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2026 SCC OnLine Del 8010

In the High Court of Delhi at New Delhi

(BEFORE ANIL KSHETARPAL AND BHARAT PARASHAR, JJ.)

Mumbai International Airport Limited ... Appellant;

*Versus*

Airports Authority of India ... Respondent.

FAO(OS) (COMM) 202/2024[§]

Decided on October 16, 2026, [Judgment reserved on: 09.10.2026]

Advocates who appeared in this case :

Mr. Rajiv Nayar, Sr. Adv, Ms. Kanika Singh, Ms. Ishanee Kapoor, Ms. Janhavi Negi, Mr. Pratham Vir Agarwal and Mr. Naman Maheshwari, Advs.

Mr. Raghavendra P. Shankar, ASG with Mr. Karan Lahiri, Mr. Prateek Arora, Ms. Pallavi Mishra and Ms. Kanishka Singh, Advs.

The Judgment of the Court was delivered by

ANIL KSHETARPAL, J.:— The present appeal under Section 37[1] of the Arbitration and Conciliation Act, 1996[2], read with Section 13 of the Commercial Courts Act, 2015, has been preferred by the Appellant, Mumbai International Airport Limited[3], assailing the judgment dated 10-4-2024[4] passed by the learned Single Judge in OMP (COMM.) No. 268/2023[5], whereby the petition preferred by MIAL under Section 34[6] of the A&C Act challenging the arbitral award dated 23-3-2023[7] was dismissed.

2. The Award was rendered by a three-member Arbitral Tribunal comprising Justice Deepak Gupta (Retd.), Justice C.K. Thakker (Retd.) and Justice (Dr.) Arijit Pasayat (Retd.). The Tribunal rejected MIAL's claims against the Respondent, Airports Authority of India[8], which principally concerned the alleged obligation of AAI to transfer or assign its lessor's interest under the lease executed in favour of Sahara (Batra) Hospitality (P) Ltd.[9].

3. The principal questions which arise for consideration are:

(*i*) Whether the Impugned judgment discloses a failure to apply the statutory standard governing a challenge under Section 34 merely because it reproduces portions of the Award.

(*ii*) Whether the Tribunal's interpretation of the relevant provisions of the Operation, Management and Development agreement dated 4

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-4-2006[10] and the Lease Deed dated 26-4-2006[11] is so perverse or unreasonable as to warrant interference under Section 34.

(*iii*) Whether the Tribunal's treatment of the letter dated 9-6-2006, the parties' subsequent conduct and the communications issued by the Ministry of Civil Aviation[12] discloses any ground for interference under Section 34, warranting interference by this Court in the present appeal under Section 37.

FACTUAL MATRIX:

4. The relevant facts, necessary for adjudication of the present Appeal, may be briefly noticed.

5. AAI had executed a Lease agreement dated 5-6-2002[13] in favour of Sahara in respect of land measuring approximately 30,047.12 square metres at Chhatrapati Shivaji Maharaj International Airport, Mumbai[14]. The lease was for a term of 29 years, ending on 4-6-2031.

6. Pursuant to the Government of India's policy of privatisation of scheduled airports, MIAL was incorporated as a joint venture company[15] and the OMDA was executed between MIAL and AAI on 4-4-2006. MIAL took over the operation of Airport with effect from 3-5-2006. MIAL Lease Deed was also executed between the parties on 26-4-2006 in relation to the Airport premises.

7. The OMDA defined “Existing Leases” as leases presently valid and subsisting in respect of portions of the Airport, entered between AAI and various third parties, details of which are set out in Schedule 28 appended thereto. The Sahara Lease was included in that Schedule. Article 2.6.1 of the OMDA excluded land granted to third parties under Existing Leases, as well as Carved Out Assets, from the land to be demised to MIAL. Article 2.1.1 of the MIAL Lease Deed similarly excluded such land from the Demised Premises and Article 2.1.2 thereto provided that, upon expiry or early termination of an Existing Lease, the land concerned would thereafter form part of the Demised Premises for the remaining term.

8. MIAL relies principally on Article 5.2(b)(i) of the OMDA. That provision contemplated that, during the Transition Phase, MIAL would use its best efforts and AAI would render reasonable assistance to transfer or novate existing contracts and agreements between AAI and third parties, insofar as they related to the Airport. It further provided for MIAL to perform, at its own risk and cost, contracts which could not be specifically novated, with the benefits arising from such contracts vesting in MIAL. Article 20.3.2 of the OMDA provides that, in the event of a conflict between the OMDA and a project agreement, the OMDA would prevail.

9. *MIAL's case* is that Article 5.2(b)(i) required AAI to transfer or

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novate the Sahara Lease, including the lessor's interest thereunder. It also relies on the minutes of the Inter-Ministerial Group meeting dated 18-10-2004, which recorded a recommendation that the Sahara Lease be assigned to the JVC, AAI's letter dated 9-6-2006, subsequent payments of lease rent by AAI to MIAL, and communications issued by MoCA in relation to the proposed transfer.

10. The Sahara Lease was never novated. Sahara did not accept MIAL as its lessor and raised objections to MIAL's invoices. *MIAL's case* before the Tribunal was that AAI had, as an interim arrangement, paid MIAL the lease amounts for approximately ten years, but stopped making such payments with effect from 1-4-2019.

11. MIAL invoked arbitration and sought, *inter alia*, a declaration and direction requiring AAI to transfer or assign the Sahara Lease, a monetary claim towards land rent, a claim relating to minimum guaranteed annual payment/turnover levy, and costs. The Tribunal rejected all claims by its unanimous Award dated 23-3-2023. MIAL's Section 34 Petition was thereafter dismissed by the learned Single Judge by the Impugned judgment.

12. It is in the aforesaid circumstances that the present appeal has been preferred.

CONTENTIONS OF THE PARTIES:

13. The learned Senior Counsel representing the parties were heard, and the record, including the Impugned judgment and the Award, has been perused.

14. The learned Senior Counsel representing the MIAL has made the following submissions:

(*i*) The Impugned judgment does not meaningfully consider the grounds raised in the Section 34 Petition and substantially reproduces the Award. Reliance is placed on *Ajay Singh* v. *Kal Airways (P) Ltd.*[16]; and *Spicejet Limited* v. *Kal Airways (P) Ltd.*[17], to contend that a court exercising jurisdiction under Section 34 must independently consider the challenges raised against an award.

(ii) The Tribunal has misconstrued Article 5.2(b)(i) of the OMDA and thereby rewritten the contract. According to MIAL, Article 2.6 of the OMDA and Articles 2.1.1 and 2.1.2 of the MIAL Lease Deed deal with the demise of land and the creation of MIAL's leasehold interest, whereas Article 5.2(b)(i) deals with the transfer of AAI's rights as lessor under existing third-party contracts. The provisions, therefore, operate in different fields and are not inconsistent. The exclusion of Existing Leases from the Demised Premises does not exclude the transfer of the lessor's interest under those leases.

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(iii) Article 5.2(b)(i) expressly refers to 'all existing contracts and agreements' and contains no exception for Existing Leases, except for Legacy Matters. The Tribunal read an additional exception into the provision, contrary to its plain language. Reliance is also placed on Article 20.3.2 of the OMDA and Section 109 of the Transfer of Property Act, 1882[18].

(*iv*) The Tribunal ignored vital evidence, particularly AAI's letter dated 9-6-2006, which stated that existing commercial and land licence/lease agreements were required to be assigned or novated to the joint venture company during the Transition Phase. The learned Single Judge noticed this objection but failed to return a specific finding on it. Reliance is placed on *Ssangyong Engineering & Construction Co. Ltd.* v. *National Highways Authority of India*[19], and other decisions concerning interference where an Arbitral Tribunal ignores vital evidence.

(*v*) AAI had transferred the rent and other benefits arising from the Sahara Lease to MIAL for nearly ten years. According to MIAL, this consistent conduct reflects AAI's own understanding that the lessor's benefits under the Sahara Lease were to vest in MIAL. MIAL further relies on communications issued by MoCA, including those dated 14-5-2012, 17-6-2013, 27-12-2013 and 6-1-2017, and submits that the Tribunal erred in holding that these communications were not policy directions under Section 40 of the Airports Authority of India Act, 1994[20].

15. *Per contra*, learned Senior Counsel representing the AAI has made the following submissions:

(*i*) The Award contains a detailed consideration of the relevant contractual provisions and that the learned Single Judge correctly declined to substitute the Tribunal's interpretation with another possible view. It is contended that Article 2.6 of the OMDA and Articles 2.1.1 and 2.1.2 of the MIAL Lease Deed specifically exclude Existing Leases from the Demised Premises and provide that the underlying land would become part of those premises only upon expiry or early termination of the relevant lease.

(*ii*) The letter dated 9-6-2006 was noticed and reproduced in the Award and that MIAL's reliance on a particular portion of the letter is, in substance, an invitation to re-appreciate the evidence. The payments made over the years are stated to have been an interim arrangement and do not establish that the Sahara Lease stood transferred or novated. The plea of acquiescence, waiver or estoppel was not advanced before the Tribunal and cannot be introduced at this stage.

(*iii*) As regards the MoCA communications, AAI contends that these

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communications and the legal opinions referred to therein could not amend or override the terms of the OMDA, which is a bilateral contract. The communications did not constitute directions on a question of policy within the meaning of Section 40 of the AAI Act.

(*iv*) The Award is a reasoned and unanimous decision, and no ground for interference under Section 34, much less under Section 37, is made out.

16. No other submissions have been advanced by learned Senior Counsel representing the parties.

ANALYSIS AND FINDINGS:

17. This Court has considered the submissions advanced by learned Senior Counsel for the parties and examined the Impugned judgment, the Award and the material placed on record. Before addressing the specific grounds urged in the Appeal, it is necessary to delineate the scope of interference available to this Court under Section 37.

18. The jurisdiction under Section 34 is limited and does not permit the Court to sit in appeal over an arbitral award. An award cannot be set aside merely because the Court considers another interpretation of the contract or a different appreciation of the evidence to be preferable. The interpretation of contractual provisions ordinarily falls within the domain of the Arbitral Tribunal. Interference is permissible only where a ground recognised under Section 34 is established. In particular, patent illegality under Section 34(2A) must go to the root of the matter. It does not permit a reappreciation of evidence or correction of every error in the Award. However, an award may be vulnerable where the Tribunal disregards vital evidence in a manner that vitiates its conclusion or adopts an interpretation that no fair-minded or reasonable person could have arrived at on the terms of the contract.

19. Further, the limits of appellate scrutiny under Section 37 are narrower still. The appellate court does not undertake an independent assessment of the merits of the Award. Its enquiry is confined to determining whether the Court exercising jurisdiction under Section 34 has remained within the bounds of that provision. The Supreme Court has repeatedly affirmed this position, including in *MMTC Ltd.* v. *Vedanta Ltd.*[21], where it emphasised the limited and supervisory nature of the jurisdiction under Section 37. The relevant extract reads as follows:

> *"14. As far as interference with an order made Under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference Under Section 37 cannot travel beyond the restrictions laid down Under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court*

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*Under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court Under Section 34 and by the court in an appeal Under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."*

*(Emphasis supplied)*

20. The Supreme Court has further reiterated that the appellate court cannot reassess the evidence or substitute its own view on the merits of the dispute, and may interfere only where the Section 34 Court has exceeded or failed to exercise the jurisdiction vested in it. The relevant observations in *Punjab State Civil Supplies Corpn. Ltd.* v. *Sanman Rice Mills*[22] are as follows:

*"20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The appellate court has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to find out as to whether the decision of the Arbitral Tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary Court of Appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the Arbitral Tribunal, the other view which is also a possible view is a better view according to the appellate court."*

*(Emphasis supplied)*

21. The same distinction between the limited jurisdiction under Section 34 and the still narrower appellate jurisdiction under Section 37 was affirmed by the three-Judge Bench of the Supreme Court in *UHL Power Co. Limited* v. *State of Himachal Pradesh*[23]. The Court observed:

*"15. This Court also accepts as correct, the view expressed by the*

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*appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings Under Section 34 of the Arbitration Act, by virtually acting as a Court of Appeal.*

*16. As it is, the jurisdiction conferred on courts Under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal Under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."*

*(Emphasis supplied)*

22. In *McDermott International Inc.* v. *Burn Standard Co. Ltd.*[24], the Supreme Court also explained that the supervisory role of the Court in arbitral matters is intended to ensure fairness, and not to correct errors by substituting its own interpretation of the contract for that of the Tribunal. The relevant extracts, including the observations on the construction of contracts and the relevance of the parties' conduct and correspondence, are reproduced below:

*"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.*

* * *

*112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of*

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*construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law.* (See Pure Helium India (P) Ltd. *v.* ONGC *[(2003) 8 SCC 593] and* D.D. Sharma *v.* Union of India *[(2004) 5 SCC 325 : (2005) 123 Comp Cas 135].)*

*113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award.*

*114. The above principles have been reiterated in* Chairman and MD, NTPC Ltd. *v.* Reshmi Constructions, Builders & Contractors *[(2004) 2 SCC 663]*, Union of India *v.* Banwari Lal & Sons (P) Ltd. *[(2004) 5 SCC 304]*, Continental Construction Ltd. *v.* State of U.P. *[(2003) 8 SCC 4] and* State of U.P. *v.* Allied Constructions *[(2003) 7 SCC 396]."*

*(Emphasis supplied)*

23. The above principles have consistently been followed by the Supreme Court in several decisions, including *Vedanta Ltd.* v. *Shenzhen Shandong Nuclear Power Construction Co. Ltd.*[25], *ONGC Ltd.* v. *Western Geco International Ltd.*[26], *Numaligarh Refinery Ltd.* v. *Daelim Industrial Co. Ltd.*[27], *Tata Hydro-Electric Power Supply Co. Ltd.* v. *Union of India*[28], *Ssangyong Engineering* (supra) and *NHAI* v. *M. Hakeem*[29].

24. The aforesaid decisions establish that the jurisdiction under Section 37, though appellate in nature, remains confined within the limits prescribed by Section 34. This Court must, therefore, examine whether the learned Single Judge applied the correct statutory standard and whether the grounds urged by MIAL disclose any error warranting interference with the decision to uphold the Award. The Court cannot undertake a fresh assessment of the merits merely because another interpretation of the contractual provisions or the evidence may be possible. At the same time, the limited nature of appellate scrutiny does not preclude interference where the learned Single Judge has failed to exercise the jurisdiction vested in the Court under Section 34 or has exercised it contrary to the governing statutory standard.

25. Keeping in view the aforementioned legal framework, this Court now adverts to the issues in the present case. The first issue that arises for consideration is whether the Impugned judgment is liable to be set aside on the ground that the learned Single Judge has substantially reproduced portions of the Award. In addressing this objection, it is necessary to distinguish between an order that does not furnish elaborate reasons and one that fails to disclose any meaningful adjudication of the controversy. The two cannot be treated as interchangeable. The adequacy of reasons must be assessed having

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regard to the nature of the proceedings, the grounds urged, and the conclusions reached. An order does not become non-speaking merely because its reasoning is brief or because the court has adopted the reasoning contained in the decision under challenge.

26. The requirement that a court must apply its mind to the controversy does not entail that it must formulate an entirely independent set of reasons in its own words, irrespective of the reasoning already available on record. Where a court examines the challenge before it and finds the reasoning of the decision under challenge to be legally sustainable, it may adopt that reasoning as the basis for its conclusion. Such adoption may be expressed by reproducing the relevant reasoning, referring to it, or expressly agreeing with it. The form in which the court conveys its agreement is not, by itself, determinative of the validity of the order. What matters is whether the judgment, read as a whole, demonstrates that the court has considered the controversy in the light of the applicable legal principles.

27. The reproduction of reasons must, therefore, be distinguished from the mechanical reproduction of a decision without adjudication of the objections raised against it. In the former situation, the court adopts reasoning which it considers sufficient to dispose of the challenge. In the latter, the court merely sets out the reasoning of the decision under challenge without examining whether it answers the grounds urged against it. The distinction lies not in the extent of textual reproduction, but in the existence or absence of judicial engagement with the controversy. Consequently, the mere circumstance that substantial portions of an arbitral award have been reproduced in a judgment does not, without more, establish non-application of mind.

28. This distinction is particularly relevant in proceedings under Sections 34 and 37 of the A&C Act. A court exercising jurisdiction under Section 34 is required to determine whether the challenge falls within a ground recognised by the statute. It is not required to undertake a fresh adjudication of the contractual dispute. Where the Tribunal has considered the relevant provisions and material on record, and its conclusion does not attract any ground for interference, the court may adopt the Tribunal's reasoning without restating the entire analysis in different words.

29. The same principle applies to an appeal under Section 37, subject to the narrower scope of appellate scrutiny. The appellate court must determine whether the Section 34 court applied the correct statutory standard and remained within the limits of its jurisdiction. It is not required to reassess the merits merely because the judgment under appeal reproduces portions of the Award.

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30. Consequently, a challenge alleging that a judgment is non-speaking cannot succeed merely by pointing to the reproduction of the Award. The objection must be assessed in substance, including whether any material ground of challenge remains unanswered, whether the applicable statutory test has been applied, and whether the reasons adopted support the conclusion reached. These considerations are not an exhaustive checklist. The ultimate inquiry is whether the judgment discloses meaningful adjudication of the challenge.

31. This principle does not permit mechanical endorsement of an Award. If the Section 34 court merely reproduces the Award without examining a material objection, or if the reasoning adopted fails to answer the challenge or rests on a legally untenable premise, the judgment may remain vulnerable notwithstanding the reproduction of reasons. Similarly, where the Tribunal has disregarded vital evidence in a manner attracting a ground under Section 34, the court cannot avoid examining that deficiency merely by adopting the Award. The distinction is between the legitimate adoption of reasoning and the abdication of the duty to adjudicate.

32. The aforesaid approach is consistent with the principle recognised by the Co-ordinate Bench of this Court in *Proto Developers and Technologies Ltd.* v. *Antriksh Realtech Pvt. Ltd.*[30]. The decision emphasises that a challenge to the sufficiency or weight of the evidence considered by the Arbitral Tribunal does not, by itself, permit reappreciation under Sections 34 or 37. It also recognises that the question whether a judgment is non-speaking must be assessed on an overall reading, having regard to the reasoning disclosed and the statutory standard applied. The relevant extracts of the same are reproduced hereinbelow:

> *"40. The challenge of the Appellant is thus, in essence, directed to the sufficiency and weight of the evidence, which is thus not a case of no evidence. At best, it constitutes a challenge to the sufficiency of the material considered by the Tribunal as evidence, which lies within the exclusive domain of the Arbitral Tribunal and is not open to re-appreciation under Sections 34 or 37 of the Act.*
>
> * * * *
>
> *44. On an overall consideration, the Impugned judgment discloses that the learned Single Judge applied the correct test under Section 34, examined the challenge on the touchstone of patent illegality and perversity, and declined to substitute the Arbitral view with an alternative interpretation of the contract or the evidence. No jurisdictional error or misapplication of the settled principles governing interference with an Arbitral Award has been shown.*
>
> *45. The contention that the Impugned judgment is non-speaking*

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*is also without merit. The Impugned judgment notices the contractual framework, the nature of the findings returned by the learned arbitrator, and records the conclusion that the view taken is a plausible and justifiable one."*

33. Further, the decision of the High Court of Karnataka in *Strategic Infra Services Pvt. Ltd.* v. *Mphasis Ltd.*[31], relied upon by AAI, similarly supports an assessment of the reasons recorded in the judgment as a whole. These decisions are relevant to the present issue not because they dispense with the requirement to give reasons, but because they direct attention to the substance of the adjudication rather than the form in which it is expressed.

34. The decisions relied upon by MIAL in *Ajay Singh* (supra) and *Spicejet Limited* (supra) underscore the obligation of a court exercising jurisdiction under Section 34 to consider the grounds of challenge and furnish reasons for its conclusion. That obligation cannot be satisfied by a mere recital of the Award where the objections remain unexamined. However, the requirement of independent application of mind is distinct from a requirement that every reason be independently formulated. The question is whether the court has meaningfully examined the challenge and applied the statutory standard.

35. The decisions in *Kalanithi Maran* v. *Ajay Singh*[32] and *National Project Constructions Corporation Ltd.* v. *S.S. Sharma and Company*[33], relied upon by MIAL, must likewise be considered in the context of the deficiencies identified in those cases. Where the objections have not been meaningfully examined and the applicable statutory test has not been applied, interference may be warranted. They do not, however, justify treating reproduction of an Award as conclusive proof of non-application of mind. The controlling consideration remains whether the judgment, read as a whole, discloses meaningful adjudication of the grounds raised.

36. Tested against the aforesaid principles, the Impugned judgment cannot be characterised as non-speaking merely because it reproduces portions of the Award. The learned Single Judge recorded MIAL's submissions, considered the relevant provisions of the OMDA and the MIAL Lease Deed, addressed the contention based on Article 20.3.2, and examined the Tribunal's interpretation of the contractual provisions. The reproduction of portions of the Award formed part of that discussion and does not, by itself, establish that the learned Single Judge failed to apply his mind to the challenge.

37. The learned Single Judge could, however, have dealt more expressly with the evidentiary significance attributed by MIAL to the letter dated 9-6-2006 and the subsequent rent payments. The adequacy of the reasoning on these matters must be distinguished

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from the objection to the form of the judgment. Whether the treatment of this material discloses a failure to exercise jurisdiction under Section 34 depends on its relevance to the grounds of challenge and on whether the Award's treatment of the same material attracts any statutory ground for interference.

38. The objection that the Impugned judgment is non-speaking merely because it reproduces portions of the Award is, accordingly, rejected. The specific objections concerning contractual interpretation, the letter dated 9-6-2006, the rent payments and the communications issued by the MoCA must nevertheless be examined on their own merits to determine whether the decision to uphold the Award falls within the limits of Section 34.

39. Turning to the contractual interpretation, Article 2.6.1 of the OMDA excludes from the land to be demised to MIAL the land granted to third parties under Existing Leases. Articles 2.1.1 and 2.1.2 of the MIAL Lease Deed reflect the same arrangement and provide that the land covered by an Existing Lease would form part of the Demised Premises only upon expiry or early termination of that lease. These provisions establish that the underlying land was not to be included in the demise to MIAL while the relevant Existing Lease continued to subsist. However, the question whether AAI was separately obliged to transfer or novate its interest as lessor under such a lease must be examined with reference to Article 5.2(b)(i) of the OMDA and cannot be answered solely by reference to the provisions governing the demise of land.

40. Article 5.2(b)(i) addresses existing contracts and agreements between AAI and third parties relating to the Airport. It contemplates that MIAL would use its best efforts and AAI would render reasonable assistance towards their transfer or novation during the Transition Phase. It further provides for MIAL to perform, at its own risk and cost, contracts which could not be specifically novated, with the benefits arising from such contracts vesting in MIAL. The provision must, therefore, be examined not only for the obligation to transfer or novate contracts, but also for the consequences contemplated where specific novation is not possible. Whether the Sahara Lease falls within the scope of this arrangement, and whether the provision encompasses the transfer of AAI's interest as lessor, are the questions requiring determination.

41. MIAL's submission that the two sets of provisions operate in different fields is not without force. Article 2.6 concerns the demise of land to MIAL, whereas Article 5.2(b)(i) concerns the transfer or novation of contracts. The exclusion of the land under the Sahara Lease from the Demised Premises does not, as a matter of language alone, necessarily answer whether AAI's lessor's interest under that lease

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could be transferred separately. The Tribunal itself acknowledged that Article 5.2(b)(i), if read in isolation, could bear the interpretation advanced by MIAL.

42. The question is not whether MIAL's construction is arguable, but whether the Tribunal's contrary construction is so unreasonable as to attract interference under Section 34. The Tribunal read Article 5.2(b)(i) in conjunction with the provisions governing Existing Leases and the Demised Premises. Its reasoning appears to proceed on the basis that the specific arrangement excluding land under Existing Leases from the demise must inform the interpretation of the general provision concerning the transfer or novation of existing contracts. That approach is not, in itself, impermissible. However, the exclusion of the underlying land from the demise cannot automatically be treated as excluding the lessor's contractual interest from the operation of Article 5.2(b)(i). The sustainability of the Tribunal's interpretation must be assessed by examining whether the contractual provisions, read together, reasonably support that further conclusion.

43. The definition of Existing Leases, their inclusion in Schedule 28, and their exclusion from the Demised Premises provide contextual support for the Tribunal's interpretation. The specific provisions governing the demise of land must be read harmoniously with the general provision concerning existing contracts and agreements. At the same time, the fact that an Existing Lease is excluded from the Demised Premises does not, without further analysis, establish that the benefits arising from that lease are also excluded from Article 5.2(b)(i). The decisive question is whether the contractual scheme, read as a whole, supports the Tribunal's construction of the expression “such contracts” and its application to the Sahara Lease.

44. MIAL's contention that Article 5.2(b)(i) contains no express exception for Existing Leases must be considered in that context. The absence of an express exception is not conclusive, since contractual provisions must be read together rather than in isolation. Equally, a court cannot introduce an exclusion that the contract, properly construed, does not support. The Tribunal's interpretation can be sustained only if it represents a plausible reconciliation of the general provision concerning existing contracts with the specific provisions governing Existing Leases. The question is not whether another interpretation is possible, but whether the interpretation adopted falls outside the range of permissible contractual constructions.

45. Article 20.3.2 of the OMDA does not, by itself, resolve the present dispute. The provision addresses a conflict between the OMDA and a project agreement, whereas the principal controversy concerns the construction of different provisions of the OMDA, read with the MIAL Lease Deed. It does not prescribe how the provisions of the OMDA are

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to be reconciled with one another. The learned Single Judge was, therefore, justified in declining to treat Article 20.3.2 as determinative of the dispute.

46. The observation of the learned Single Judge that there was no clause dealing with the benefits arising from Existing Leases requires qualification. Article 5.2(b)(i) expressly provides that the benefits arising from the contracts covered by that provision would vest in MIAL. The dispute is whether the Sahara Lease falls within that expression. Accordingly, the existence of the benefits clause cannot be overlooked. The question is one of its scope and application. The conclusion that the Award does not warrant interference must, therefore, rest on the Tribunal's construction of the category of contracts covered by Article 5.2(b)(i), and not on the absence of a contractual provision concerning benefits.

47. The Award's treatment of MIAL's submission that the provisions concern distinct interests, the demise of land on the one hand and the transfer of the lessor's interest on the other, is not elaborate. Nevertheless, if the Award is read as a whole, the Tribunal's reasoning must be assessed by reference to the contractual framework it considered and the basis on which it treated the specific provisions governing Existing Leases as controlling. The absence of a separate answer to every step of MIAL's argument does not, by itself, establish patent illegality. However, the distinction between the demise of land and the transfer of the lessor's interest remains material, and the conclusion must be sustainable on the contractual provisions actually considered by the Tribunal rather than on an assumption that the two interests are identical.

48. Section 109 of the TPA does not by itself establish the contractual obligation asserted by MIAL. The provision concerns the rights and liabilities arising upon transfer of the lessor's interest in the leased property. The question in the present case is anterior: whether, on a proper construction of the OMDA, AAI was obliged to transfer or novate its interest as lessor under the Sahara Lease. The statutory consequences of a transfer cannot, without more, establish that the parties had contractually undertaken to effect such a transfer. The reliance on Section 109 must, therefore, be considered in conjunction with, and not as a substitute for, the construction of the relevant contractual provisions.

49. It is also necessary to distinguish between the novation of a contract and the transfer of the lessor's interest in the leased property. The former ordinarily involves the substitution of a contract or a contracting party in accordance with the applicable legal requirements, whereas the latter raises the question of the rights that pass to a transferee of the lessor's interest under Section 109 of the TPA. The fact

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that the Sahara Lease was not novated does not, by itself, determine whether the lessor's interest could have been transferred independently. The issue in the present case, however, is whether such a transfer was contemplated or required by the OMDA, and whether the Tribunal's construction of the contractual provisions on that question attracts any ground for interference under Section 34.

50. MIAL relies upon the communications issued by the MoCA and the legal opinions referred to therein to contend that the proposed transfer of the Sahara Lease was supported by the policy framework governing the privatisation of the Airport. It further submits that these communications constituted directions on a question of policy within the meaning of Section 40 of the AAI Act. The mere fact that the OMDA is a bilateral contract would not, by itself, answer a contention that a binding statutory direction was issued under Section 40. The nature and legal effect of the communications must be assessed with reference to the statutory provision and the contents of the communications themselves.

51. The Tribunal considered the communications and concluded that they did not constitute policy directions under Section 40, but reflected views concerning the interpretation and implementation of the contractual arrangements. The question before this Court is whether that conclusion is so legally untenable or perverse as to attract interference under Section 34. The fact that the Ministry was involved in the policy process leading to the privatisation of the Airport does not, by itself, establish that every subsequent communication or legal opinion constituted a binding direction. In the absence of a demonstrated statutory direction having been disregarded, the communications do not, merely by expressing a particular understanding of the transaction, establish a ground for setting aside the Award. This conclusion is confined to the grounds raised in the present arbitral challenge and does not determine any independent public-law issue that may arise concerning the legal effect of a direction validly issued under Section 40.

52. The Tribunal referred to AAI's letter dated 9-6-2006 and reproduced a portion of it in the Award. However, it did not separately analyse the precise statement on which MIAL relies, and the learned Single Judge could have dealt with this objection more expressly. The relevant question is whether the omission to discuss that statement separately amounts to a disregard of material evidence warranting interference under Section 34, or whether the Award, read as a whole, discloses a sustainable basis for the conclusion reached.

53. The letter records AAI's understanding that existing commercial and land licence/lease agreements were required to be assigned or novated to the JVC during the Transition Phase. It is, therefore,

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relevant to MIAL's contention that Article 5.2(b)(i) contemplated a transfer of the lessor's interest under the Sahara Lease. At the same time, the letter is a post-contractual communication and cannot, by itself, amend the terms of the OMDA. Its significance must be assessed in conjunction with the contractual provisions that govern the scope and manner of the contemplated transfer.

54. The fact that the letter refers to assignment or novation during the Transition Phase does not, by itself, resolve the dispute. The absence of an automatic transfer is distinct from the question whether AAI was contractually obliged to take steps to effect a transfer. The relevant inquiry is whether the letter, considered with the contractual scheme and the reasons recorded in the Award, renders the Tribunal's interpretation legally unsustainable. The omission to discuss every sentence of a document separately is not sufficient to establish patent illegality. However, the materiality of the omitted consideration must be assessed rather than presumed away.

55. MIAL also relies upon the payments made by AAI to MIAL for approximately ten years. The Award noticed that AAI had passed on the lease amounts to MIAL until 2019, although it considered that conduct while dealing with limitation and did not separately examine whether the payments supported MIAL's interpretation of Article 5.2(b)(i). The evidentiary significance of this conduct must, therefore, be considered in the context of the contractual dispute.

56. The payments are relevant to the extent that they may indicate the manner in which the parties implemented or understood the arrangement concerning the Sahara Lease. However, the fact that AAI passed on the amounts in question does not, by itself, establish that the lessor's interest stood transferred to MIAL. Nor does it conclusively establish that Article 5.2(b)(i) required such a transfer. The weight to be attached to the payments depends upon the circumstances in which they were made, the arrangement under which they were passed on, and their consistency with the contractual provisions.

57. AAI has contended that no plea of acquiescence, waiver or estoppel was advanced before the Tribunal. In the absence of such a plea having been adjudicated, this Court need not determine the dispute on those independent grounds. The payments must instead be considered for their evidentiary relevance to the contractual interpretation advanced by MIAL. The question is whether the Tribunal's failure to analyse that relevance separately renders its conclusion perverse or otherwise attracts a ground for interference under Section 34. That question must be answered by reference to the materiality of the payments and the reasoning of the Award as a whole, rather than by treating the absence of an automatic transfer as conclusive.

58. The minutes of the Inter-Ministerial Group meeting dated 18-10-

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2004 recorded a recommendation that the Sahara Lease be assigned to the JVC. The minutes predate the execution of the OMDA and may be relevant to the background and commercial context of the transaction. However, the contractual rights and obligations enforceable between MIAL and AAI must ultimately be determined from the agreements executed by them, read in the light of the surrounding circumstances to the extent permissible in construing those agreements. The minutes do not, by themselves, establish that the parties incorporated the recommendation into a binding contractual obligation. The Tribunal's reliance on the executed agreements, therefore, does not warrant interference merely because the earlier recommendation contemplated an assignment.

CONCLUSION:

59. For the reasons stated above, this Court finds no ground to interfere with the Impugned judgment merely because it reproduces portions of the Award. The Tribunal's interpretation of the contractual provisions must be assessed within the limited scope of Section 34, and the evidentiary objections raised by MIAL must be examined by reference to their materiality and the effect of the alleged omissions on the conclusions reached. For the reasons recorded hereinabove, and subject to the foregoing examination of the contractual provisions and the material relied upon by MIAL, no ground for interference by the Court exercising jurisdiction under Section 34 has been established.

60. Consequently, the present appeal is dismissed.

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[1] Hereinafter referred to as ‘Section 37’

[2] Hereinafter referred to as ‘A&C Act’

[3] Hereinafter referred to as ‘Appellant’ or ‘MIAL’

[4] Hereinafter referred to as ‘Impugned Judgment’

[5] Hereinafter referred to as ‘Section 34 Petition’

[6] Hereinafter referred to as ‘Section 34’

[7] Hereinafter referred to as ‘Award’

[8] Hereinafter referred to as ‘Respondent’ or ‘AAI’

[9] Hereinafter referred to as ‘Sahara’

[10] Hereinafter referred to as ‘OMDA’

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[11] Hereinafter referred to as 'MIAL Lease Deed'

[12] Hereinafter referred to as 'MoCA'

[13] Hereinafter referred to as 'Sahara Lease'

[14] Hereinafter referred to as 'Airport'

[15] Hereinafter referred to as 'JVC'

[16] (2024) 3 HCC (Del) 117

[17] 2023 SCC OnLine Del 4557

[18] Hereinafter referred to as 'TPA'

[19] (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213

[20] Hereinafter referred to as 'AAI Act'

[21] (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293

[22] 2024 SCC OnLine SC 2632

[23] (2022) 4 SCC 116 : (2022) 2 SCC (Civ) 401

[24] (2006) 11 SCC 181.

[25] (2019) 11 SCC 465 : (2019) 4 SCC (Civ) 724.

[26] (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12.

[27] (2007) 8 SCC 466.

[28] (2003) 4 SCC 172.

[29] (2021) 9 SCC 1.

[30] 2026 SCC OnLine Del 2842

[31] Commercial Appeal No. 102/2024

[32] 2024 SCC OnLine SC 1876

[33] 2025:DHC:5244-DB

[§] 2026:DHC:9264

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