



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3596/2024

1. Project Director,
National Highway Authority of India,
Ministry of Road Transport & Highway
Originally with Project Implementation
Unit- Nagpur having its office at:
Project Implementation Unit,
Bungalow No.2, Shubhankar Apartment,
Hill top, Ram Nagar, Nagpur-440033;
Presently with: Project Director,
PIU- Yavatmal, Office: Plot No.13,
Chandan Niwas, Kolhe Layout 2,
Darwha Road Yavatmal.
2. Secretary, Union of India,
Ministry of Road Transport and
Highway Department of Road,
Parliament Street, New Delhi.

... PETITIONERS

...VERSUS...

1. The Additional Commissioner,
Nagpur and Arbitrator under
National Highways Act, 1956.
Having Office at Old Secretariat
Building, Civil Lines, Nagpur-01.
2. The Competent Authority & Special
Land Acquisition, Road Project,
Yavatmal, Distt.- Yavatmal.
3. Dr. Jairaj S/o Moreswar Pathak,
IAS, Municipal Commissioner,
BMC (Mumbai), Municipal

Commissioner Bungalow, 9,
M.L. Dhanurkar Marg, Mumbai-26

4. Shri. Prabhakar Pathak
R/o: Sidup Greater London (U.K)
Presented Through Shri. Jairaj M.
Pathak; Through general Power
of Attorney Holder;
R/o Municipal Commissioner Bungalow,
9, M.L. Dhanurkar Marg, Mumbai-26

...RESPONDENTS

Mr. Anish A. Kathane, Advocate for petitioners.
Ms. Deepa Charlewar, AGP for respondent Nos.1 & 2.
Mr. Dipesh Mehta, Advocate a/w Mr. Rohan H. Chandurkar,
Advocate for respondent Nos.3 & 4.

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 28/01/2025

DATE OF PRONOUNCING THE JUDGMENT : 27/02/2025

JUDGMENT

1. **Rule.** Rule made returnable forthwith.
2. Heard learned Counsel for both the parties.
3. Being aggrieved by the order passed by the learned District Judge, Yavatmal dated 11.10.2023 in M.J.C. no. 14/2016 by which the learned District Judge, has allowed the application filed by the respondent No.3 & 4 under section 34(4) of the Arbitration and

Conciliation Act, 1996(hereinafter referred as '**A & C Act**'), whereby it has remitted the matter to Arbitrator i.e. respondent no.1 to resume arbitration and determine the claim filed by the respondent no. 3 & 4 afresh and especially consider the claim of the said respondents with respect to solatium within a period of three months.

4. Petitioner No.1 is the Project Director of National Highway Authority of India (hereinafter for sake of brevity referred as NHAI) which conducts its activities under the provisions and law contemplated under the National Highway Act 1956 (hereinafter referred as '**NH Act**'). The Applicant No.2 i.e. Government of India vide its Gazette Notification published the details of land in villages which were proposed to be acquired for the building (Widening), maintenance, management and operation on the stretch of land from Km 110 to Km 175.600 of Nagpur-Hyderabad Section of NH-7 relating to Village: Pandharkawda, Tah: Kelapur; Dist: Yavatmal and thereby declared the competent authority for land acquisition i.e. the Respondent No.2. The Respondent No.2 followed all the parameters contemplated under Section 3(G)(7) of the NH Act and

has passed the award dated 30.3.12 for Village: Pandharkawda, Tah: Kelapur; Dist: Yavatmal thereby granting the Respondents Nos.3 & 4 compensation to the tune Rs.36,01,773/- for their 0.5400 HR acquired property; in Survey No. 5/1. Thereafter, the present Respondent No. 3 and 4 has availed his statutory right under Section 3(G)(5) of the NH Act and has filed Arbitration application before the respondent No.1 i.e. the Arbitrator appointed under Section 3(G)(5) of the NH Act; for enhancement of compensation amount which was granted by the Respondent No.2 while passing the original award dated 10.01.2008. The said application was registered as Arbitration Case no.1/2008-09. The present petitioner has categorically opposed the application filed by the Respondent No.3 & 4 on all grounds. However, the Arbitrator i.e. Respondent No.1 decided the said Arbitration Case No.1/2008-09 and passed the award dated 04.09.2015 whereby it has partly allowed the application and directed the petitioner to pay the Respondent no. 3 & 4 an amount of Rs. 4,28,65,200/- (Rs. Four Crores, twenty Eight Lacs, Sixty Five Thousand and Two hundred only) as compensation for their acquired land of 0.54 HR less the amount already received and also directed to pay to the respondent no. 3 & 4 additional

amount of 10% of total compensation amount for the loss of easement right, if not already paid and to pay an interest @ 9% p.a. on the enhance compensation w.e.f. the date of notification under Section 3D of the National Highways Act, 1956 till the date of payment of enhanced compensation.

5. The present petitioners i.e. NHAI being aggrieved by the said order dated 04.09.2015, challenged the said award before the Ld. District Judge, Yavatmal under Section 34 of the A & C Act. The respondent appeared in the said matter and both the parties argued the matter before the Ld. District Court, Yavatmal. However, the suitable orders for final disposal were never passed and the matter is still pending since last more than 7 years before the said Court. Surprising, after lapse of more than 6 years from the date of inception of the original arbitration application, respondent filed application u/s 34(4) of the A & C Act before the Ld. District Judge, Yavatmal. Present petitioners duly objected to the said application moved by the respondent no.3 & 4 before the Ld. District Judge and presented arguments to the effect that the gross illegalities and errors made by the Ld. Arbitrator in his award dated 04.09.2015

were not capable of being eliminated under the guise of "CURABLE DEFECTS" under Section 34(4) of the A & C Act. Therefore, the Ld. District Judge having no authority to modify or alter the award passed by the Arbitrator and further the present respondent no.3 & 4 having failed to prove that the order was capable of being "CURED" within the meaning of Section 34(4), the only action that was available to Ld. District Judge was to set aside the impugned award passed by the Ld. Arbitrator. However, the Ld. District Judge, Yavatmal vide his order below Exhibit-32 dated 11.10.2023 in M.J.C no.14/2016 allowed the said application filed u/s 34(4) of the A & C Act, by the respondents nos.3 & 4 and remitted the matter to the arbitrator to pass the award including point of solatium and submit to the court, within three months. The aforesaid order is the subject matter of challenge in the present writ petition.

6. Learned counsel for petitioner contended that the learned District Judge grossly erred in law by remitting the matter indirectly for fresh consideration to the respondent no.1, i.e. the learned Arbitrator for passing an award including point of solatium. It is further contended that the law with regards to acquisition of land

for the purposes under the National Highways Act, as it stood on the date of award i.e 04.09.2015, is that the provisions of the Land Acquisition Act, 1894 were not applicable to the present matter due to the express bar contained in section 3(J) of the NH Act. Thus, there was no irregularity in the order dated 04.09.2015 passed by the Ld. Arbitrator. In view of the same Ld. District Court was barred from having resort to section 34(4) of the A & C Act, and thus there was no question of the matter being remitted back to the said Arbitrator for passing a fresh award. Hence, in view of the same the order below Exh. 32 passed by the Ld. District Judge in M.J.C case no. 14/2016 needs interference by this court and which also needs to be set aside.

7. Learned Counsel for petitioners relied on the following citations:

(i) Union of India and anr. Vs. Tarsem Singh and Ors., 2019 (9) SCC 304,

(ii) I-Pay Clearing Services Private Limited Vs. ICICI Bank Limited, (2022) 3 SCC 121,

(iii) Delhi Metro Rail Corporation Ltd., Vs. J. Kumar-Crtg JV, 2022 SCC OnLine Del 1210,

(iv) Kinnari Mullick & Anr., Vs. Ghanshyam Das Damani, (2018) 11 SCC 328,

(v) Inox Air Products Private Limited Vs. Air Liquide North India Private Limited, 2023 SCC Online Del 1778 and

(vi) Uem India Pvt. Ltd. Vs. ONGC Ltd., O.M.P (COMM) 393/2018.

8. Learned counsel for the Respondents supported the order passed by the learned District Judge and contended that under Section 34(4) of the A & C Act, the Court is vested with the discretion where it is appropriate and where the court is requested by a party, to adjourn the proceedings for a period of time. An adjournment is granted in order to furnish the arbitral tribunal with an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the Tribunal would cure any defects in the award which needs no interference and order needs to be confirm.

9. Learned Counsel for the respondents relied on the following citations :

(i) Union of India (UOI) and Ors. Vs. Tarsem Singh and Ors., AIR 2019 SC 4689,

- (ii) The Project Director (LA) Vs. T. Palanisamy and Ors., C.M.A. No.3035/2019, decided on 22.04.2022,*
- (iii) Sunder Vs. Union of India, AIR (2001) SC 3516,*
- (iv) Geojit Financial Services Limited (Presently known as Geojit BNP Paribas Financial Services Limited) Vs. Kritika Nagpal, Appeal No. 35/2013 in Arbitration Petition No.47/2009,*
- (v) Rishabhkumar s/o Babulal Jejani Vs. Secretary to the Government of India and others, Arbitration Appeal No.06/2015, with connected matters, decided on 26.11.2021,*
- (vi) Sulzer Pumps India Pvt. Ltd. Vs. Shriram EPC Ltd. Commercial Arbitration Petition (L) No.8430/2020, decided on 25.03.2021,*
- (vii) Lalita and Ors. Vs. Union of India and Ors., AIR 2003 KANT 165 and*
- (viii) V. Sankararaman Vs. Union of India and others, Writ Petition No.18644 of 2020, decided on 14.12.2020.*

10. Heard both the parties at length. Perused the application, impugned order and considered citations placed on record by the parties.

11. It appears that the National Highway Authority challenged the Award passed by the Arbitrator in Land Acquisition Case No.1/ARB/2008-2009, wherein the Additional Commissioner-Arbitrator has directed the non-applicants to pay the applicants an amount of Rs4,28,65,200/- as compensation for their acquired land of 0.54 H.R. i.e. 5400 Sq.Mtrs. Less the amount already received by the applicant. The petitioner National Highway Authority have been directed further to pay to the respondent Nos.3 and 4 additional amount of 10% of the total compensation amount for the loss of easement rights as per Section 3(G)2 of the NH Act if not already paid. They further directed to pay an interest @ 9% per annum on the enhanced compensation with effect from date of notification under Section 3(D) of the NH Act till the date of payment of the enhanced compensation. The said application filed in the year 2015 challenging the said Award before the learned District Judge under Section 34 of the A & C Act.

12. It is submitted that Award is illegal, arbitrary and without proper appreciation of evidence on record. The non-applicant Nos.3 and 4 therein demanded an exorbitant compensation for their land was totally unlawful and malafide. It is contention of the applicant that Arbitrator relied on the sale deed dated 11.04.2002 executed between Hamida Nasuriddin Alana, Habibulla Abdulajij Kadwani through power of attorney Amir Ali Husen Kerawala and Anwar Ali Noor Mohammad Pirani and others and passed an Award @ Rs.7938/- per Sq.Mtr. It is contended that Arbitrator has committed a gross mistake as contemplated under various provisions of the Act of 1996 by not referring to the parameters of Section 3(G)(7) of the NH Act. Before passing of Award, the competent Authority i.e. non-applicant No.2, in the said application, had already considered several sale transactions before determining the compensation payable to the non-applicant Nos.3 and 4.

13. Learned Counsel for the respondents drawn my attention to Section 2(1)(e) of the A & C Act, which defines as “Court” as the

principal Civil Court of original jurisdiction in a district. Also Section 2(4) of the A & C Act reads as under :

“2 Definitions.....

(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.”

Thus, provisions of Section 34 of the A & C Act was applied to every Arbitration under any other enactment for the time being in force, as if the arbitration were pursuant an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of that part are inconsistent with that other enactment or with any rules made there under.

14. It is submitted that in view of Section 3(G)(7) of the NH Act, the competent Authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5)

shall take into consideration -

- (a) the market value of the land on the date of publication of the notification under Section 3-A;
- (b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the serving of such land from other land;
- (c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
- (d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any incidental to such change.

15. It makes mandatory for the Arbitrator to consider the Award question before him on the grounds mentioned in Section 3(G)(7)(a) to (d) of the NH Act. It is contended that the Arbitrator

without proper adjudication and without exercising his power of sub-section (7) of Section 3(G) has traversed beyond the scope of his powers and has enhanced the compensation granted by the Competent Authority approximately 12 times of the original Award, which is in violation of public interest. As such, the Award passed by the Arbitrator is challenged by the National Highway Authority under Section 34 of the A & C Act. It appears that there was an application under Section 34(4) of the A & C Act filed by respondent No.3 in M.J.C. No.14/2016, Section 34 (4) of the A & C Act reads as under :

***“ 34. Application for setting aside arbitral award -
(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”***

16. In the said application, it was claimed that the Arbitrator has not awarded solatium on account of acquisition of land and prayed for remand the matter to the Additional Collector,

Yavatmal to make an enquiry and grant solatium in the matter. The National Highway Authority filed their reply to the application and submitted that till passing of the Award of Arbitrator dated 04th September, 2015, Section 3(J) of the NH Act was in force which categorically excluded the application of provisions of the Land Acquisition Act, 1894 to the National Highways Act. Further claim as raised by the non applicant for getting certain statutory benefits relying on recent judgment of 2019, it was not proper as the award of Arbitration is passed on 4th September, 2015 and hence learned Arbitrator had no occasion to deal with the said issue at the said relevant time. Also the non grant of certain statutory benefits was owing to certain laws in force at the said relevant time. Hence, it is submitted in reply by the present petitioner that particular claim as made by the applicant on the basis of judgment of 2019 for invoking the jurisdiction of the Hon'ble Court under Section 34(4) of the A & C Act is not proper and same is required to be rejected. It is also contended that Section 34(4) of the A & C Act never contemplates any power of remand of matter at the hands of the Hon'ble Court.

17. The learned Counsel for the petitioner relied on ***I-Pay Clearing Services Private Limited*** (supra), wherein the Hon'ble Apex Court held in para 39, 40, 41 and 42 as under :

“39. Further, Section 34(4) of the Act itself makes it clear that it is the discretion vested with the Court for remitting the matter to Arbitral Tribunal to give an opportunity to resume the proceedings or not. The words (2017) 2 SCC 609 C.A.@S.L.P (C)No.24278 of 2019 “where it is appropriate” itself indicate that it is the discretion to be exercised by the Court, to remit the matter when requested by a party. When application is filed under Section 34(4) of the Act, the same is to be considered keeping in mind the grounds raised in the application under Section 34(1) of the Act by the party, who has questioned the award of the Arbitral Tribunal and the grounds raised in the application filed under Section 34(4) of the Act and the reply thereto.

40. Merely because an application is filed under Section 34(4) of the Act by a party, it is not always obligatory on the part of the Court to remit the matter to Arbitral Tribunal. The discretionary power conferred under Section 34(4) of the Act, is to be exercised where there is inadequate reasoning or to fill up the gaps in the reasoning, in support of the findings which are already recorded in the award.

41. Under guise of additional reasons and filling up the gaps in the reasoning, no award can be

remitted to the Arbitrator, where there are no findings on the contentious issues in the award. If there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself. Under guise of either additional reasons or filling up the gaps in the reasoning, the power conferred on the Court cannot be relegated to the Arbitrator. In absence of any finding on contentious issue, no amount of reasons can cure the defect in the award.

42. *A harmonious reading of Section 31, 34(1), 34(2A) and 34(4) of the Arbitration and Conciliation Act, 1996, make it clear that in appropriate cases, on the request made by a party, Court can give an opportunity to the arbitrator to resume the arbitral proceedings for giving reasons or to fill up the gaps in the reasoning in support of a finding, which is already rendered in the award. But at the same time, when it prima facie appears that there is a patent illegality in the award itself, by not recording a finding on a contentious issue, in such cases, Court may not accede to the request of a party for giving an opportunity to the Arbitral Tribunal to resume the arbitral proceedings.”*

18. Learned Counsel for the petitioners also relied on ***Delhi Metro Rail Corporation Ltd.*** (supra), wherein the Delhi High Court relied on *I-Pay Clearing Services (P) Ltd. Vs. ICICI Bank Ltd.*,

reported in *(2022) 3 SCC 121*, therein it is held that, “Section 34(4) of the A & C Act can be resorted to record reasons for the finding already given in the award or to fill up the gaps in the reasoning of the award. But recourse to Section 34(4) of the A & C Act is not available to review findings, which are not based on evidence or where there are no findings on contentious issues”. It is also held by the Delhi High Court that merely because an application is filed under Section 34(4) of the A & C Act by a party, it is not always obligatory on the part of the Court to remit the matter to Arbitral Tribunal. The discretionary power conferred under Section 34(4) of the A & C Act, is to be exercised where there is inadequate reasoning or to fill up the gaps in the reasoning, in support of the findings which are already recorded in the award. In the said matter before Delhi High Court it is also held that, “the Arbitral Tribunal has interpreted the provisions of Clause 4.9 of GCC and Clause 4.23 of GCC. This Court is not called upon to examine the correctness of the said interpretation but merely to ascertain whether the said view is a possible one. Tested on this anvil, this Court is unable to accept that the Arbitral Tribunal’s view warrants any interference in this proceeding. The scope of examination under Section 34 of the

A & C Act does not extend to re-evaluation of evidence or re-adjudication of the disputes. It is trite law that this Court does not sit as a First Appellate Court to examine the correctness of the decision of the Arbitral Tribunal”.

19. Learned Counsel for the petitioners also relied on ***Kinnari Mullick and Anr.*** (supra), wherein the Hon’ble Apex Court held as under :-

“The power of the court to remand the matter to the Arbitral Tribunal is only to adjourn the proceedings for the limited purpose mentioned in Section 34(4) i.e. to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award. The conditions required to be satisfied for such remand are : (i) there is a written request made by a party to the arbitration proceedings, (ii) the arbitral award has not already been set aside, (iii) the challenge to the award has been set up under Section 34 about the deficiencies in the arbitral award which may be curable by allowing the Arbitral Tribunal to take such measures which can eliminate the grounds for setting aside the arbitral award”.

20. There is no dispute in respect of proposition laid down by the Hon'ble Apex Court. In fact, in view of the same, if there is an application, the learned District Court in its discretion under Section 34(4) of the A & C Act to remand the matter to the Arbitral Tribunal by adjourning the proceeding for a limited purpose mentioned in Section 34(4) of the A & C Act, however, there should not be any award, which has already been set aside.

21. Learned Counsel for the petitioners also placed reliance on *Inox Air Products Private Limited* (supra), wherein in my considered opinion the issue involved before the Delhi High Court was different, a document which was disputed by the other party if not proved, it cannot be considered by the Arbitrator to be on record or as a piece of evidence. In the said matter, the Tribunal had started recording the statements of claimant's witness, however, after some cross-examination, it was agreed between the parties that there is no need of recording any oral evidence and the matter can straightway be fixed for arguments. It is also agreed that whatever oral evidence was recorded will not be read. In this background, these observations were made by the Delhi High Court.

The Delhi High Court led emphasis para 11 of judgment in ***Dyna Technologies Pvt. Ltd. Vs. Crompton Greaves Ltd.***, reported in ***(2020) 1 SCALE 121***, wherein it is held that,

“In case of absence of reasoning the utility has been provided under of Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34 (4) of the Arbitration Act to cure defects can be utilized in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced.”

22. Learned Counsel for the petitioners also placed reliance on judgment of Delhi High Court dated 15.03.2022 passed in ***O.M.P (COMM) 393/2018, Uem India Pvt. Ltd. Vs. ONGC Ltd.***, however, this judgment is not relevant as in the said judgment, it is made

clear that after exercising discretion under Section 34(4) of the A & C Act, the impugned award by the Arbitral Tribunal remains unaltered, the only difference being that it is now to be read with the orders passed by the Arbitral Tribunal under Section 34(4) of the A & C Act. In this view, the petitioner cannot be precluded from raising such additional grounds as may be otherwise available to it albeit to challenge the impugned award if read in conjunction with the order passed by the Arbitral Tribunal pursuant to the Court's order under Section 34(4) of the A & C Act.

23. Whereas, the learned Counsel for the respondents herein relied on ***Union of India Vs. Tarasem Singh*** (supra), wherein the Hon'ble Apex Court held in para 41 as under :

“41. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest.

Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction Under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal @ SLP (C) No.9599/2019 is dismissed.”

24. As such, Section 3(J) of the NH Act which exclude an applicability of the provisions of the Land Acquisition Act to the acquisition under the NH Act was struck down as being unconstitutional with respect to the provisions pertaining to solatium. In the said judgment, the Hon’ble Apex Court relied in ***Gurpreet Singh Vs. Union of India, (2006) 8 SCC 457***, wherein it is held that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High

Court order. In *Golden Iron and Steel Forging Vs. Union of India, 2008 SCC OnLine P&H 498*, i.e. 28.03.2008, concluded cases should not be opened.

25. The learned Counsel for the respondent also relied on *Sunder Vs. Union of India* (supra), wherein it is held that the amount of award in Section 34 of the A & C Act make the aggregate amount of compensation calculated in accordance with the provisions of all the sub-sections of Section 23 of the said Act and hence includes solatium. It also held that the award of solatium is mandatory and found an integral parts of compensation.

26. The learned Counsel for the respondents placed reliance on judgment of this Court in *Geojit Financial Services Limited* (supra), wherein this Court observed in para 14 as under :

“14. Under sub-section 4 of Section 34, the Court is vested with the discretion, where it is appropriate and where the court is requested by a party, to adjourn the proceedings for a period of time. An adjournment is granted in order to furnish the arbitral tribunal with an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the Tribunal will

eliminate the grounds for setting aside the award. Sub-section 4 of Section 34, therefore, does not contemplate a situation where the proceedings are remanded back to the arbitrator after setting aside the arbitral award. Once an arbitral award is set aside under Section 34, that brings to a conclusion a proceeding before the Court. What sub-section 4 of Section 34 envisages is an opportunity to the arbitral tribunal to resume the arbitration proceedings or to take such other action as would eliminate the grounds for setting aside the award. Without meaning to be exhaustive, we can conceive of a situation where the arbitral tribunal has overlooked a particular item of claim on which parties have led evidence and have addressed arguments. A challenge to the arbitral award in such a case would be on the ground that the arbitral tribunal has failed to decide a claim which was raised, controverted and submitted upon. The provisions of Section 34 enable the Court to adjourn the petition under Section 34 so that instead of setting aside the award, the arbitral tribunal can resume the proceedings and take necessary steps to eliminate a ground of challenge. Section 34(4), however, does not contemplate or vest a power in the Court to remand proceedings back to the arbitral tribunal once the Court has set aside the award. Once an award has been set aside, recourse cannot be taken to Section 34(4) since it is evident that the power can be exercised by the Court while adjourning a petition under Section 34.”

27. The learned Counsel for the respondents also relied on judgment of this Court in ***Rishabhkumar s/o Babulal Jejani*** (supra), wherein this Court held that solatium cannot be granted by way of modification under an Appeal under Section 34(1) of the A & C Act and rather the Court is permissible to follow the Section 34(4) of the A & C Act wherein on the request made by a party the Court may adjourn the proceedings so as to give the arbitral tribunal an opportunity to resume the arbitral proceedings.

28. The learned Counsel for the respondents also submitted that in judgment of this Court in ***Lalita Vs. Union of India*** (supra) Section 3(J) of National Highways Act, 1956 was struck down as being unconstitutional in the year 2003. It is mentioned that the said section struck down way back before the passing of the award in the present case.

29. The learned Counsel for the respondents also placed reliance on judgment of this Court in ***V. Sankararaman vs. Union of India*** (supra), a judgment of Madras High Court in Writ Petition No.18644/2020, wherein it was held that provision has been

declared to be unconstitutional by the High Court or by the Supreme Court, the same will have a retrospective effect and it will be treated as a non-est in the eye of law.

30. Thus, from all these judgments it is clear that it is a discretion of Court under Section 34(4) of the A & C Act to direct to resume the arbitration proceeding if there is any written application to the Court in that regard, if the Court is satisfied that to grant the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other actions as in the opinion of Arbitral Tribunal to eliminate the grounds of setting aside the arbitral award. The primary objective of this provision is to preserve the finality of arbitral award and encourage the resolution of disputes within the arbitral framework, minimizing judicial intervention. It offers a machenisam to rectify minor issues without the need for the Court to set aside the award. The section thus balances the need for judicial oversight with respect for the autonomy of the arbitration proceeding.

31. In the present matter, as discussed earlier, the Section 3(J) of the NH Act is struck down as it is declared as unconstitutional by the Hon'ble Apex Court. As such, it take effect not from declaration as unconstitutional but will have a retrospective effect and it will be treated as *non est* in the eye of law. However, as held in ***Gurpreet Singh*** (supra), award of solatium and interest on solatium should be made effective only to proceeding pending on the date of High Court order. Concluded cases should not be opened. In present matter, the application under Section 84 is pending therefore, application for solatiam and interest thereon cannot be thrown out.

32. In my considered opinion, in view of settled position of law, I do not see any error or illegality in the order passed by the Court in directing the Arbitrator to resume the arbitration and considered solatium and interest thereon as there is no issue or findings in respect of solatium. The learned District Court exercised its discretion, which cannot be faulted with.

33. As such, there is no merit in the petition. Accordingly, the Writ Petition stands **dismissed**. No costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak