COMAP No. 295 of 2026

RESERVED ON 17TH AUGUST 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

COMMERCIAL APPEAL NO. 295 OF 2026

BETWEEN:

1. M/S. TRANSACTION SOLUTION INTERNATIONAL (INDIA) PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR. AK JAIN
HAVING ITS REGISTERED OFFICE AT
DPT 316, DLF PRIME TOWERS
F-79-80, OKHLA INDUSTRIAL AREA
PHASE-1, SOUTH DELHI
NEW DELHI - 110 020

…APPELLANT

(BY SRI SRINIVASAN RAGHAVAN V., SENIOR ADVOCATE FOR SRI CHINMAY J. MIRJI, ADVOCATE)

Digitally signed by AMBIKA H B
Location: High Court of Karnataka

AND:

1. HITACHI CASH MANAGEMENT PRIVATE LIMITED
(FORMERLY WRITER BUSINESS SERVICES PRIVATE LIMITED)
REPRSENTED BY ITS MANAGING DIRCTOR
MR. ANUP NEOGI
S/O. NISHA NATH NEOGI

AGED ABOUT 65 YEARS
HAVING ITS REGISTERED OFFICE AT LEVEL-2
MPL SILICON TOWERS
NO.23/1, VELACHERY TAMBARAM MAIN ROAD
CHENNAI - 600 100

…RESPONDENT

(BY SRI VIKRAM A. HUILGOL, SENIOR ADVOCATE FOR
SRI ARJUN, ADVOCATE FOR C/R-1 & R-2)

THIS COMMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF THE COMMERCIAL COURTS ACT, 2015 PRAYING TO ALLOW THE PRESENT COMMERCIAL APPEAL AND SET ASIDE THE IMPUGNED ORDER DATED 27.03.2026 PASSED BY THE LXXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU (CCH-83), IN COM.A.P.NO.78/2024 & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as **'A&C Act'**] impugning a judgment dated 27.03.2026 [hereinafter referred to as **'the impugned judgment'**] passed by the

learned LXXXII Additional City Civil & Sessions Judge, Commercial Court at Bengaluru (CCH-83) [hereinafter referred to as **'the Commercial Court'**] in Com. A.P. No.78/2024. The appellant had filed the said petition under Section 34 of the A&C Act, assailing an arbitral award dated 28.02.2024 [hereinafter referred to as **'the impugned award'**] rendered by the learned Sole Arbitrator [hereinafter referred to as **'the Arbitral Tribunal'**].

2. The Appellant, Transaction Solutions International (India) Private Limited [hereinafter referred to as **'TSI'**], is a company incorporated under the Companies Act, 1956, specialising in developing and implementing transaction payment solutions for banks, financial institutions, and utility companies. TSI also offers solutions in ATM and Managed Services for banks, such as ATM deployment, maintenance, support services. It took over the ATM business, which was earlier carried on by Mphasis Limited [**Mphasis**].

3. The Respondent, Hitachi Cash Management Private Limited [hereinafter referred to as **'HCMPL'**] took over the Cash Replenishment Agency division of Writer Business Services Private Limited, comprising of ATM cash replenishment services, retail cash

management services, operation of dedicated vans, vaulting and distribution and cash processing services.

4. Before considering the challenge in the present appeal, it is relevant to set out the context in which the controversy arises.

PREFATORY FACTS

5. Mphasis was awarded contracts by its clients for installation and management of ATM sites. In respect of such contracts, Mphasis entered into a Service Agreement dated 25.04.2013 [hereinafter referred to as **'the Service Agreement'**] with Writer Safeguard Private Limited for the procurement of cash replenishment and cash management services in respect of ATMs of various banks. The Service Agreement was amended by two addenda dated 23.04.2014 and 16.10.2015 respectively.

6. By a letter dated 31.03.2016, Mphasis intimated Writer Safeguard Private Limited that it had appointed TSI as its outsourcing partner in respect of the said ATM business, and assigned all its rights and obligations under the Service Agreement in favour of TSI, with effect from 01.04.2016.

7. Writer Safeguard Private Limited thereafter entered into a scheme of arrangement with Writer Business Services Private Limited for the demerger of Writer Safeguard Private Limited and the transfer of certain of its businesses. The said scheme of arrangement was sanctioned by the National Company Law Tribunal, Mumbai Bench, by an order dated 09.08.2018. Consequent thereupon, Writer Safeguard Private Limited and Writer Business Services Private Limited executed a Business Transfer Agreement dated 07.03.2019, pursuant to which the rights and liabilities pertaining to the cash management business stood transferred to Writer Business Services Private Limited with effect from 31.03.2019. During the pendency of the arbitral proceedings referred to hereinafter, the cash management business of Writer Business Services Private Limited was further transferred to HCMPL with effect from 01.01.2024, under a Business Transfer Agreement dated 21.07.2023. The arbitral proceedings, however, culminated in the impugned award in the name of Writer Business Services Private Limited, and HCMPL was substituted in its place in the proceedings under Section 34 of the A&C Act, as noted hereinafter.

8. In this judgment, unless the context requires otherwise, reference to HCMPL also includes reference to its predecessors in interest, namely Writer Safeguard Private Limited and Writer Business Services Private Limited.

9. On 14.09.2015, HCMPL was entrusted with the responsibility of rendering cash management services in respect of an ATM of Bank of India bearing ID No. GBA9041, situated at Surat, Gujarat [hereinafter referred to as **'the said ATM'**]. On 16.05.2018, HCMPL handed over responsibility for the said ATM to Logicash Solutions Private Limited as part of a routine change in ATM allocation, at which point the said ATM reflected a cash balance of ₹24,24,100/-

10. Approximately two months thereafter, TSI, by its email dated 30.07.2018 addressed to HCMPL, pointed out discrepancies in the Cash Balance Reports [hereinafter referred to as **'CBRs'**] submitted in connection with the said ATM for the period between 06.09.2013 and 20.01.2018, and intimated a cash shortage of ₹5,01,12,500/-. By a further email dated 10.08.2018, TSI intimated that it would recover ₹4,74,44,800/- from HCMPL, being the amount attributable to the period during which the said ATM had been under its charge.

11. HCMPL investigated the matter but also clarified by its email dated 09.10.2018 that such investigation was not to be construed as an admission of liability. It thereafter contacted three of its former employees who had been in charge of the said ATM during the relevant period and obtained confession statements from them admitting their involvement in manipulating the CBRs and misappropriating the cash meant to be replenished. Based on these confessions, HCMPL lodged a detailed police complaint at Surat on 23.10.2018, pursuant to which a criminal case was registered against the said employees.

12. By a demand notice dated 06.12.2018, TSI called upon HCMPL to pay ₹4,78,62,200/-, being the total cash shortage attributed to the discrepant CBRs submitted by the said employees over the period from 2015 to 2018. HCMPL responded by a letter dated 19.12.2018, denying its liability. It contended that the offending acts of its employees were outside the scope of their duties and constituted offences punishable under the Indian Penal Code, 1860 [**IPC**], and offered to remit the sum of ₹41,90,000/- recovered from the said employees to TSI. TSI, however, called upon HCMPL to deposit the said sum directly with the bank.

13. Meanwhile, TSI withheld invoices raised by HCMPL for services rendered from April 2018 onwards and made only a part payment of ₹31,42,035/- on 21.12.2018. HCMPL addressed communications dated 02.01.2019, 14.01.2019 and 21.02.2019 calling upon TSI to release the outstanding dues, which as on 02.01.2019 stood at ₹1,79,49,548/-, and cautioned that failure to do so within a reasonable time may compel it to suspend or terminate the Service Agreement. TSI neither released the outstanding dues nor took any step to appoint an alternative service provider. By a further communication dated 04.03.2019, HCMPL intimated that it would be constrained to suspend its services with effect from 05.03.2019, and it did so accordingly.

14. Thereafter, TSI sent an email dated 11.03.2019, demanding that HCMPL resume its operations and threatening HCMPL with dire consequences if it failed to do so. Alternatively, TSI demanded that HCMPL hand over the keys of all 629 ATMs to TSI within a day's time.

15. On 12.03.2019, HCMPL addressed an email stating that TSI had illegally taken over 5 ATMs on 08.03.2019 itself. According to HCMPL, TSI was not interested in continuing to avail its services

and hence demanded that HCMPL hand over the charge of all the ATMs. HCMPL expressed its willingness to hand over all 629 ATMs within 48 hours. In this regard, it addressed an email dated 14.03.2019 to TSI.

16. On 04.07.2019, HCMPL addressed an email to TSI invoking arbitration under the Service Agreement and proposing the names of three persons for appointment as the arbitrator. HCMPL informed TSI about the progress in the criminal proceedings initiated by it against the errant employees vide email dated 10.07.2019. TSI, by its email dated 23.08.2019, stated that it was waiting for the outcome of the criminal proceedings to determine whether arbitration would be necessary.

17. Hence, HCMPL addressed a letter dated 05.09.2019 to TSI stating that, even if any amount was recovered from the sale of the errant employees' assets, HCMPL would not be in a position to avail of these recoveries.

18. Thereafter, by its email dated 30.09.2019, TSI disputed HCMPL's claim for payment against its invoices. TSI asserted that it was entitled to retain the payments against the disputed invoices on account of HCMPL's failure to reimburse the lossand called upon

HCMPL to reimburse the entire amount of ₹4,78,62,200/-, apart from other losses claimed by it. TSI also asserted that the appropriation of the sum of ₹41,90,000/-, recovered from the errant employees, towards the amounts claimed by HCMPL was unsustainable.

19. Subsequently, the parties explored the possibility of resolving the disputes through conciliation. By an email dated 10.02.2020, TSI called upon HCMPL to release the sum of ₹41,90,000/- as a pre-condition for commencement of the conciliation proceedings. By its email dated 18.02.2020, HCMPL declined to accept the said condition and informed TSI that it would proceed with arbitration.

20. Thereafter, by a communication dated 24.06.2021, TSI proposed the names of three persons, including that of Mr. Justice A.V. Chandrashekar, former Judge of this Court, for appointment as the sole arbitrator. By its communication dated 29.06.2021, HCMPL conveyed its acceptance of the said appointment. The Arbitral Tribunal was thus constituted with the consent of the parties.

ARBITRAL PROCEEDINGS

21. HCMPL, as the claimant in the arbitration proceedings, filed its statement of claim dated 01.09.2021. It contended that TSI was

required to inform HCMPL of any discrepancy in the reports submitted by it within 7 days of receipt of each such report. HCMPL alleged that TSI had illegally withheld payments and such withholding was in breach of the terms of the Service Agreement. HCMPL also averred that it was not concerned in any manner with the disputes between Mphasis/TSI and Bank of India and that the disputes between the parties herein had arisen out of a separate and distinct contract. HCMPL accordingly made the following claims:

> "**77. <u>CLAIM NO.1</u>:**
>
> The Claimant submits that as per the provisions of the Agreement, the Claimant was entitled to payment for the services rendered to the Respondent. In accordance therewith, and as per the express approval of the Respondent, the Claimant had raised monthly invoices for the various services rendered by the Claimant. However, the Respondent has failed and neglected to make payment against a majority of the invoices raised by the Claimant for services rendered from April 2018 upto March 2019.
>
> Admittedly, the sole reason for the Respondent to withhold payments in respect of these services was on account of the cash shortages that were reported based upon the discrepant reports submitted by the Claimant. The Claimant submits that the Respondent has admittedly notified the Claimant of any such discrepancies for the first time on 30.07.2018. The Respondent had committed material breaches of its obligations under the Agreement, and consequently the Respondent was not entitled to withhold the payments of the

Claimant for services that had been rendered on account of any such cash shortages. After accounting for the various credit notes issued by the Claimant, the Claimant submits that an amount of Rs.3,93,40,872/- is due and payable to the Claimant in respect of the services rendered by the Claimant as per the details and particulars annexed herewith as **Annexure CA-2**. The Claimant's offer to return the amount of Rs.41,90,000/- received from the Errant Employees was not accepted by the Respondent, and the same was ultimately adjusted by the Claimant against its outstanding dues. After accounting for the said amount of Rs.41,90,000/-, the Claimant is entitled to payment of the balance amount of Rs.3.51.50.872/- as per the details and particulars annexed herewith as **Annexure CA-3**. The Claimant claims the aforesaid amount of Rs.3,51,50,872/- on this account from the Respondent, and prays that the Learned Arbitrator may be pleased to award the same to be paid to the Claimant by the Respondent.

78. <u>CLAIM NO.2</u>:

The Claimant submits that as per the provisions of the Agreement, the Respondent was required to make payment against each invoice raised by the Claimant within 30 days. The Respondent has failed to make payment against any of the invoices, the details and particulars of which are set out under Annexure CA-2. The Claimant is therefore entitled to ante-lite, pendente lite and future interest on the amounts due and payable against each unpaid invoice of the Claimant from the respective due dates of payment of each invoice amount till actual payment or realization @ 18% p.a. under the provisions of law read with the provisions of Section 31(7) of the Arbitration and Conciliation Act, 1996. The Claimant claims the said interest on this account from the Respondent and prays that the Learned Arbitrator may be pleased to award the same to be paid to the Claimant.

> **79. <u>CLAIM NO. 3</u>**:
>
> The Claimant is entitled to all costs of arbitration from the Respondent, the particulars of which will be furnished at the final hearing to be held in the matter. The Claimant claims the said costs on this account from the Respondent and prays that the Learned Arbitrator may be pleased to award the same to be paid to the Claimant."

22. TSI, as the Respondent in the arbitration proceedings, filed its statement of defence and counterclaim dated 19.11.2021, and raised a preliminary objection to the jurisdiction of the Arbitral Tribunal, contending that HCMPL could not be permitted to maintain claims under the Service Agreement so as to defeat its criminal liability directly resulting from the acts of its employees in misappropriating the cash. On the merits, TSI denied all allegations of delay in submitting the reports. TSI contended that, under clause 13.2 read with clause 8.1(d)(iv) of the Service Agreement, the Claimant alone would be liable to reimburse the misappropriated amount to the bank, and that HCMPL had failed to do so. TSI further contended that HCMPL's suspension of services on 05.03.2019 was a unilateral act and contrary to the provisions of the Service Agreement and that the Claimant had committed breach of the conditions of the Service Agreement. TSI accordingly preferred

counterclaims amounting to ₹7,69,62,978.30 and interest at the rate of 18% per annum thereon. The counterclaims are set out below:

Sl. No.	**Claim**	**Amount (In Rs)**
1.	Misappropriated Amount	Rs 96,44,632
2.	Penalties imposed by the banks for prolonged downtime of ATMs	Rs 12,53,543.27
3.	Cash out penalties imposed on the Claimant under the Service Agreement	Rs 1,79,33,500
4.	Loss of Revenue for the month of March 2019	Rs 3,04,14,586
5.	Expenses incurred to break open and take over ATMs	Rs 8,35,137
6.	Expenses incurred on account of differential pricing of service provider CMS Infosystems Limited	Rs 1,24,45,190
7.	Operational Penalties	Rs 44,36,390
8.	Reputational Losses	To be computed at the end of the final hearing
9.	Cost of arbitration	To be computed at the end of the final hearing
	Total:	**Rs 7,69,62,978.3**

23. HCMPL filed its reply to the counterclaim dated 17.12.2021, denying the counterclaims. It is relevant to note that HCMPL admitted that the operational penalties mutually agreed between the

parties for the period from July 2018 to October 2018 amounted to ₹6,85,800/-, and that it had accepted operational penalties aggregating ₹1,70,240/- for the period from November 2018 to February 2019. HCMPL thus accepted that an amount of ₹8,56,040/- could be set off against its claims.

24. On the basis of the pleadings, the Arbitral Tribunal framed the following issues for determination:

> "1. Whether the Hon'ble Tribunal has no jurisdiction to entertain the claims made by the claimant, as averred in para 75 of the statement of defence?
>
> 2. Whether the Respondent was contractually entitled to withhold the invoices of the Claimant for services being rendered under the Service Agreement dated 25.04.2013 in view of the cash shortage in the Bank of India Surat ATM bearing ID No. GBA9041?
>
> 3. Whether the Claimant is justified in adjusting Rs. 41,90,000 on the ground that the respondent was due to the claimant to this extent?
>
> 4. Whether the Claimant was obligated to indemnify the Respondent for Misappropriated Amount?
>
> 5. Whether the Claimant is entitled for a sum of Rs.3,51,50,872/- as per claim No.1 made in the claim statement?
>
> 6. Whether the Claimant is entitled for interest at 18% per annum from the date it fell due till the date of filing of the claim statement, as found in claim No.2 of the claimant?

> 7. Whether there is any breach of the terms and conditions of the service agreement and, if so, who has committed the same?
>
> 8. Whether the Claimant was entitled to suspend its services in March 2019?
>
> 9. Whether any of the counter claims of the Respondent are maintainable and/or arbitrable?
>
> 10. Whether all or any of the counter claims raised by the respondent are barred by time?
>
> 11. Whether the Respondent is entitled to the reliefs claimed in the counter claim prayer column?
>
> 12. Whether the parties are entitled for interest from the date of filing of the claim petition and the counter claim, if so, what is the rate of interest to be awarded, on which amount and payable from which date?
>
> 13. Whether the parties are entitled for costs, and if so, what is amount of the cost to be awarded and from whom it is recoverable?
>
> 14. To what reliefs and award the parties are entitled for?"

THE IMPUGNED AWARD

25. On Issue No.1, the Arbitral Tribunal held that the criminal proceedings pending against HCMPL's employees had no bearing on the adjudication of the contractual dispute between the parties. It was further held that TSI had not raised its jurisdictional objection at the stage of the arbitrator's appointment, and that the outcome of the criminal proceedings would not, in any event, absolve TSI of its contractual obligations. Issue No.1 was accordingly answered in the

negative. The Arbitral Tribunal held that it had jurisdiction to entertain the claims.

26. Issues Nos. 2, 3, 4 and 5 being interdependent, were considered together by the Arbitral Tribunal. It was held that Clauses 4.3 and 13 of the Service Agreement were required to be read harmoniously, and that the obligation to intimate any discrepancy in the CBRs within seven days of their submission, under Clause 4.3, constituted a condition precedent for invoking the liability contemplated under Clause 13. The Arbitral Tribunal further held that the seven-day timeline under Clause 4.3 was intended to enable reconciliation of the CBRs with the bank's switch data so as to detect any suppressed shortage, and that TSI had failed to discharge its own obligation of following up with the bank in this regard. On this basis, the Arbitral Tribunal answered Issues Nos. 2 and 4 in the negative and held that TSI was not entitled to withhold the Claimant's invoices and that the Claimant was not obligated to indemnify TSI for the misappropriated amount. Issue No.3 was answered holding that the Claimant was justified in adjusting ₹41,90,000/- recovered from its employees, and Issue No.5 was answered affirmatively in part, holding that, after deducting ₹63,718/- towards the 7thinvoice and ₹8,56,040/- towards admitted

operational penalties from the principal claim of ₹3,51,50,872/-, the Claimant was entitled to recover a sum of ₹3,42,31,114/- from TSI.

27. In regard to Issue No.8, the Arbitral Tribunal examined the correspondence exchanged between the parties, including HCMPL's communications dated 02.01.2019, 14.01.2019, 21.02.2019 and its final communication dated 04.03.2019, and held that the suspension of services with effect from 05.03.2019 was neither abrupt nor without notice. Issue No.8 was accordingly answered in the affirmative, holding that HCMPL was entitled to suspend its services. Correspondingly, in regard to Issue No.7, the Arbitral Tribunal held that TSI had committed breach of terms and conditions of the Service Agreement.

28. On Issues Nos. 9, 10 and 11, concerning TSI's Counterclaim Nos. 1 to 8, the Arbitral Tribunal held that the counterclaims were not barred by limitation, but rejected each counterclaim on merits for want of proof, save for a partial admission under Counterclaim No.7. Counterclaim No.1, for the balance misappropriated amount, was rejected as a consequence of want of proof of actual loss and the non-production of books of accounts; Counterclaim No.2, for ATM-downtime penalties, was rejected for want of authenticated

supporting correspondence; Counterclaim No.3, for 'cash-out' penalties, was rejected as the underlying computation was unsupported by electronic journals, general ledger or switch data; Counterclaim No.4, for loss of revenue, was rejected for the lack of legal or factual basis; Counterclaim No.5, towards the cost of breaking open ATMs, was rejected for want of any nexus between the invoices relied upon and TSI; Counterclaim No.6, for the differential pricing, was rejected for want of proof that the revised rates relied upon had in fact been agreed to or given effect; Counterclaim No.7, for operational penalties, was allowed only to the extent of ₹8,56,040/-, being the amount already admitted by the Claimant and adjusted in arriving at the sum found due under Issue No.5; and Counterclaim No.8, for reputational loss, was rejected as speculative and unsupported by evidence. Issues Nos. 9 and 10 were accordingly answered in the negative and Issue No.11 was answered in the affirmative only in part, to the extent of ₹8,56,040/- under Counterclaim No.7.

29. On Issues Nos. 6 and 12, the Arbitral Tribunal, invoking the discretion conferred under Section 31(7)(a) of the A&C Act, held that interest at the rate of 12% per annum was just and reasonable having regard to the commercial nature of the transaction, and that

the Claimant's email dated 18.02.2020 declining the conditions proposed by TSI on 10.02.2020 marked the date on which the cause of action for arbitration arose; interest was accordingly awarded on ₹3,42,31,114/- at 12% per annum from 18.02.2020 till realisation, and Issues Nos. 6 and 12 were answered affirmatively in part. On Issue No.13, having regard to the costs incurred by the Claimant, including the arbitrator's fee computed under Schedule IV of the A&C Act, secretarial and venue charges, the Arbitral Tribunal awarded a sum of ₹25,00,000/- towards legal and miscellaneous expenses under Section 31A of the A&C Act, and Issue No.13 was answered affirmatively in part.

30. The dispositive portion of the impugned award is set out below:

> "(1) The claim petition is allowed in part, holding that the claimant is entitled to recover a sum of Rs.3,42,31,114/- (Rupees Three Crores Forty-Two Lakhs Thirty-One Thousand One Hundred and Fourteen Only) from the respondent with interest at 12% per annum on Rs.3,42,31,114/- only from 18.2.2020. till realization along with Rs.25,00,000/- (Rupees Twenty-Five Lakhs Only) being the Legal and Miscellaneous Expenses.
>
> (2) Consequently, counterclaims raised by the Respondent stand rejected."

THE IMPUGNED JUDGMENT

31. Aggrieved by the impugned award, TSI filed a petition under Section 34 of the A&C Act before the Commercial Court, being Com. A.P. No.78/2024. TSI contended that the Arbitral Tribunal had failed to give effect to the overriding, non-obstante character of Clause 13; that it had erroneously subordinated it to Clause 4.3, and had thereby rendered Clause 13 otiose; that Clause 4.3 was confined to clerical or arithmetical errors and had no application to losses arising from deliberate manipulation of CBRs; and that the Arbitral Tribunal had fastened an obligation on TSI to reconcile with the bank even though the Service Agreement did not provide for any such obligation.

32. By an order dated 30.05.2024, the Commercial Court stayed the operation and execution of the impugned award, subject to TSI depositing 50% of the awarded amount of ₹3,42,31,114/-, that is, ₹1,71,15,557/-, within a period of one month. TSI states that it deposited the said amount with the Commercial Court on 20.06.2024.

33. During the pendency of the said petition, I.A. Nos. 2 and 3 of 2024 were filed under Section 151 of the Code of Civil Procedure,

1908, seeking substitution of HCMPL in place of Writer Business Services Private Limited. By an order dated 13.12.2024, the Commercial Court allowed the substitution, and the petition thereafter proceeded as between TSI and HCMPL.

34. The learned Commercial Court framed two points for consideration: (i) “Whether Arbitration Petition Deserves to be allowed and the Impugned Arbitral Award is liable to be set aside for granting all the reliefs sought for by the claimant?”; and (ii) “What Order?”.

35. The Commercial Court held that the impugned award was within the jurisdiction of the Arbitral Tribunal; did not suffer from any patent illegality; and was not against public policy in India. Accordingly, the Commercial Court dismissed the petition filed under Section 34 of the A&C Act, thereby upholding the impugned award.

36. Aggrieved by the impugned judgment passed by the learned Commercial Court, TSI has preferred the present appeal.

RIVAL CONTENTIONS, REASONS & CONCLUSION

37. TSI assails the impugned award essentially on the ground that it is contrary to the terms of the Service Agreement. It also assails the impugned judgment on the ground that it is unreasoned and has not addressed TSI's challenge to the impugned award. According to TSI, Clause 13 of the Service Agreement governs HCMPL's liability for any stolen currency or losses arising from dishonesty, negligence or intentional acts by HCMPL's employees. Clause 13 is a non-obstante clause and, therefore, supersedes any inconsistent provisions of the Service Agreement. TSI contends that the Arbitral Tribunal's interpretation of Clause 4.3 is misconceived, as it does not pertain to losses arising from any dishonest conduct or misconduct by HCMPL's employees or misappropriation of funds. It claims that Clause 4.3 pertains only to losses arising out of discrepant CBRs, and that the Arbitral Tribunal erred in interpreting the clause to cover TSI's claim. The Arbitral Tribunal's interpretation of the Service Agreement is fundamentally flawed and constitutes patent illegality apparent on the face of the impugned award. It claims that the interpretation amounts to rewriting of the agreement between the parties, which is impermissible. It also claims that TSI has no obligation to secure the reconciliation from the concerned

bank and the Arbitral Tribunal erred in proceeding on the basis that TSI had any such obligation.

38. It is also contended on behalf of TSI that the impugned award is perverse and no reasonable person could have arrived at the said view.

39. It is well settled that the Arbitral Tribunal is the final adjudicator of disputes between the parties, and interpretation of the contract falls squarely within its jurisdiction. Any error within the Arbitral Tribunal's jurisdiction would not warrant interference in proceedings under Section 34 of the A&C Act. However, if the Arbitral Tribunal's decision runs contrary to the terms of the contract between the parties and effectively amounts to rewriting the contract, the arbitral award would be liable to be set aside under Section 34 of the A&C Act on the grounds of patent illegality, due to it suffering from a jurisdictional error. This is because the Arbitral Tribunal's jurisdiction is confined to adjudicating the claims within the framework of the agreement between the parties.

40. The essential facts are not in dispute. There is no dispute that HCMPL's employees had misappropriated funds to the extent of ₹4,78,62,200/- (Rupees Four Crores Seventy Eight Lakh Sixty Two

Thousand and Two Hundred only). HCMPL had recovered an amount of ₹41,90,000/- from the said employees. However, in its reply dated 19.12.2018, HCMPL had claimed that it was not liable for such misappropriation, as it was outside the terms of the Service Agreement. According to HCMPL, it was an offence punishable under the IPC, and HCMPL would not be accountable for the same. HCMPL also claimed that any discrepancy in the cash replenished had to be communicated within a maximum period of seven days, failing which it would be absolved of any loss on account of the discrepancy. The Arbitral Tribunal accepted HCMPL's contention and interpretation of Clause 4.3 of the Service Agreement.

41. It is also relevant to bear in mind that HCMPL's claim related to the services rendered, and there was no dispute that HCMPL had rendered its services and had raised the invoices. TSI did not seriously dispute the liability to pay the amount against the invoices as raised. It withheld the payment of the invoices on the ground that it was entitled to recover the losses it had suffered on account of misappropriation of cash by HCMPL's employees.

42. Before proceeding further, it would be relevantto refer to the relevant clauses of the Service Agreement entered into between

Mphasis and Writer Safeguard Private Limited (the predecessors in interest of TSI and HCMPL, respectively). Clause 1.5 of the said agreement defines the term 'CD' to mean cash dispensers deployed by Mphasis or any sub-contractor of Mphasis. Clause 1.6 of the Service Agreement defines the term "CD loss" as under:

> "1.6 'CD Loss' means a single occurrence of the any loss of Valuables from a single CD directly result from dishonesty, negligence or intentional act by employees or representative of Service Provider. The amount of a CD loss is the face value of the currency, plus the reasonable cost of reconstructing any negotiable instruments or other items of value including but not limited to re-issuance and stop payment fees, stolen, lost or destroyed as a result of the occurrence from such time when these services are provided by the Service Provider. CD losses do not include any loss of Valuables occurring outside the CD room, including but not limited to losses occurring while such Valuables are in transit. In the event of such discrepancies, MphasiS shall provide the switch file and the Service Provider shall resolve the same through a verification of bill counter totals at the switch and at the CD, along with the physical count of cash in the CD."

43. As is apparent from the above, CD loss will include loss of any valuables from any single cash dispenser, which results from dishonesty, negligence or intentional act by employees or representatives of the service provider. The said loss includes not only the face value of the currency, but also the reasonable cost of reconstructing any negotiable instrument. These losses do not

include any loss of valuables that occur outside the CD room, including, but not limited to, losses that occur while such valuables are in transit. Thus, by its very definition, CD loss is a loss confined to the loss of currency from inside the CD room.

44. Clause 4 of the Service Agreement specified the scope of services. Clause 4.2 obliged HCMPL to at the end of the day generate a CBR and other reports in the format as provided and to submit the same within a period of two days (T + 2 basis). If there was any discrepancy between the CBR and the Bank's switch, the Banks reconciliation team was required to communicate the same to Mphasis (TSI) within 7 working days of the receipt of the CBR. Mphasis (TSI) was required to inform the Service Provider (HCMPL) of such discrepancy and the service provider was required to attend the same within 3 working days of such difference or discrepancy being reported.

45. Clauses 4.2 and 4.3 of the Service Agreement, which are central to the dispute, are reproduced below:

> “4.2 Service Provider shall perform end of day (EOD) operation and generate Cash Balance Report (CBR) and other reports in the format, and containing such information, as provided in Exhibit II, which shall be submitted to the MphasiS and the Bank on T+2 basis.

> 4.3 If any discrepancy is observed in the CBR and Bank's switch, the Bank's reconciliation team will intimate the same to MphasiS within 7 (seven) working days of receipt of CBR and subsequently MphasiS will inform the Service Provider. The Service Provider shall attend the same within 3 (Three) working days of reporting the difference/discrepancy in cash in CD(s). If the Service Provider does not respond by the 4th working day, the difference/discrepancy amount will be recovered from the Service Provider on the 6th working day. Any discrepancy in CBR reported after 7 days from the date of submission of report will not be entertained and the Service Provider will not be liable for any loss arising out of discrepant report."

46. Clause 13 of the Service Agreement governs the liability of the Service Provider. The said Clause is set out below:

> "13. LIABILITY
>
> 13.1 The provisions of this clause govern the liability of the Service Provider or its Personnel for any claim of lost, missing, Counterfeit Currency or stolen Currency and, with respect to such losses, supersede any inconsistent provision in this Agreement.
>
> 13.2 For the purpose of this Agreement, the amounts of the following terms shall be:
>
> • Transit Loss Liability Limit- at actual
>
> • Vault Loss Liability Limit is at actual
>
> • CD Loss Liability Limit is at actual
>
> Parties may mutually consider increasing the above limits on case to case basis in case of need.
>
> 13.3 Service Provider shall be liable for CD Loss, Transit Loss or Vault Loss if such losses at actual directly result from (a) kidnapping of employees / representative of Service Provider (b) dishonesty, negligence or intentional act by employees or representative of Service Provider or (c) proven damage to Bank's Valuables caused by negligence

> or wilful misconduct of the employees or representative of Service Provider.
>
> 13.4 Service Provider shall be liable for any actual Vault Loss. The Service Provider's liability under this Agreement shall commence when Currency has been delivered into a vault or other secured facility owned, operated by, or under the control of Service Provider, and shall terminate when they are either (a) delivered to Bank or its designated consignee or agent; or (b) placed in a vehicle owned, operated by, or under the control of Service Provider.
>
> 13.5 Service Provider shall be liable for any actual Transit Loss. The Service Provider's liability under this section shall commence when Currencies have been placed in Service Provider's vehicle and shall terminate when they are either (a) delivered to Bank or its designated consignee or agent; or (b) delivered to, and deposited in, an CD and Service Provider has secured the CD vault and departed from the room or immediate area where the CD is located.
>
> 13.6 The Service Provider agrees to assist and cooperate fully with each other relative to any claim arising hereunder.
>
> 13.7 Supporting documentation is necessary to process and investigate cash loss claims and the same shall be furnished by the Service Provider or MphasiS without any protest or demur. Reasonably satisfactory proof of a claim for loss is required, and includes but is not limited to:
>
> i. Cash Replenishment report and CD counters for the time period the variance was discovered and the same report(s) for the previous and post settlement periods as per Service Provider's report; and
>
> ii. Copies of the suspect transactions report;"

47. Clause 13.3 of the Service Agreement provides that the service provider would be liable for CD loss, Transit loss or Vault

loss if such losses were incurred as a result of “dishonesty, negligence or intentional act by employees or representative of Service Provider”.

48. We may now examine the Arbitral Tribunal’s interpretation of the relevant clauses. The Arbitral Tribunal examined the manner in which cash was replenished at the ATMs of the Bank. The Arbitral Tribunal also examined the *modus operandi* adopted by the employees of HCMPL for misappropriation of cash from the ATM in question.

49. Mphasis (TSI) would raise indents with HCMPL (service provider) from time to time, setting out the quantum of cash to be collected from the concerned bank and loaded into the specific ATM. The indent was based on information relating to cash balances at the ATM, and the concerned bank would provide it to Mphasis/TSI. This in turn would be based on the switch data obtained by the bank directly from the ATM. The Arbitral Tribunal had noted that the switch is an electronic hub or a network gateway of the ATM and it transmits signals regarding cash withdrawal requests, approval and dispensation to the concerned bank.

50. On the basis of the indents issued by Mphasis/TSI, HCMPL would collect the requisite cash from the concerned Bank which would be duly recorded in the books of the Bank. HCMPL would then transfer the cash collected from the bank to the ATM and load it into the ATM as per the indent. After loading the cash, HCMPL would update the ATM counter balance to reflect the cash contained in the ATM after each loading cycle. The Electronic Journal records the cash details and captures all ATM activities, including manual cash loading and customer attempts to withdraw cash. The switch sends an update to the bank regarding the customer's request. The customer's bank would then confirm the availability of the amount in the customer's account to the ATM switch, and the ATM would dispense cash from its cassette. After each event of cash dispensation, a message would be sent to the concerned bank with the details of the amounts dispensed and the details of the customer. The bank would record this data in its ledger, ensuring that the customer's ledger account and the bank's books are updated. The switch data was also recorded in the Electronic Journal of the ATM and the Arbitral Tribunal had noted that only the bank and Mphasis had access to the Electronic Journal of the ATM. HCMPL had no access to the said journal.

51. The service provider was required to prepare a CBR containing details of the cash loaded into the ATM on a particular day, the amount dispensed by the ATM during the day, and the cash available in the ATM at the end of the day. The Bank was required to reconcile the said report with the information available from the switch data. As noted above, the said data was captured in the Bank's General Ledger as well as the Electronic Journal at the ATM. It is not disputed before us that reconciling this data would determine whether there was any discrepancy between the CBR and the switch data, which would identify whether there was any shortage in cash.

52. The Arbitral Tribunal referred to Clause 4.3 of the Service Agreement and observed that it had to be read in the context of Clause 1.6, which defined the expression "CD loss". The Arbitral Tribunal observed that TSI had a duty to call upon the concerned bank to furnish the switch details to compare them with the CBR and determine whether there was any discrepancy. The Arbitral Tribunal held that reconciliation is required to determine whether the CBRwas correctly prepared and accurately reflected the cash balance movements for that day. The comparison between the

CBR and the switch data would reflect whether there were any cash shortages, which were suppressed through the discrepant reports. The Arbitral Tribunal held that a loss arising from a discrepant report could fall into only three kinds of losses, as mentioned in clause 13.2 of the Service Agreement and clause 4.3 was required to be read harmoniously with clause 13 of the Service Agreement.

53. The Arbitral Tribunal faulted TSI for not fulfilling its obligation of intimating HCMPL of any discrepancy within the period of 7 days from the date of submission of the CBR. The relevant extracts of the impugned award are set out below:

> "74. Whenever a clause exists in a contract signed by the parties, with eyes wide open the same cannot be ignored stating that it has absolutely no relevance in the light of another clause which has a overriding effect. Therefore, all the clauses in an agreement of this nature, will have to be read harmoniously. The obligation cast upon the Respondent herein with regard to intimate the claimant within 7 days form the date of the submission of CBRs, is an important condition and the compliance of the same is an absolute necessity. The Respondent would be absolved of its responsibility only it had complied with the mandate found in the last sentence of clause 4.3.
>
> xxx xxx xxx
>
> 78. It is to be seen that the Respondent had already informed the claimant about the loss and only then the Claimant filed a complaint after conducting internal investigation. These clauses will have to be read in the light of procedure stipulated in Annexure D appended to the service agreement. Point I(4) of annexure B states that the service

> provider shall perform EOD operation and generate CBRs in the format provided in Exhibit II and the said report be submitted to the Mphasis and the bank on T+1 basis. It is also made clear that EOD operation should be performed on the day on which cash replenishment is done and sub-clause (5) mandates that the service provider should perform physical CD cash balancing on each occasion of cash replenishment. Clause I(vi) of Annexure D is nothing but reiteration of clause 4.3. This procedure speaks about the mandatory time line also."

54. The Arbitral Tribunal also examined the evidence on record, including the testimony of witnesses, and found that Mphasis/TSI had not taken any steps to follow up with the bank or check the contents of the CBRs against the Electronic Journal in its possession. The Arbitral Tribunal concluded that TSI had "thoroughly failed to act with due diligence in fulfilling the above obligation as mandated under Clause 4.3 of the Service Agreement". The Arbitral Tribunal also reasoned that TSI was expected to forecast the cash position at the time of raising indents and, for the purpose of forecasting the cash requirement, it was bound to analyse the cash dispensation pattern and the cash balance. This exercise was required to be done on the basis of switch data available with the bank on a day-to-day basis. It was TSI's case that the ATM in question did not have a switch. However,

the Arbitral Tribunal rejected the said stand in view of RW1's answers to the specific questions and held as under:

> "86. The Respondent has taken a stand in para 115 (b) of SOD that the Respondent was forced to rely upon the manipulated CBRs for raising indents on the ground that the ATM did not have a switch. As already discussed above, the answers given by RW1 has utterly falsified the stand taken up by the Respondent in the SOD that the ATM in question did not have a switch. The Respondent has not furnished any evidence for having written to the bank on any occasion complaining that switch data had not been provided to the Respondent and as a result of the same, Respondent was not able to raise indents in the manner required. No letter is addressed by the Respondent to the bank stating that the Respondent had to rely upon only the CBRs provided by the Claimant for the purpose of raising indents. The Learned Counsel for the Claimant had asked RW1, vide Q39 as to whether it was the case of the Respondent that in respect of Surat ATM the Respondent raised indents on the basis of CBRs because the Claimant had removed the switch from the ATM. RW1 has denied the said suggestion. Answers to subsequent questions 41 and 42 would make it clear that Surat ATM in question had a switch at all times.
>
> 87. Comparing CBRs with the available EJs was the important duty of the Respondent in order to know whether there was any discrepancy. If, during this exercise the Respondent had found out that switch data was required, the Respondent should have sought such switch details from the bank. Having not done this very critical exercise, the Respondent cannot turn round and say that it had no obligation to conduct such an exercise and that the obligation to conduct such exercise was with the bank only. If the Respondent had not relied upon the CBRs with regard to the cash balance shown therein, the discrepancies in CBRs would have been easily identified without any delay. Therefore, not conducting such an exercise was a

> material breach on the part of the Respondent with regard to the raising of indent by merely relying upon the CBRs. This exercise was not done by the Respondent for many years. RW1 has asserted in his answer to Q46 that Claimant was expected to identify discrepancies on the basis of CBRs, ATM counter, switch counter and indents. This assertion is completely incorrect. It was not possible for the Claimant to have identified the discrepancies as the Claimant had no access to switch data, EJ and GL. In fact, this assertion is contrary to the stand taken by the Respondent in para 115 (b) of SOD where the Respondent has averred that it i.e., the Respondent was incorrectly raising the indents based on the CBRs. The Respondent was required to rely upon the switch data without raising any indent. RW1 has admitted that the ATM counters had also been manipulated, vide answer to Q76. This manipulation was for the period from 14.9.2015 up to Jan 2018. Therefore, comparison of CBRs with ATM counters would be of no use. Ultimately the bank took up the exercise of reconciliation by comparing CBRs vis-à-vis the switch data which is also reflected in GJ and EJs. Then only, the bank was able to find out the discrepancy. The respondent was in possession of EJs and nothing came in its way to have insisted the bank to furnish the switch data for comparing CBRs. To find out discrepancy. This is evident from the positive answer given by RW1 to q68 that ATM GL will reflect the actual cash dispensed by the ATM to the customers without any manipulation since manipulation at ATM GL level is not possible. Therefore, as admitted by RW1 in his answer to Q43, the bank undertook the reconciliation exercise of CBRs based on ATM GL and EJs."

55. The Arbitral Tribunal found that the exercise of comparing the CBRs with the General Ledger and the Electronic Journal was not conducted for many years and, resultantly, the errant employees had continued to systematically misappropriate the cash over the

years and had manipulated the CBRs. The Arbitral Tribunal noted that as on 10.11.2015, the cash shortage was ₹1,35,900/- and HCMPL had taken over the ATM on 14.09.2015. Thus, the Arbitral Tribunal reasoned that the cash shortage would have been limited if the reconciliation had been carried out, as the discrepancy would have been found earlier.

56. Before examining whether the Arbitral Tribunal's interpretation of Clause 4.3 and Clause 13 vitiates the impugned award on the ground of patent illegality, it would be necessary to note that the Arbitral Tribunal had, while rejecting Counterclaim No.1, found that TSI had failed to establish that it had suffered losses on account of the amounts misappropriated by HCMPL's employees.

57. TSI had raised a counterclaim for a sum of ₹96,44,632/- (Counterclaim No.1) as the balance claimed to be recoverable from HCMPL after adjusting the amount of ₹3,83,04,850/- payable against HCMPL's invoices against a sum of ₹4,79,49,482/-, which, according to TSI, had been recovered from it on account of the misappropriation. The Arbitral Tribunal found that TSI had not established that it suffered a loss of ₹4,79,49,482/- on account of misappropriation of cash from the ATM in question.

58. In terms of clause 13.3 – which is relied upon by TSI –HCMPL would be liable for 'CD loss'. However, to claim any amount against said loss, TSI would need to establish that it had incurred such a loss.

59. There appears to be no cavil that employees of HCMPL had misappropriated the cash, which belonged to the concerned bank. However, for TSI to sustain any claim for such amount, it would be essential to establish that it had incurred a loss on account of misappropriation of funds. However, the Arbitral Tribunal found that TSI could not establish that it had incurred the said loss, as it had not produced its books of accounts or any other cogent material to show that the misappropriated amount had, in fact, been recovered from it by Mphasis or the concerned bank.

60. The Arbitral Tribunal observed that TSI's witness (RW2), Shree Jeetram Sharma, Senior Finance Manager, stated during his examination that the books of account did not directly reflect any penalties that may have been levied by the customer banks. TSI had produced credit notes; however, TSI could not establish that they reflected the penalties TSI claimed it had suffered.

61. It is also relevant to note that a credit note issued by a person reflects that the person issuing the credit note has credited the account of the persons to whom the note is issued. It does not reflect that the person to whom the credit note is issued has debited the account of the person issuing the credit note. Thus, if a penalty had been imposed on TSI, the person imposing the penalty would have issued a debit note to reflect that TSI's account in its books has been debited by that levy.

62. As observed earlier, the Arbitral Tribunal is the final adjudicator of facts. In view of these findings, the Arbitral Tribunal's decision to allow HCMPL's claim and reject Counterclaim No.1 warrants no interference in these proceedings.

63. In view of the above, the Arbitral Tribunal's interpretation of the relevant clauses regarding HCMPL's liability may not be dispositive of HCMPL's claim and TSI's Counterclaim No.1. This is because, even if it is accepted that HCMPL is liable for the loss on account of misappropriation of cash by its employees, TSI would still have to prove that it had suffered such loss to sustain its counterclaim or resist HCMPL's claim.

64. We may now examine whether the Arbitral Tribunal's interpretation of the Service Agreement vitiates the impugned award on the ground of patent illegality.

65. The threshold question to be considered is whether Clause 4.3 of the Service Agreement covers CD loss. According to the Arbitral Tribunal, a loss arising out of a discrepant report would include a CD loss.

66. We note, at this stage, that it is not seriously disputed that if CBR was reconciled with the bank switch and its records, the cash shortage would have been found at the material time. This would have enabled HCMPL to address it at that stage. TSI's case is that the cash shortage was discovered on reconciliation of the CBRs with the Electronic Journal and the reconciliation vendor emailed the Bank on 27.07.2018 regarding the discrepancies found during the reconciliation process of the data relating to ATM ID GBA9041, which was managed by the HCMPL. The reconciliation vendor accordingly requested the Bank to take up the cash discrepancies identified with the respective vendor, that is, TSI.

67. The Arbitral Tribunal had found that Clause 13 of the Service Agreement also expressly provided that Service Provider would be

liable for the CD loss, and there is no dispute that HCMPL would be liable for any loss occasioned by misappropriation of cash. The Arbitral Tribunal noted that HCMPL did not dispute its liability. However, its defence was predicated on the language of Clause 4.3, which would absolve it of liability if the loss arose from a discrepant report but was not communicated within a period of 7 days from its submission. The question of whether the expression "any loss arising out of discrepant report" would cover the CD loss is a contentious one.

68. Clause 1.6 of the Service Agreement defines CD Loss as a loss which arises from dishonesty, negligence or intentional act of the employees or representatives of the service provider. In the present case, TSI claims loss on account of misappropriation of cash by the employees of HCMPL. Thus, undisputedly, the said loss would be covered under the definition of CD Loss within the meaning of Clause 1.6 of the Service Agreement.

69. Clause 4 of the Service Agreement sets out the scope of the service to be provided. Clause 4.3 of the Service Agreement contemplates that the concerned bank's reconciliation team would intimate any discrepancy between the CBR and the Bank's switch to

Mphasis (TSI) within seven working days from the receipt of the CBR. TSI/Mphasis was required to inform the service provider (i.e., HCMPL) of any such discrepancy intimated by the bank's reconciliation team. HCMPL, as the service provider, was required to attend to the same within three working days of the reporting of the difference/discrepancy in cash in the CD(s). If it failed to respond by the fourth working day, the difference/discrepancy amount would be recovered from the service provider on the sixth working day. Any discrepancy in CBR reported after seven days will not be entertained by the service provider, and it would not be liable for any loss so arisen.

70. The language of Clause 4.3, which expressly provides that "the difference/discrepancy amount" would be recovered from the service provider is of some significance for addressing the dispute. Prima facie, Clause 4.3 would cover the CD loss, as that would be reflected as a discrepancy/difference in the amount in the CBR and the switch data. As noted above, it is TSI's case that the shortage in cash was discovered by reconciliation of CBRs with the Electronic Journal.

71. Having stated the above, it is necessary to bear in mind that this Court is not required to re-adjudicate the said question. The scope of examination under Section 34 of the A&C Act is limited to examining whether the Arbitral Tribunal's view is a plausible one.

72. The Arbitral Tribunal's view that the CD loss would be a direct loss arising from a manipulated report which does not truly reflect the cash balance, and that reconciliation would have resulted in the discovery of misappropriation of cash, is clearly a plausible view. Thus, this conclusion would be outside the scope of interference in these proceedings.

73. The learned counsel appearing for TSI had laid much emphasis on the language of Clause 13.1, which expressly provided that the provisions of the said clause would override any other inconsistent provisions of the agreement. The Arbitral Tribunal also found that there was no dispute that HCMPL was liable for such losses. However, under Clause 4.3, it would be absolved of liability if the difference was not reported within the specified period. We cannot accept that this view is not plausible.

74. The learned counsel appearing for TSI also contended that TSI had no obligation to reconcile the CBR and the Switch data. The Arbitral Tribunal erred in imputing such obligations on TSI.

75. Undisputedly Clause 4.3 does not expressly provide that TSI would reconcile CBR with the Switch data or ensure that such reconciliation is done. However, it provides that if any discrepancy between the Switch data and CBR is reported, HCMPL would be informed. However, if no discrepancy is reported to HCMPL, it would be absolved of its liability of making good any such difference/discrepancy.

76. It is apparent from the reading of Clause 4.3 that it concerns the liability of HCMPL to make good the discrepancy/difference between the CBRs and switch data if communicated within the specified period, failing which HCMPL would be absolved of its liability.

77. It is also relevant to bear in mind that the cash handed over by the concerned Bank to HCMPL remained the property of the concerned Bank. HCMPL was a temporary custodian of the same. Thus, subject to the terms of the Service Agreement, if HCMPL had taken adequate care as a prudent person would have, it cannot be

held liable to make good the cash stolen from its custody.In the present case, TSI claims that HCMPL is liable by virtue of the Service Agreement. However, the Arbitral Tribunal found that HCMPL was absolved of its liability. The Arbitral Tribunal's decision rests on the interpretation that clause 4.3 of the Service Agreement absolved HCMPL of its obligation to pay the difference/discrepancy amount, as it was not communicated within the stipulated period.

78. It is settled law that the Arbitral Tribunal's decision on the interpretation of a contract cannot be interfered with unless the court finds that no reasonable person could accept such interpretation. In **MSK Projects (I) (JV) Ltd. v. State of Rajasthan**[1], the Supreme Court had held as under:

> "17. If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has

[1] (2011) 10 SCC 573

> to be determined outside and independent of what appears in the award. Such a jurisdictional error needs to be proved by evidence extrinsic to the award."

79. In **McDermott International Inc. v. Burn Standard Co. Ltd.**[2], the Supreme Court had stated as under:

> "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 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.
>
> 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."

80. In **SAIL Ltd. vs Gupta Brothers Steel Tube Limited**[3], the Supreme Court had observed as under:

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[2] (2006) 11 SCC 181
[3] (2009) 10 SCC 63

> "18. ... (*ii*) An error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction and such error is not amenable to correction by courts as such error is not an error on the face of the award."

81. We cannot accept that the Arbitral Tribunal's view on the interpretation of the terms of the Service Agreement is one that no reasonable person would accept. It is a possible view. Thus, the impugned award cannot be set aside on the ground of patent illegality.

82. TSI's challenge to the impugned judgment on the ground that it is unreasoned is unpersuasive. The learned Commercial court had examined the limited scope of interference under Section 34 of the A&C Act. In any view, we have examined TSI's challenge to the impugned award on merits find that the Arbitral Tribunal's view cannot be stated to be *ex facie* erroneous and one that vitiates the impugned award on patent illegality.

83. In view of the above, the impugned award could not be interfered with in proceedings under Section 34 of the A&C Act.

84. HCMPL's claim rested on the services rendered by it, and there was no serious dispute regarding the same. TSI did not

question the same before the Arbitral Tribunal. Even before us, no serious dispute was raised as to the invoices raised by HCMPL. TSI's only defence was that it was entitled to withhold the said payments for recovering the loss it had suffered on account of HCMPL's employees misappropriating the cash.

85. In view of the above, we find no ground to interfere with the impugned award. The appeal is accordingly dismissed.

86. The pending application stands disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

AHB