IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21-04-2026

DATE OF DECISION : 01-06-2026

CORAM

THE HONOURABLE MR JUSTICE P. VELMURUGAN
AND
THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA(CAD) No. 47 of 2026
AND
CMP No. 7800 of 2026

M/s E.C.Bose & Company Private Limited
ECB Towers
No.13A, St George Terrace, P.S.Hastings
Kolkata 700 022

Appellant

Vs

M/s Sugesan Transport Pvt. Ltd.,
Rep. by its Director Mr.Rajendra K.Sheth
No.340, 1st South Main Road
Kapaleeswarar Nagar, Neelangarai
Chennai 600 115

Respondent

Memorandum of Grounds of Original Side Appeal filed under Section 13 of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996 read with Clause 15 of the Letters Patent, against the order dated 26.11.2025 made in Arb.OP (Comm.Div) No.10 of 2021 passed by the learned single Judge on the Original Side.

For Appellant: Mr.J.Ravikumar

For Respondent: Mr.A.K.Sriram
Senior Advocate for
Mr.Vaibhav R.Venkatesh

for Caveator

JUDGMENT

P.Velmurugan J.

The present intra-Court appeal is directed against the order passed by the learned single Judge in Arb.OP (Com.Div) No.10 of 2021, dated 26.11.2025 on the Original Side.

2. The facts leading to the filing of the appeal are as follows:-

The appellant is a 100 year old company based at Kolkata and in the business of stevedoring and other allied services operating from the Kolkata Port and Docks. The appellant successfully bid for and was awarded a tender by the Kolkata Port Trust (for short, "the KOPT") to operate dry cargo at berth 2 and 8 of Haldia Dock Complex under Kolkata Port Trust vide MTO/G/607-E/SHORE/2015 and Work Order No.MTO/G/607-E/SHORE/ 2016/2849 dated October 09, 2015 for a period of 10 years as per Clause 7.5 of the concerned Tender document at Rs.63.71 per ton and under the terms and conditions contained in the said tender document as well as the addendum issued thereof by KOPT, which was duly accepted by the respondent herein. The appellant had to meet out to preliminary obligations, namely, submission of performance bank guarantee for a sum of Rs.3.52 Crores and the installation and commissioning of minimum equipments by 06.01.2016 at the Kolkata Port

Trust. Since the appellant could not mobilise the necessary funds and the equipments required for commissioning, the respondent agreed to fund Rs.2.50 Crores for the purpose of performance bank guarantee and to mobilise and commission minimum equipments as per the tender conditions. Based on the aforesaid exigencies, the parties herein entered into a Memorandum of Understanding dated 11.12.2015, wherein it was agreed that the existing work order issued by KOPT stated supra and future work orders and other existing contracts outside berth 2 and 8 will be jointly executed by both parties. Based on the MoU dated 11.12.2015, the respondent paid Rs.2.50 Crores to the appellant for the purpose of submitting performance bank guarantee to KOPT and with additional self fund of Rs.1.02 Crores, a performance bank guarantee worth Rs.3.52 Crores was furnished to the KOPT as per the tender. The KOPT executed an agreement with the appellant, which was also shared with the respondent and the respondent was requested to supply their equipments, machineries and cranes to meet the deadline of 06.01.2018 for installation and commissioning of minimum equipments as per the tender. Several e-mails were sent by the appellant to the respondent to supply the equipments and cranes. On 04.02.2016, KOPT extended the time for installation of equipments and requested the appellant to submit documentary proof of the preparedness and availability of the equipments and machineries. The appellant requested the respondent to share the documentary proof of the preparedness of the

equipments, but the respondent failed to supply the equipments and machineries and also failed to provide documentary proof of preparedness. The respondent shared inadequate and invalid documents, which were not valid proof for availability of machineries. The deadline to furnish documentary proof ended on 10.02.2016 and due to the failure of the respondent to provide the documentary proof and machineries, KOPT terminated the contract awarded to the appellant and encashed the entire performance bank guarantee of Rs.3.52 Crores, which included the sum of Rs.2.50 Crores given to the appellant by the respondent for the said purpose. After the termination of contract and encashment of the bank guarantee by KOPT in February 2016, the respondent started distancing itself from the work order and claimed repayment of Rs.2.50 Crores from the appellant as if it was a loan transaction. The appellant informed the respondent that it was a joint project of the parties to take up the work order of KOPT and it was not proper for the respondent to claim the money from the appellant knowing well that the said money was encashed by KOPT along with the sum of Rs.1.02 Crores paid by the appellant due to the failure of the respondent to supply the minimum equipments as per the tender conditions by 06.01.2016 and submission of documentary proof within the extended time of 10.02.2016. Since disputes arose between the parties due to the unfair and false claim of loan of Rs.2.50 Crores by the respondent against the appellant, the matter was referred to arbitration.

3. The respondent herein filed a claim statement on 11.10.2017 stating that the respondent company is a leading service provider of heavy earth equipments on contract basis, road laying service, plant erection, heavy lift, granite handling-crawler cranes etc. Based on the assurances and promises of appellant company, namely, M/s EC Bose & Co Pvt Ltd (ECB), the claimant entered into a Memorandum of Understanding (MoU) dated 11.12.2015 with the appellant company to provide financial assistance to tune of Rs. 2.50 Crores to be utilized by the company in meeting with obligations for providing a Performance Bank Guarantee of Rs.3.52 Crores from State Bank of India, SME, Ballygunge Branch, Kolkatta in respect of exclusive right to operate cargo at Berths 2 & 8 of the Haldia Dock Complex vide MTO/G/607-E/SHORE/2015 and work Order No. MTO/G-E-SHORE/2015/2849 dated 9th October 2015. It was also specifically agreed that the financial assistance amount provided by the claimant would be utilized for margin money to be deposited with appellant's bankers, namely, State Bank of India as fixed deposit. The same would be returned to the claimant by the appellant within 30 days, but not later than 89 days at any cost from the date of MoU dated 11.12 2015. It was further agreed that the amount deposited with the bankers-SBI by the appellant for the margin monies as fixed deposits, copy of the same will be handed over to the claimant along with copy of the Bank Guarantee for Rs.3.52 Crores. Out of the sum of

Rs.2.50 Crores provided as financial assistance, the appellant company provided copy of PBG & fixed deposit amounting to Rs.2.27 Crores and Rs.5 Lacs i.e., Rs.2.32 Crores only. No copy of fixed deposit for remaining Rs.18 Lakhs was provided by the appellant, despite assurance in the MoU that they would utilize the amount for the margin money only. In lieu of the amounts paid by the claimant, a promissory note for Rs.2.50 Crores was executed on 11.12.2015 by Mr.Diborshi Sadhan Bose at Chennai and Board Resolution of the appellant company too was handed over authorizing Mr.Deborshi Sadhan Bose, Director of the company to take necessary action as mentioned in the Board's resolution. The appellant company gave post dated cheques of Rs.3 Crores (Rupees Three Crores only) vide Cheque No.077530 dated 10.12.2015 as security for the financial assistance provided by the claimant. However, the appellant company represented by Mr.Deborshi Sadhan Bose & Mr.Partha Sadhan Bose never fulfilled their commitments as per the MoU dated 11.12.2015. Even after giving various dates and commitments to repay the financial assistance, 6 new security cheques were furnished on 09.03.2016 since the financial assistance could not be repaid within 30 days, but not later than 89 days at any cost as per MoU. The details of the cheques bearing Nos.1) 786527, 2) 786528, 3) 786529, 4) 796530, 5) 796531 & 6) 786532 all dated 09.03.2016 each for Rs.50 Lakhs (Rupees Fifty Lakhs only) in all totalling to Rs.3 Crores. The claimant have been put to real, untold embarrassment and hardship with their bankers and all

their vendors too on this non fulfillment of repaying the financial assistance, has resulted in a huge financial problem and mess for them. In fact the appellant company pleaded the claimant not to deposit the said cheques already given on the pretext of promising to make payments. With no option left the claimant agreed to the same and decided to give the appellant company and its directors one more chance. Thereafter, the appellant company handed over 6 cheques to the claimant promising that these cheques would pass and payments would be made promptly. The details of the cheques bearing Nos. 1) 786533, 2) 786534, 3) 786535, 4) 786536, 5) 786537 & 6) 786538 dated 06.06.2017 each for Rs.50 Lakhs (Rupees Fifty Lakhs only) in all totalling to Rs.3 Crores. Induced into believing the appellant, the claimant accepted these cheques. The claimant deposited the above mentioned cheques on 03.09.2016, but to the shock and surprise of the claimant, the cheques got dishonoured. It is evident that the said cheques were issued with a mala fide intention knowing fully well that the same would bounce purely to cheat the claimant and thereby to defraud in every manner possible. It is further stated that the appellant company have wilfully, wantonly, fraudulently and with criminal intention cheated the claimant for the monies due and payable. It is pertinent to mention at this juncture that despite huge amounts being due from the appellant and despite all the fake assurances, till today the appellant have not paid a single penny to the claimant. Therefore, with no other choice the claimant was constrained to initiate arbitration

proceedings as available under the abovesaid MoU. Moreover, Clause 3.6 of the MoU provides that all or any dispute between the parties should be resolved through arbitration. The appellant company seems unable to pay its debts to the claimant. The claimant has also reliably learnt that the appellant has no sources or means to pay the monies due to the claimant. The amounts due to the claimant are huge and interest is mounting every day. During the claimant's visit to Kolkotta, the claimant also came to know that the appellant is a habitual defaulter and has defaulted payments to various other similarly situated parties as well. The claimant sent an arbitration notice on 19.12.2016 stating the above. The claimant was constrained to conduct the arbitration proceedings due to the commissions, omissions and breach committed by the appellant. The appellant is liable to pay the cost of the arbitration proceedings and the advocate fees incurred by the claimant. Therefore, the claim statement was filed before the arbitral tribunal seeking for an award directing the appellant to pay a sum of Rs.2,50,00,000/- (Two Crores Fifty Lakhs only) which is the amount received by the appellant as financial assistance from the claimant together with interest at the rate of 24% per annum from the date of non payment along with costs of the arbitration proceedings including advocate fee and expenses.

4. The appellant filed a counter claim for Rs.75 Crores on 22.12.2017 and subsequent pleadings were also filed by both parties. The respondent filed the proof affidavit of CW-1 in March 2018 and cross examination of CW-1 commenced on 21.06.2018. CW-1 was cross examined on 21.06.2018, 22.06.2018, 15.07.2018, 16.07.2018, 03.08.2018, 28.10.2018, 27.07.2019 and 28.07.2019. Even while the cross examination of CW-1 (respondent herein) was in progress, the respondent indulged in forum shopping by approaching the National Company Law Tribunal (NCLT), Kolkata by filing an application on the very same cause of action, which was pending before the tribunal vide CP(IB) No.1388/KB/2018 under the Insolvency and Bankruptcy Code. The said application was admitted by the NCLT, Kolkata Bench on 25.10.2020 and Corporate Insolvency Resolution Process (CIRP) was initiated in respect of the appellant company. When the claim of Rs.2.50 Crores under the MoU dated 11.12.2015 was pending adjudication since 2017 before the arbitral tribunal, which was the chosen forum of the parties and trial was midway during 2018, it was highly improper and mala fide on the part of the respondent to approach the NCLT and obtain an order against the appellant herein in 2019 in a summary proceeding on the very same issue pending before the arbitral tribunal. The appellant unsuccessfully challenged the order of NCLT before NCLAT and later filed Civil Appeal No.2914 of 2020. The Hon'ble Supreme Court dismissed the

appeal by giving liberty to both parties to work out their remedies in the pending arbitration proceedings without being affected by the dismissal of the appeal.

5. In the meantime, the final award came to be passed by the arbitral tribunal on 01.12.2020 considering numerous documentary evidence relied by both parties and exhaustive oral deposition made by both sides and came to the conclusion that a sum of Rs.2.50 Crores paid by the respondent to the appellant was not a financial loan transaction, but the integral part of the business arrangement between the parties to execute the work order of KOPT under the MoU dated 11.12.2015. The arbitral tribunal further held that the respondent was in breach of the terms of the MoU dated 11.12.2015. Even though the issue regarding the nature of transaction and breach of contract was held against the respondent herein, the arbitral tribunal felt compelled to award Rs.2.50 Crores to the respondent without interest and awarded Rs.3.52 Crores to the appellant with interest. It is significant to mention that the award of Rs.2.50 Crores to the respondent was made subject to the outcome of the civil appeal pending before the Hon'ble Supreme Court at the time of passing the award.

6. The appellant challenged the award aggrieved by the grant of Rs.2.50 Crores to the respondent and the respondent also challenged the award

aggrieved by the grant of Rs.3.52 Crores with interest to the appellant herein. The petition of the respondent in Arb.O.P.(Comm.Div.) No.10 of 2021 and the petition of the appellant in Arb.O.P.(Comm. Div.) No.102 of 2021 were heard by different benches and remained inconclusive due to the pendency of the civil appeal filed by the appellant herein. The civil appeal was finally disposed of on 27.02.2023 directing both the parties to work out their rights in the pending arbitration appeal proceedings. The larger bench judgement of the Apex Court in *Gayatri Balasamy* case on the nature and scope of power of Section 34 of the Arbitration and Conciliation Act was settled on 30.04.2025, wherein it was held that Courts under Section 34 of the Act do not have power to review the merits of the dispute in a challenge to arbitral award and held that the Court cannot modify the award but can severe the invalid portion if the award is severable. It was also held that the Court has no power to modify or award interest in exercise of the power under Section 34 of the Act.

7. Due to the various developments in the NCLT proceedings culminating in the order of the Hon'ble Apex Court giving liberty to the parties to work out their rights in the arbitration proceedings pending before this Court, the appellant advisedly withdrew the challenge to the arbitral award in Arb.O.P. (Comm. Div.) No.102 of 2021 and sought for confirming the award. The appellant contested the Arb.O.P. (Comm Div.) No.10 of 2021 filed by the

respondent and in the meantime, the CIRP process culminated in initiating liquidation proceedings of the appellant during the pendency of the matter.

8. The learned single Judge, after hearing both parties, held that the finding rendered by the arbitral tribunal by applying the principle of alter ego against the respondent and holding the respondent as having committed breach of the agreement is unsustainable and that the said finding itself would disentitle the appellant from claiming any damages, as they have not pleaded and proved the actual loss or damages suffered by them, allowed the Arb.O.P.(Com.Div.) No.10 of 2021 in part, thereby set aside the award passed by the arbitral tribunal severing the portion of the damages awarded with interest, by directing the appellant to pay a sum of Rs.2.50 Crores to the respondent along with interest at the rate of 12% per annum from 11.12.2015 till the date of actual payment. Aggrieved thereby, the present appeal has been filed before this Court.

9. The learned counsel appearing on behalf of the appellant would submit that the learned Judge erred in partly allowing the original petition filed by the respondent on imaginary grounds of lifting corporate veil raised during oral arguments of the appeal, which was not having factual foundation in the pleadings before the arbitral tribunal and in the petition filed under Section 34 of the Act. When it is settled law that a factual plea not taken before the arbitral

tribunal cannot be raised before the Court in a petition under Section 34 of the Act and it is a matter of record that the contention of lifting of the corporate veil was not raised by the respondent in his pleadings before the arbitral tribunal and no issue was framed on such aspect, the learned Judge exceeded the jurisdiction of Section 34 of the Act and reviewed the merits of the dispute. He would also submit that when the findings of the arbitral tribunal, which is a forum chosen by the parties will be final and binding on the parties and such findings will supersede the summary finding of the NCLT, more so, when the Hon'ble Supreme Court has held that the outcome of the NCLT proceedings shall not affect the rights of the parties before the arbitration proceedings pending before the High Court, the learned Judge has come to an erroneous conclusion that the MoU dated 11.12.2015 was an independent financial arrangement between the parties de hors the other terms of the contract, ignoring the fact that the decision in summary procedure before NCLT will not operate as res judicata in an elaborate trial conducted by the arbitral tribunal much earlier. He would further submit that the interpretation of the contract, namely, the MoU dated 11.12.2015 falls within the domain of the arbitrator, who had considered the elaborate documentary and oral evidence of both the parties and held against the respondent, as it is a settled law that the arbitrator is the master of the quality and quantity of evidence and Courts have no power to review the case on merits or to re-appreciate the evidence. The learned counsel also relied upon a

judgment of the Hon'ble Supreme Court in the case of *OPG Power Generation Private Limited v. Exenio Power Cooling Solutions India Private Limited and another, (2025) 2 SCC 417* in support of his contentions. Therefore, the learned counsel sought for allowing the appeal by setting aside the impugned order, which is perverse and passed in excess of jurisdiction vested on the Court under Section 34 of the Act.

10. On the other hand, the learned Senior Counsel appearing on behalf of the respondent would submit that the MoU entered into between the parties only pertained to the financial assistance given by the respondent; that there was absolutely no mention in the MoU about providing of any equipment and assisting the appellant in the work and that such finding was rendered by the arbitral tribunal in total disregard to the terms of the MoU entered into between the parties. He would also submit that the arbitral tribunal exercised the jurisdiction of lifting the corporate veil, which power was not available to the tribunal. The arbitral tribunal also fixed an unliquidated sum without any pleading or evidence let in by the appellant. Therefore, the learned Judge has rightly interfered with the award finding that the same suffers from perversity or patent illegality, which requires no interference.

11. We have considered the rival submissions and perused the materials available on record.

12. The specific case of the appellant is that pursuant to the work order dated 9.10.2015 issued by the KOPT to operate dry cargo at berth 2 and 8 of Haldia Dock Complex for a period of 10 years under the terms and conditions contained in the tender document in favour of the appellant, the respondent provided the financial assistance of Rs.2.50 Crores for the purpose of performance bank guarantee and to mobilise and commission minimum equipments and in view thereof, the parties entered into a MoU dated 11.12.2015 agreeing to execute the contracts jointly. It is also admitted by the appellant that apart from the sum of Rs.2.50 Crores paid by the respondent, the appellant additionally self funded Rs.1.02 Crores and a performance bank guarantee worth Rs.3.52 Crores was furnished to the KOPT. The KOPT executed an agreement with the appellant, which was also shared with the respondent and the respondent was requested to supply their equipments, machineries and cranes to meet the deadline of 06.01.2018 for installing and commissioning of minimum equipments as per the tender. Though the respondent was requested to share the documentary proof of their preparedness within the extended time granted by the KOPT, the respondent failed to provide

the documentary proof and machineries, which led to the termination of the contract awarded to the appellant and the KOPT also encashed the entire performance guarantee of Rs.3.52 Crores including the amount of Rs.2.50 Crores provided by the respondent. Therefore, the appellant claimed that when it was a joint project of the parties to take up the work order of KOPT and the respondent failed to supply the equipments and also the documentary proof within the extended time limit, the appellant was not liable to pay the amount of Rs.2.50 Crores to the respondent with interest.

13. The specific case of the respondent is that based on the assurances and promises made by the appellant, the respondent entered into the MoU dated 11.12.2015 with the appellant to provide financial assistance of Rs.2.50 Crores to meet the obligation of executing a performance bank guarantee of Rs.3.52 Crores in respect of the work order dated 9.10.2015. The said amount of Rs.2.50 Crores was to be utilised for the margin money in the form of fixed deposit with the appellant's bankers and the same would be returned by the appellant to the respondent within 30 days, but not later than 89 days at any cost from the date of MoU dated 11.12.2015. However, the appellant provided the copies of performance bank guarantee and fixed deposit amounting to Rs.2.32 Crores only to the respondent without the copy of fixed deposit for the balance Rs.18 lakhs, despite the assurance in the MoU that the financial assistance would be

utilised for the margin money alone. Since the appellant failed to repay the amount, the respondent was constrained to approach the arbitral tribunal seeking for an award directing the appellant to pay a sum of Rs.2.50 Crores, which was received as financial assistance, along with interest at the rate of 24% per annum to the respondent.

14. In the light of the above, based on the arbitration clause mentioned in the MoU, the sole Arbitrator was appointed. The sole Arbitrator, after conducting enquiry, found that the MoU, Ex.C1 was not merely a loan document, but it is an agreement pertaining to the business transaction between the parties to execute the work order of KOPT and therefore passed an award on 01.12.2020 holding as follows:-

> "(a) The claim is partly allowed and the respondent shall pay to the claimant Rs.2,50,00,000/- (Rupees two crores fifty lakhs only) without any interest;
>
> (b) The counter claim is partly allowed and claimant shall pay to the respondent Rs.3,52,00,000/- (Rupees three crores fifty two lakhs only) with interest at 18% from the date of termination of the work order i.e. 10.2.2016 till the date of the award;
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> (c) The cost of these proceedings (excluding the respective advocates fees) shall be borne by the claimant;

(d) 3 months' time from today (till 1.3.2021) is given for making the payment as per the claim and the counter claim, in default whereof;

(e) the amount of Rs.2,50,00,000/- (Rupees two crores fifty lakhs only) awarded as per Para 22(a) above shall be paid to the claimant along with the respondent with interest @ 12% from 1.3.2021 till date of payment; and

(f) the amount of Rs.6,51,20,000/- (being the aggregate of Rs.3,52,00,000/- together with interest on the said sum at 18% p.a. from 10.2.2016 till date of award) (Rupees six crores fifty one lakhs twenty thousand only) awarded as per Para 22(b) above shall be paid by the claimant to the respondent with interest @ 12% p.a. from 1.3.2021 till date of payment."

15. Challenging the award, both the parties filed Arb.O.P. (Comm.Div.)Nos.102 and 10 of 2021 respectively. Meanwhile, one of the parties approached the NCLT and obtained an order, against which the other party approached the NCLAT unsuccessfully, leading to the filing of the appeal before the Hon'ble Supreme Court. Though the Hon'ble Supreme Court dismissed the appeal, however, gave liberty to both the parties to workout their remedies in the pending arbitration proceedings without being affected by the dismissal of the appeal. Pursuant to the same, Arb.O.P.(Comm.Div.)No.102 of 2021 was dismissed as withdrawn vide order dated 18.11.2025.

16. The learned single Judge, while dealing with Arb.O.P. (Comm.Div.)No.10 of 2021, held that the MoU, Ex.C1 is only a loan document and not an agreement for business arrangement and hence the award passed by the learned Arbitrator in favour of the appellant was set aside and the award passed in favour of the respondent was confirmed with a direction to the appellant to pay the amount of Rs.2.50 Crores along with interest at the rate of 12% per annum. Aggrieved thereby, the appellant is before this Court.

17. A reading of the pleadings, oral and documentary evidence and also the deposition of both parties adduced before the arbitral tribunal, would show that the entire case rests upon the MoU dated 11.12.2015 under Ex.C1. Admittedly, the appellant was awarded a tender by the KOPT to operate dry cargo at berth 2 and 8 of Haldia Dock Complex for a period of 10 years. The appellant also accepted the same and in order to meet out the preliminary obligations, namely, submission of performance bank guarantee for a sum of Rs.3.52 Crores and installing and commissioning of minimum equipments by 06.01.2016 at the KOPT, on the ground that the appellant could not mobilise the necessary funds and the required equipments for commissioning, they approached the respondent for joint venture, for which the respondent also initially agreed to fund a sum of Rs.2.50 Crores for the purpose of performance

bank guarantee and to mobilise and commission minimum equipments as per the tender conditions. Based on the aforesaid exigencies, the parties entered into a MoU dated 11.12.2015, wherein it was agreed that the work order issued by the KOPT and future work orders and other existing contracts outside berth 2 and 8 would be jointly executed by both parties. Based on the MoU dated 11.12.2015, the respondent paid Rs.2.50 Crores to the appellant for the purpose of submitting performance bank guarantee to KOPT and with additional self fund of Rs.1.02 Crores, a performance bank guarantee worth Rs.3.52 Crores was furnished to the KOPT as per the tender. The KOPT executed an agreement with the appellant and the same was shared with the respondent and that the respondent was required to supply their equipments, machineries and cranes to meet the deadline of 06.01.2018 for installation and commissioning of minimum equipments as per the tender. Several communications thru' e-mails were sent by the appellant to the respondent to supply the equipments and cranes. On 04.02.2016, the KOPT extended the time for installation of equipments and requested the appellant to submit the documentary proof of preparedness and availability of the equipments and machineries. Though the appellant requested the respondent to share the documentary proof of preparedness of the equipments, the respondent failed to supply the equipments and machineries and also failed to provide documentary proof of preparedness. The respondent shared inadequate and invalid documents, which were not valid

proof for availability of machineries. Consequently, the KOPT cancelled the tender and therefore the appellant incurred losses due to non-extending the agreed benefits by the respondent. According to the respondent, Ex.C1 is only a loan document and there is no proof to show that they agreed to extend the benefits for the joint venture and it is also claimed that only due to urgency, the respondent signed the MoU, which is nothing but a loan document. As per the MoU, the respondent provided the financial assistance to the tune of Rs.2.50 Crores and even the appellant did not utilise the entire Rs.2.50 Crores for the performance bank guarantee and as per the agreement, the appellant ought to have returned the amount within 30 days, but not later than 89 days at any cost from the date of MoU dated 11.12.2015. The amount was deposited with the bankers-SBI by the appellant for the margin money as fixed deposits, copy of the same ought to have been handed over to the respondent along with copy of the bank guarantee for Rs.3.52 Crores. However, out of the sum of Rs.2.50 Crores provided as financial assistance, the appellant provided copy of performance bank guarantee & fixed deposit amounting to Rs.2.27 Crores and Rs.5 lacs respectively, i.e., Rs.2.32 Crores only and the copy of fixed deposit for the remaining Rs.18 Lakhs was not provided by the appellant, despite assurance in the MoU that they would utilise the amount for the margin money only. The respondent never agreed to be part of the business transactions and also the supply of equipments and since the appellant did not repay the loan within the

stipulated time mentioned in the MoU, the respondent invoked the arbitration clause. The learned Arbitrator failed to consider the terms of the agreement and also the oral and documentary evidence and erroneously held that it is not an agreement pertaining to the loan transaction and therefore passed the award as stated supra. Aggrieved over the same, both the parties approached the learned single Judge by filing the arbitration original petitions. Though the appellant did not press for its claim, the learned single Judge has held that the MoU is only a loan transaction and since the appellant did not carry out the business as per the terms of agreement, the appellant is liable to repay the said amount of Rs.2.50 Crores with interest to the respondent.

18. On a careful perusal of the oral and documentary evidence adduced by the parties, the only point for consideration is whether the MoU, Ex.C1 dated 11.12.2015 is a financial transaction or not?

19. A reading of the MoU, Ex.C1 dated 11.12.2015 shows that it has been entered into under three heads, namely, (1) Bank Guarantee, (2) Special Purpose Vehicle & (3) General. A reading of Clause 1 pertaining to bank guarantee shows that the respondent has agreed to extend the financial assistance to the tune of Rs.2.50 Crores to be utilised by the appellant in meeting the obligation of providing the performance bank guarantee of Rs.3.52

Crores and therefore, out of 3.52 Crores, the respondent extended the financial assistance of Rs.2.50 Crores and the balance of Rs.1.02 Crores was borne by the appellant. The further terms under the said clause would also indicate the time for repayment of that amount with interest and other things. The MoU did not stop with Clause 1 alone. A reading of Clause 2 pertaining to Special Purpose Vehicle shows that both the appellant and the respondent have agreed to form an alliance through a 'Special Purpose Vehicle' in the form of a Private Limited Company. The SPV creation process would be completed within 25.12.2015 or as soon as possible and placed with the Ministry of Corporate Affairs for registration. Both the appellant and the respondent would invest in the SPV in equal ratio, which is mutually agreed upon. Further Clause 2.8 shows that the commercial/financial aspects shall be handled by both the appellant and the respondent jointly and the bank accounts shall be operated jointly and suitable collateral security by way of property to be offered to the bank would be arranged by the appellant for all working capital/bank guarantees and equipment finance facilities and in case of any shortfall they shall be organised jointly. The other terms of the said clause also show that both the parties have to establish the SPV in the name of the company jointly and they have to run the business jointly and all the rights and liabilities had to be shared jointly. A reading of Clause 3 also shows that both the appellant and the respondent agreed that the business carried on in terms of the agreement would be executed in the name of

the SPV only and the MoU would be terminated once the SPV is formed or fulfilment of the objective of the agreement whichever is later. From a reading of the MoU, we are unable to agree with the view of the learned single Judge that it is a loan document. If it is a loan document, the parties ought to have stopped with Clause 1. There need not be Clauses 2 & 3. Admittedly, the respondent extended the financial assistance for the purpose of giving performance bank guarantee by the appellant to the KOPT with regard to the execution of the tender, and therefore the MoU also came into existence for extending the financial assistance for the purpose of giving the performance bank guarantee. Hence, a reading of the MoU clearly shows that apart from the loan transaction, there is a further relationship between the appellant and the respondent and the respondent cannot deny the same. At the same time, admittedly, when the said tender could not be completed within time, the KOPT cancelled the same and the respondent asked the appellant to return back the said amount. Further, the appellant also agreed to return back the said amount and issued the cheques and though according to the respondent, the appellant requested the respondent not to present the cheques for sometime, but later they could not keep up to promise. Therefore, the respondent presented the cheques for collection, but the same were dishonoured. Hence, the respondent invoked the arbitration clause and filed the claim before the learned Arbitrator. The parties agreed that one way or the other they could not carry on the business and

admittedly the SPV could not be established by the parties i.e., the appellant and the respondent herein. Even before establishing the SPV, the tender was cancelled and no business was carried out in the name of the SPV. It is seen from the records that the appellant did not produce any document and did not prove the claim that due to the breach of agreement committed by the respondent, the appellant incurred losses or damages. However, the appellant admitted the receipt of a sum of Rs.2.50 Crores for giving the performance bank guarantee and it is not the case of the appellant that the appellant need not repay the amount. That amount of Rs.2.50 Crores is only a capital for the business.

20. Therefore, from the oral and documentary evidence, it is clearly proved that the respondent extended the financial assistance of Rs.2.50 Crores to the appellant for giving the performance bank guarantee. Since the tender itself was cancelled for one reason or the other, from the materials, the appellant did not prove that they used the entire Rs.2.50 Crores, as they were able to account for Rs.2.32 Crores alone. However, the appellant accepted that the respondent extended the financial assistance of Rs.2.50 Crores, but the same was not repaid. If the payment of Rs.2.50 crores by the respondent to the appellant were treated purely as a loan transaction carrying interest, then the appellant's obligation would simply be to repay the amount with interest. In that case, the respondent would not be concerned with how the appellant actually

spent the money. A conjoint reading of the three clauses in the MoU would show that apart from the financial assistance, the respondent had an intention to join with the appellant to run the business. Unfortunately, the appellant could not succeed and subsequently the tender was cancelled and no SPV was established and that the appellant also accepted the liability. Therefore, the MoU is not only a loan transaction, but for other purposes also. When the MoU clearly shows that the parties have to establish the SPV by incorporating it as a company and proceed with the business jointly, since they could not complete the process within the stipulated time, the tender itself was cancelled and the SPV also not established and even the appellant failed to prove that the cancellation was only due to the non-cooperation of the respondent alone. Under these circumstances, the appellant is liable to repay the sum of Rs.2.50 Crores, as agreed by them in terms of the MoU as well as the subsequent issuance of cheques. However, considering the facts and circumstances, namely, the MoU and other materials coupled with the oral and documentary evidence, we are of the view that the respondent is not entitled for any interest for the sum of Rs.2.50 Crores. The arbitral tribunal, as the fact-finding authority, examined all the oral and written evidence, including the MoU and the financial assistance. It rightly concluded that the MoU was not merely a loan document but also served other business purposes. On that basis, the tribunal held that the MoU was intended both for financial assistance and for joint business purposes.

In these circumstances, the learned single Judge, while exercising jurisdiction under Section 34, could not assume the role of an appellate authority or re-appreciate the evidence simply to substitute his own view. The scope of his jurisdiction was limited to determining whether the award suffered from patent illegality. By traversing beyond this limit and setting aside the award in part, the learned Single Judge exceeded the powers conferred under Section 34. Accordingly, the order of the learned single Judge is set aside so far as the interest portion is concerned and the original side appeal is partly allowed. Consequently, the connected CMP is closed. No costs.

(P.VELMURUGAN J.) (K.GOVINDARAJAN THILAKAVADI J.)
01-06-2026

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Internet:Yes
Neutral Citation:Yes/No

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P.VELMURUGAN J.
AND
K.GOVINDARAJAN
THILAKAVADI J.

ss

Judgment in OSA(CAD)
No. 47 of 2026

01-06-2026