after obtaining leave. In this factual backdrop, Hon'ble Supreme Court, *inter-alia* after adverting to Section 74 of said Contract Act, set aside the High Court decree *inter- alia* holding that it was possible for the Government of India to lead evidence to prove the rates at which potatoes were purchased by them when the plaintiff failed to deliver regularly and fully and thereby proved the rates at which they had to be purchased and other

incidental charges but no such attempt was made. To be noted, **Fateh Chand** was considered in **Maula Bux** as already alluded to. Thereafter, Hon'ble Supreme Court in **Kailash Nath** considered both **Fateh Chand** and **Maula Bux**. On facts, **Kailash Nath** pertains to a public auction conducted by 'Delhi Development Authority' ('DDA' for the sake of convenience) where the highest bidder deposited a sum of ₹ 78 lakhs as earnest money as per the terms and condition of the auction. To be noted, ₹ 78 lakhs represent 25% of the bid amount. Thereafter, DDA communicated to the highest bidder that the land auctioned was not Najul land and therefore, the Government would have nothing further to do in the matter. The highest bidder approached the Delhi High Court and thereafter, the Hon'ble Supreme Court stating that in similar circumstances, other bidders had been allowed to pay 75% premium and were allotted plots. This plea was predicated on Article 14 of Constitution of India but for the purposes of the case at hand, it is not necessary to dilate more on facts. Suffice to write that this challenge culminated in an order of Hon'ble Supreme Court stating that the highest bidder is at liberty to take suitable steps in law and he was permitted to challenge forfeiture of earnest money. Thereafter, the highest bidder filed a suit for specific performance

and made an alternative prayer for recovery of damages and return of earnest money. The Trial Court dismissed the specific performance and damages pleas but ordered refund of earnest money which was subjected to forfeiture. To be noted, the Trial Court was a Single Judge of the Delhi High Court, the matter was carried in appeal *vide* an intra-Court appeal to a Division Bench by DDA and the Division Bench held that the order of DDA ordering forfeiture of earnest money is in order. The highest bidder carried the matter to Hon'ble Supreme Court. It is in this backdrop that Hon'ble Supreme Court after holding that Section 74 of said Contract Act is sandwiched between Sections 73 and 75 which deal with compensation for loss or damage caused by breach of contract and compensation for damage which a party may sustain due to non-fulfillment of a contract after such party rightfully rescinds such contract, respectively held that compensation under Section 74 will become payable only where damage or loss is caused by such breach. Thereafter, Hon'ble Supreme Court elucidated the principle behind the Section 74 and after survey of various case laws postulated 7 (seven) principles *qua* Section 74 of said Contract Act. The relevant paragraphs in **Kailash Nath** are paragraphs 33 and 43 (43.1 to 43.7) which read as follows:

‘33. Section 74 occurs in Chapter 6 of the Indian Contract Act, 1872 which reads “Of the consequences of breach of contract”. It is in fact sandwiched between Sections 73 and 75 which deal with compensation for loss or damage caused by breach of contract and compensation for damage which a party may sustain through non-fulfillment of a contract after such party rightfully rescinds such contract. It is important to note that like Sections 73 and 75, compensation is payable for breach of contract under Section 74 only where damage or loss is caused by such breach.

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

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as

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

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

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

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

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

43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the

> contract, if a genuine pre-estimate of damage or loss, can be awarded.
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> **43.7.** Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction *before* agreement is reached, Section 74 would have no application.'

[28] Out of the 7 principles postulated and put it in place, principles *vide* 43.6 and 43.3 in that order are relevant and significant for the case at hand. The fundamental policy of Indian Contract Law which is public policy of India, in the language in which Section 74 of said Contract Act is couched does not dispense with proof of loss or damages altogether. Proof of actual loss or damages is only dispensed with and only in cases where damages or loss is difficult or impossible to prove, the genuine pre-estimated damages or loss can be awarded. In this regard, the arbitral award has not returned a finding that damages or loss is difficult or impossible to prove, on a demurer even if this was the position, the genuine pre-estimate of ₹ 35 crores should have been awarded but the AT has awarded ₹ 10 crores which is not only a case of 'neither here nor there' but is also without any basis/proof.

[29] In any event, in the case at hand, it is only a concession given by State for selling online lottery tickets and the primary contract is more in the nature of a *concessionaire* agreement. There will be a little more allusion about this elsewhere *infra* in this order. Be that as it may, the State having merely given a concession *qua* sale of online lotteries which is more in the nature of *res extra commercium*, in the hope of earning revenue obviously cannot have suffered damages (by any stretch of imagination) owing to first draw being delayed.

[30] However, this Section 37 Court refrains from delving and dilating more in this direction as the same tantamount to examining the arbitral award on merits which is outside the remit of Sections 34 and 37 Courts. Suffice to reiterate that damage and loss were not established by any evidence before AT much less proved.

[31] In this regard, reverting to **Fateh Chand,** it was rendered by a Constitution Bench of Hon'ble Supreme Court and therefore, it is not merely a ratio and it is declaration of law. Disregarding declaration of law will certainly amount to conflict with public policy of India, if afore-referred **CORE-II** principle is applied as a litmus test. In other words, as it disregards judicial

precedents, it is a certain case of being in conflict with public policy of India. Furthering the discussion and dispositive reasoning in this direction, as a buttressing point, this Section 37 Court deems it appropriate to respectfully refer to ***Prakash Atlanta (JV) -versus- National Highways Authority of India*** case rendered by Hon'ble Supreme Court and reported in **2026 INSC 76**. In ***Prakash Atlanta***, Hon'ble Supreme Court held that an arbitral award can be set aside if the illegality goes to the root of the matter. This principle was laid down in ***Prakash Atlanta*** by referring to ***Associate Builders -vs- Delhi Development Authority [(2015) 3 SCC 49], Oil & Natural Gas Corporation Ltd. -vs- Saw Pipes Ltd. [(2003) 5 SCC 705]*** *and* ***Renusagar Power Co.Ltd. Versus General Electric Co. [1994 supplementary SCC 644]***. Relevant paragraphs are paragraph 24 and 25 and the same read as follows:

> '**24.** In **Associate Builders vs. Delhi Development Authority**[18], this Court noted that the expression 'public policy of India' in Section 34(2)(b)(ii) of the Arbitration Act was given a wider meaning in **Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Ltd.**[19]. It was held therein that the concept of public policy connotes some matter which concerns public good and public interest. It was observed that what is for public good or in public

interest or what would be injurious or harmful to the public good or public interest has varied from time to time but an arbitral award which, on the face of it, is patently in violation of statutory provisions, cannot be said to be in public interest. It was further observed that such an award is likely to adversely affect the administration of justice. This Court, therefore, held that, in addition to the narrower meaning given to the term 'public policy' by a 3-Judge Bench of this Court in **Renusagar Power Co. Ltd. v. General Electric Co.**[20], an arbitral award can be set aside if it is patently illegal. The result was that an arbitral award could be set aside if it was contrary to the fundamental policy of Indian law; or the interest of India; or justice or morality; or if it is patently illegal. It was observed that illegality must go to the root of the matter but, if the illegality is of trivial nature, it cannot be held that the award is against public policy. It was further held that if the award is so unfair and unreasonable that it shocks the conscience of the Court, it would be opposed to public policy.

25. Thereafter, in **Oil and Natural Gas Corporation Limited vs. Western Geco International Ltd.**[21], a 3-Judge Bench of this Court added three other distinct and fundamental juristic principles which must be understood as part and parcel of the fundamental policy of Indian law. The first is the principle that in every determination that affects the rights of a citizen or leads to civil consequences, whether by a Court or other authority, such Court or authority is bound to adopt what is, in legal parlance, called 'judicial approach'. The second principle is that a Court and so also a quasi-judicial authority, while determining rights and

> obligations of parties before it, must do so in accordance with the principles of natural justice. It was observed that, in addition to *audi alteram partem*, the Court/ authority deciding the matter must apply its mind to the attendant facts and circumstances as non-application of mind is a defect that is fatal to any adjudication. It was, therefore, held that the requirement that an adjudicating authority must apply its mind is so deeply embedded in our jurisprudence that it can be described as the fundamental policy of Indian law. The last principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same cannot be sustained. Decisions that fall short of the standards of reasonableness were, therefore, held liable to challenge in a Court of law and even in statutory processes wherever the same were available.'

18 (2015) 3 SCC 49
19 (2003) 5 SCC 705 21
20 1994 Supp (1) SCC 644
21 (2014) 9 SCC 263

[32] This section 37 Court deems it appropriate to respectfully further refer to ***OPG Power Generation Private Limited -vs- Enexio Power Cooling Solutions India Private Limited and another*** case rendered by Hon'ble Supreme Court and reported in **(2024) SCC OnLine SC 2600**, the reason is 'what is public policy of India' in the A&C Act context and more particularly for testing an award has been elucidated in **OPG** and

the same is instructive. The relevant paragraphs in **OPG** are paragraphs 30 to 36 and the same read as follows:

> '**Public Policy**
>
> **30.** "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification etc. since long, and is also a part of common law. Section 23[19] of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, *inter alia*, opposed to public policy. That is, a contract which is opposed to public policy is void.
>
> **31.** In Chitty on Contracts[20], scope of public policy, largely accepted across jurisdictions for invalidation of contracts, has been summarized in the following terms:
>
> > "Objects which on grounds of public policy invalidate contracts may, for convenience, be generally classified into five groups : first, objects which are illegal by common law or by legislation; secondly, objects injurious to good government either in the field of domestic or foreign affairs; thirdly, objects which interfere with the proper working of the machinery of justice; fourthly, objects injurious to marriage and morality; and, fifthly, objects economically against the public interest, viz contracts in restraint of trade….."
>
> **32.** In **Gherulal Parakh v. Mahadeodas Maiya**[21], a three-Judge Bench of this Court, in the context of Section 23 of the Contract Act, summarized the doctrine of public policy as follows:

"Public policy or the policy of the law is an elusive concept; it has been described as untrustworthy guide, variable quality, uncertain one, unruly horse, etc; the primary duty of a court of law is to enforce a promise which the parties have made and to uphold the sanctity of contracts which formed the basis of society, but in certain cases, the court may relieve them of their duty on a rule founded on what is called the public policy; for want of better words Lord Atkin describes that something done contrary to public policy is a harmful thing, but the doctrine is extended not only to harmful cases but also to harmful tendencies; this doctrine of public policy is only a branch of common law, and, just like any other branch of common law, it is governed by precedents; the principles have been crystallized under different heads and though it is permissible for courts to expound and apply them to different situations, it should only be invoked in clear and incontestable cases of harm to the public; Though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days.

(Emphasis supplied)

33. In *Central Inland Water Transport Corporation v. Brojo Nath Ganguly*[22], this Court observed that the expressions 'public policy', 'opposed to public policy', or 'contrary to public policy' are incapable of precise definition. It was observed that public policy is not the policy of a particular government. Rather it connotes some matter which concerns the public good and the public interest. It was observed:

"92.……what is for the public good or in the public interest or what would be injurious or harmful to the public good or

the public interest has varied from time to time. As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the courts and, similarly, where there has been a well-recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy."

(Emphasis supplied)

34. In *Renusagar Power Co. Ltd. v. General Electric Co.*[23], a three Judge Bench of this Court observed that the doctrine of public policy is somewhat open- textured and flexible. By citing earlier decisions, it was observed that there are two conflicting positions which are referred to as the "narrow view" and the "broad view". According to the narrow view, courts cannot create new heads of public policy whereas the broad view countenances judicial law making in these areas. In the field of private international law, it was pointed out, courts refuse to apply a rule of foreign law or recognize a foreign judgment or a foreign arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked or enforced. However, it was clarified, a distinction is to be drawn while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. It was observed that the application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. It was held that contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required.

35. In fact, in *Renusagar* (supra), this Court was dealing with the enforceability of a foreign award. For that end, it had to interpret the expression "contrary to public policy" in the context of Section 7(1)(b) (ii) of Foreign Awards (Recognition and Enforcement) Act, 1961[24]. While doing so, this Court held that— (a) contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required[25]; and (b) the expression 'public policy' must be construed in the sense the doctrine of public policy is applied in the field of private international law. Applying the said criteria, it was held that enforcement of a foreign award could be refused on the ground of being contrary to public policy if such enforcement would be contrary to (a) fundamental policy of Indian law or (b) the interests of India or (c) justice or morality[26]. The Court thereafter proceeded to hold that a contravention of the provisions of the Foreign Exchange Regulation Act would be contrary to the public policy of India as that statute is enacted for the national economic interest to ensure that the nation does not lose foreign exchange which is essential for the economic survival of the nation[27].

36. What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, *inter alia*, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.'

19 Section 23.— What consideration and objects are lawful, and what not.— The consideration or object of an agreement is lawful, unless it is forbidden by law; or
is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or
involves or implies, injury to the person or property of another; or
the court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is wide.

20 Volume 1, 35th Edition, paragraph 19-112

21 AIR 1959 SC 781

22 (1986) 3 SCC 156, paragraph 92

23 1994 Supp (1) SCC 644

24 Section 7. Conditions for enforcement of foreign awards. - (1) A foreign award may be enforced under this Act—
****
(b) if the court dealing with the case is satisfied that-
****
(ii) the enforcement of the award will be contrary to the public policy.

25 paragraph 65 of *Renusagar* (supra)

26 paragraph 66 of *Renusagar* (supra)

27 paragraph 75 of *Renusagar* (supra)

[33] In the case at hand, the award of liquidated damages to the tune of ₹ 10 crores *qua* a claim of ₹ 35 crores without any evidence much less proof by adopting not even a rough and ready approximation approach but fixing it at ₹ 10 crores without any basis is clearly a patent illegality which goes to the root of the matter. Continuing the dispositive reasoning in this direction, this Section 37 Court deems it appropriate to write that giving a complete goby to judicial precedents *viz.,* **Fateh Chand, Maula Bux and Kailash Nath** and awarding ₹ 10 crores damages without any evidence much less proof is clearly not a case of mere

violation of Municipal Law of India but a case of conflict with public policy of India. To put it differently, the fundamental policy of Indian Contract Law is, even liquidated damages, wherever damages can be proved, it can be awarded only on evidence of damage/injury and proof of the same and that the quantum should be on settled principles.

The award of ₹ 10 crores damages without any evidence or material much less proof and without any reasoning as to why it is being pegged at ₹ 10 crores as opposed to a pre-estimate of ₹ 35 crores is also clearly and certainly patently illegal as no inferential process is required to come to the conclusion that award of ₹ 10 crores is completely contrary to binding legal precedents of superior courts namely, **Fateh Chand, Maula Bux and Kailash Nath**. In this regard, as already alluded to *supra*, this section 37 Court is now applying the pre 23.10.2015 regime of A&C Act. Therefore, it is **Saw Pipes** patent illegality and not S. 34(2A) patent illegality. The difference between the two is S.34 (2A) patent illegality is circumscribed by a proviso which forbids setting aside of an arbitral award merely on the ground of erroneous application of law and re-appreciation of evidence about which also there is allusion elsewhere *supra* in this order. On a demurrer, hypothetically speaking even if S.34(2A) patent

illegality is applied, the impugned S.34 Court order and the award of the AT do not pass muster. The reason is there is no evidence, obviously no appreciation of evidence and therefore, the question of re-appreciation of evidence does not arise at all insofar as award of ₹ 10 crores damages is concerned. It is also not a case of setting aside a part of the award merely on the ground of erroneous application of law but it is a case of setting aside owing to adoption of a course which is completely contrary to the obtaining legal position settled by binding precedents of superior courts. It goes to the root of the matter and therefore it is certainly not a case of setting aside merely on the ground of an erroneous application of law. In any event, in the pre 23.10.2015 regime, these two constrictions are not there and therefore, this S. 37 Court has no hesitation in writing that the arbitral award is vitiated by the vice of patent illegality also and the S. 34 Court order is incorrect in sofar as it sustains this part of the arbitral award.

As regards, S.28(3) of the A&C Act raised by the appellant, as this S.37 Court is not going into the interpretation of AT *qua* terms of the contract, further discussion is not necessary.

[34] As regards counter-claim no. 4 i.e., claim of ₹ 19,48,111/- towards balance cost of construction of facility/complex which was exclusively constructed by State for use of contractor for the purposes of Online Lottery, this Section 37 Court has no hesitation in writing that this part of the award does not fall foul of Section 34 of A&C Act. The reason is, the construction of the facility/complex was made by State exclusively for the purposes of Online Lottery, the total cost of construction is ₹ 89,16,298/- out of which, the contractor has admittedly paid ₹ 69,68,187/- leaving a balance of ₹ 19,48,111/-. Therefore, this counter-claim no. 4 does not fall in the category of damages within the meaning of Section 74 of said Contract Act as it is actual cost of construction and is therefore not in the realm of damages. It is distinct and different from ₹ 10 crores damages *vide* counter-claim no.1 Therefore, by respectfully applying **ISG Novasoft Technologies** principle laid by a Constitution Bench of Hon'ble Supreme Court reported in ***(2025) 7 SCC 1 [Gayatri Balasamy v. ISG Novasoft Technologies Limited]***, this Section 37 Court severes award *qua* counter-claim no. 4 from award of damages *qua* counter-claim no. 1 award of damages and sustains counter-claim no. 4 (award of Rs. 19,48,111/-) as it does not fall foul of any of the 8 pigeonholes of Section 34 and dislodges counter-claim

no.1 (award of ₹ 10 crores damages) as it *inter-alia* falls foul of section 34 *vide* 2 pigeonholes i.e., public policy and patent illegality. In this regard, it is deemed appropriate to respectfully write that in **ISG Novasoft Technologies,** Hon'ble Supreme Court {Constitution Bench} made it clear that severance as a legal concept is recognized intrinsically in Section 34 itself and held that stand alone claim falling foul of Section 34 can be set aside as long as they are capable of being severed without affecting the other parts of the award.

[35] In the case at hand, as one counter-claim (Claim No. 1) is for damages and another counter-claim (Claim No. 4) is balance cost of construction that too actual cost, the two are no way connected much less intertwined. To be noted, **ISG Novasoft Technologies** reiterated the severability principle laid down by Hon'ble Supreme Court in ***J.G. Engineers (P) Ltd. v. Union of India*** reported in ***(2011) 5 SCC 758***. Relevant paragraphs in **ISG Novasoft** are paragraphs 239 to 245 and the same read as follows:

> *'Severability under Section 34*
>
> *239. If there was one aspect on which there was a chorus among the rival factions, it was on the aspect of Section 34 Court having power to sever that part of the award which fell foul of Section 34 from the good part.*

240. According to P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn.):

> *"Sever - 'to separate; to insist upon plea distinct from that of other co-defendants; to disjoin and severable – 'capable of being separated',"*
>
> *(emphasis supplied)*

241. A bare perusal of Section 34 indicates that the power to sever an award is recognized in Section 34(2)(a)(iv) which reads as under:

> *"34.(2)(a)(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submissions 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."*

242. A reading of the above sub-section reveals that where the arbitral award deals with disputes not contemplated by or not falling within the terms of the submission to arbitration or it contains decision on matters beyond the scope of the submission to arbitration, the award can be set aside.

243. However, the proviso states 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.

244. So, severance as a concept is recognized intrinsically in Section 34 itself on the aspect mentioned hereinabove. But the question is when there are several claims adjudicated and if awards on a few claims fall foul of Section 34 and if each of the claims which fall foul of Section 34 are capable to separation could the awards on those claims be set aside? This issue was not discussed in ***Hakeem****. However, the consistent view of this Court has been that such standalone claims falling foul of Section 34 can be set aside as long as they are capable of being severed without affecting the other parts of the award. In*

> *other words, if the claims falling foul of Section 34 are not inseparably intertwined with the good portion of the award, the award can be severed.*
>
> *245. In J.G. Engineers (P) Ltd. v. Union of India, R.V. Raveendran, J. speaking for the Court clearly set out the principle as follows: (SCC p. 775, para 25)*
>
> > *"25. It is now well settled that if an award deals with and decides several claims separately and distinctly, even if the court finds that the award in regard to some items is bad, the court will segregate the award on items which did not suffer from any infirmity and uphold the award to that extent. As the award on Items 2, 4, 6, 7, 8 and 9 was upheld by the civil court and as the High Court in appeal did not find any infirmity in regard to the award on those claims, the judgment of the High Court setting aside the award in regard to Claims 2, 4, 6, 7, 8 and 9 of the appellant, cannot be sustained. The judgment to that extent is liable to be set aside and the award has to be upheld in regard to Claims 2, 4, 6, 7, 8 and 9."*

[36] As regards the order of Section 34 Court, it is not really necessary to dilate much as it has proceeded on the erroneous legal principle that as regards Section 74 of said Contract Act, proof of damages is not necessary by not considering **Fateh Chand, Maula Bux** and **Kailash Nath.** It was contended by learned counsel for appellant that all 3 (three) case laws namely, **Fateh Chand, Maula Bux** and **Kailash Nath** were cited but not considered. It is not necessary to go into that controversy, as a perusal of paragraphs 28.10 and 28.11 of the order of the Section 34 Court makes it clear that it has neither

followed **Fateh Chand, Maula Bux** and **Kailash Nath** nor followed any settled principles of Indian Contract Act. These paragraphs i.e., paragraph number 28.10 and 28.11 of the order of Section 34 Court read as follows:

> *'28.10. A sum of Rs. 35 crores is named in the Modified Agreement dated 20-11-2002 for not commencement of 1st draw of lottery within the stipulated period. It is no doubt that the respondents did not led any evidence to establish the actual loss or damage because of that non commencement of 1st draw of lottery within the stipulated period, however, in Section 74, it clearly provides that the party complaining of the breach is entitled,* ***whether or not actual damage or loss is proved to have been caused thereby.*** *Thus, the question of proving the actual loss or damage does not arise at all. More so, section 74 of the Indian Contract Act has also provided that the compensation to be awarded should be a* ***reasonable compensation not exceeding the amount so named or as the case may be, the penalty stipulated for.*** *For granting reasonable compensation not exceeding the amount so named or as the case may be, the penalty stipulated for, a wide discretionary power has given to the Court. The Ld. Arbitrator after discussing the evidences of the parties, provisions of law and the ratios of the case laws i.e. (i) 2003 (5) SCC 705 and (ii) AIR 1962 SC 1314 decided that the reasonable compensation to be paid by the Claimant to the State is Rs. 10 crores instead of the claim amount of Rs. 35 crores.*

> *28.11. On having synthetic perusal the submissions of the petitioner/claimant as well as his ld. Counsel and the case laws cited in connection with this point, I find no sufficient ground which may nullified the decision of the ld. Arbitrator to fix the compensation at Rs. 10 crores out of the claimed amount of Rs. 35 crores, as reasonable compensation. Therefore, I fully agreed with the decision of the ld. Arbitrator.'*

[37] The above is plainly incorrect and section 34 Court order cannot but be dislodged as regards damages. Therefore, as regards the arbitral award, this section 37 Court severing counter-claim nos. 1 and 4, sets aside the award of ₹ 10 crores *qua* counter-claim No. 1 (damages) but sustains the award of ₹ 19,48,111/- towards counter-claim no.4 being balance cost of construction. Though paragraphs 150 to 162 of the arbitral award have already been extracted and reproduced *supra*, for the sake of ease of reference and for adding clarity and specificity to the effect of this order, this Court deems it appropriate to extract paragraph 162 of the arbitral award and the same reads as follows:

> *'162) Therefore, the Counter Claim of the Respondent is partly allowed only to extent of the Counter Claim made in Sl. Nos. 1 and 4 and accordingly, the Claimant is directed to pay an*

amount of Rs. 19,48,111/- towards Counter Claim No. 4 and Rs. 10,00,00,000/- towards counter claim No. 1 totalling to Rs. 10,19,48,111/- (Rupees ten Crores Nineteen lakhs Forty Eight Thousand One Hundred and Eleven only). The remaining Counter Claims are rejected.

There shall be no order as to costs.'

[38] Before concluding, this Section 37 Court deems it appropriate to write about three points which may not qualify as essential and integral parts of dispositive reasoning but which will capture features of the instant legal drill and contribute to comprehensively capturing the crux and gravamen of the legal drill. The two points are as follows:

(i) In oft quoted ***Khoday Distilleries Ltd. and others – Vs- State of Karnataka and others [(1995) 1 SCC 574]***, it was held that business in liquor is *res extra commercium* and therefore, does not qualify as a right to trade protected/guaranteed under Article 19(1). **Khoday Distilleries** was rendered by a Constitution Bench. Subsequently, after referring to **Khoday Distilleries**, a 2 (two) member Bench of Hon'ble Supreme Court in ***B.R. Enterprises –Vs- State of U.P. and others [(1999) 9 SCC 700]*** made it clear that

right of sale of lottery tickets is neither a fundamental right nor a right under Article 301. It was made clear that one cannot seek a right *qua* lottery tickets as a free trade. In this view of the matter, the primary contract is more in the nature of *concessionaire* agreement rather than a contract. Therefore, the State having merely given a concession to the contractor could not have obviously suffered any loss.

(ii) this Division Bench is Commercial Appellate Division (CAD) by way of Notifications made on the administrative side of this Court and therefore, in the light of Section 10 of Commercial Courts Act, 2015 this Court has heard the captioned statutory appeal under Section 37 of A&C Act as a CAD.

(iii) to be noted, while ₹ 10 crores damages is set aside/dislodged, ₹ 19,48,111/- balance cost of construction is sustained/not-interfered with.

[39] The *sequitur* is, this Section 37 Court has no hesitation in coming to the conclusion that the challenge to the award by the appellant clearly and snugly fits into Section 34(2)(b)(ii) of the A & C Act as regards ₹ 10 crores damages *qua*

counter-claim no. 1. As regards patent illegality, as it is patent illegality in the pre 23.10.2015 regime, it is not circumscribed by mere erroneous application of law or reappreciation of evidence. On the contrary, this is a clear case of complete contravention of Indian Contract Law and is therefore in conflict with public policy of India. As regards appreciation of evidence, as there was no evidence before AT, the question of appreciation of evidence by AT itself did not arise and therefore, reappreciation by this Court does not arise at all.

[40] As regards the dispositive reasoning set out *supra*, this Court deems it appropriate to respectfully conclude by adverting to ***Associate Builders [(2015) 3 SCC 49]***, ***Western Geco International Limited [(2014) 9 SCC 263]*** *and* ***Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India [(2019) 15 SCC 131]*** case laws rendered by Hon'ble Supreme Court. In **Associate Builders**, as regards Section 34(2)(b)(ii) (*conflict with Public Policy of India*) Hon'ble Supreme Court carved out 3(three) facets i.e., juristic principles/doctrines and also laid down the 3 (three) separate tests for these 3 (three) facets/juristic principles. The 3 (three) juristic principles/doctrines are (a) judicial

approach, (b) principles of natural justice and (c) irrationality/perversity. The three separate tests laid down are (a) fidelity in judicial approach, (b) time tested *audi alteram partem* and reasons to be given in award and (c) time honoured **Wednesbury** principle of reasonableness respectively. Subsequently, in **Ssangyong**, Hon'ble Supreme Court took note of the trajectory of change *qua* the architecture of A&C Act and held that judicial approach is not available any more, principles of natural justice are available and irrationality/perversity is not available under Section 34 (2) (b) (ii) but it is available under Section 34 (2A). In this view of the matter, if the 2 (two) juristic principles now available are applied to the case at hand, this Section 37 Court has no hesitation in coming to the conclusion that in so far as counter-claim no.1 (₹ 10 crores damages) is concerned, a clear and complete go by has been given to **Fateh Chand, Maula Bux and Kailash Nath** principles *qua* Section 74 of Indian Contract Act and therefore a case of irrationality/perversity.

[41] Before parting with the matter, it would be trite to place on record that State has pressed into service in the hearing/written submission 2 case laws as would be evident from

narration thus far – one is ***Construction & Design Services -vs- Delhi Development Authority [(2015) 14 SCC 263]*** and the other is ***UHL Power Company Limited -vs- State of Himachal Pradesh [(2022) 4 SCC 116]***. As regards **Construction & Design Services,** the same was pressed into service in an attempt to emphasize that the burden was on the contractor to show that no loss or lesser loss was suffered by State. This Section 37 Court respectfully finds that **Construction & Design Services** is distinguishable on facts for at least 2 reasons: one is **Construction & Design Services** was a case of construction of a sewage pumping station which is a public utility service and delay was not in dispute. Delay in construction of a public utility service undoubtedly causes loss and the burden cast on the contractor was that the extent of loss was not equal to or more than the sum stipulated as liquidated damages/penalty which is factually completely different from the case at hand as in the instant case it is a contract *nay* concession to conduct On-Line lotteries which is *res extra commercium*. The second distinguishing feature is that there was no issue of extension of time. To elaborate on these 2 factually distinguishing features, in **Construction & Design Services**, it was a case of a public utility service where neither delay nor loss was in dispute

and the issue was only with regard to quantum, as the direct question was whether State was entitled to the entire pre-estimated sum stipulated in the contract. It is in this context, that the burden of showing that the State has not suffered loss to the extent of being entitled to the entire pre-estimated sum was cast on the contractor. As regards a case law being distinguishable on facts, this Section 37 Court respectfully reminds itself of Constitution Bench judgment of Hon'ble Supreme Court in ***Padma Sundara Rao (dead) and Ors. v. State of T.N. and Ors.*** reported in **[*(2002) 3 SCC 533* , AIR 2002 SC 1334]**. In **Padma Sundara Rao**, Hon'ble Supreme Court declared the law as to how case laws and precedents should be referred to by Courts. To be noted, **Padma Sundara Rao,** on facts arose under Land Acquisition Act, 1894 (Act No.1 of 1894) and the question was after quashing of land acquisition proceedings, whether State will get a fresh period of time for making declaration. In this factual background, Hon'ble Supreme Court held that even one variation in factual matrix can make a world of difference in applying precedents. The relevant paragraph in **Padma Sundara Rao** is paragraph 9 and the same reads as follows:

> *'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact*

situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board (1972) 2 WLR 537, (1972)1 All ER 749 (HL)]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

As regards **UHF**, as already discussed elsewhere *supra* in this order, interpretation of terms of contract is no doubt the domain of AT but it is so, as long as the findings returned is a plausible view and not illegal. However, this Section 37 Court is only testing whether award of ₹ 10 crores damages fall foul of Section 34 *vide* 2 pigeon holes namely, being contrary to public policy of India and being hit by the vice of patent illegality without going into interpretation of contract by AT. Therefore, **UHF** does not come to the aid of State in the instant case.

[42] The contractor has pressed into service 17 case laws in hearing/written submission but as **Fateh Chand, Maula Bux and Kailash Nath** are most relevant *inter-alia* in the light of **Padma Sundara Rao** principle, those of the case laws which are outside the perimeter of the legal drill at hand are not being

adverted to and instant order is not burdened with discussion on the same to avoid this order becoming verbose.

[43] *Ergo*, the *sequitur* is, order of the Section 34 Court is set aside in part and the award rendered by the Arbitral Tribunal ('AT' for the sake of brevity as per tabulation in the opening paragraph *supra*) is also set aside in part. Captioned appeal is allowed in part by making the following order:

(i) order dated 24.02.2021 made in Arbitration Case No. 1 of 2012/10 of 2013 on the file of Ld. District Judge, Imphal East is set aside in part i.e., in sofar as it sustains the award of ₹ 10 crores damages *vide* counter-claim no. 1 of State by dismissing the Section 34 petition of the contractor;

(ii) order dated 24.02.2021 made in Arbitration Case No. 1 of 2012/10 of 2013 on the file of Ld. District Judge, Imphal East is sustained in part i.e., in sofar as it upholds the award of ₹ 19,48,111/- towards balance cost of construction *vide counter-claim* no. 4 of State by dismissing the Section 34 petition;

(iii) arbitral award dated 30.06.2012 made by the AT is set aside in part i.e., award of ₹ 10 crores damages *vide* counter-claim no. 1 of State;

(iv) arbitral award dated 30.06.2012 made by the AT is sustained in part i.e., award of ₹ 19,48,111/- towards balance cost of construction *vide counter-claim* no. 4 of State; and

(v) consequently, captioned MC taken out by State (filed on 02.12.2022) with the prayer to direct appellant to deposit the sum that has crystallized pursuant to Arbitral Award (crystallized on 15.11.2022) in which no interim order was made, is disposed of as closed.

(vi) there shall be no order as to costs.

JUDGE **CHIEF JUSTICE**

FR/NFR

Bipin/Sushil

P.S. I : Upload forthwith

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