IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL ARBITRATION APPEAL NO.15 OF 2024

National Agricultural Co-operative Marketing Federation of India Limited (NAFED), A cooperative Society, having its registered office at NAFED House, Siddhartha Enclave, Ashram Chowk, New Delhi-110014 and having its branch office at Naman Centre, A Wing, Unit No.803, G Block, C-31, Opp. Dena Bank, One BKC Mumbai-400 051 Through its authorized signatory Mr. Vikas Rawal, Asst. Manager (Legal) .. **Appellant**

Verus

1. Roj Enterprises (P) Limited Having its office at A-8, Saket, 45/1+2/A, Karwe Nagar, Off. Patwardhan Building, Pune
2. Mr. Suresh G. Motwani, having his office at 39, Mysore Colony, Anik Village, Behind RCF, Chember, Mumbai.
3. Mr. Rajendra Narhar Kulkarni, having his office at Row House No.8, Swapnashilpa, 19/2C, Ganesh Nagar, Kothrud, Pune-411029. .. **Respondents**

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Dr. Veerendra Tulzapurkar, Senior Advocate with Mr. Vaibhav Joglekar, Senior Advocate, Mr. Ankit Tiwari, Mr. Sagar Chaurasiya i/by Shashipal Shankar, Advocates for the appellant.

Mr. Ashish Kamat, Senior Advocate with Mr. Ranjeev Carvalho, Mr. Rishab Murali, Ms. Punita Arora, Mr. Puneet Arora i/by M/s. Arora & Co., Advocates for the respondent nos.1 and 3.

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CORAM : A.S. CHANDURKAR & RAJESH PATIL, JJ

Date on which the arguments concluded : 18th DECEMBER 2024
Date on which the judgment is pronounced : 7th MARCH 2025.

JUDGEMENT : (PER : A. S. CHANDURKAR, J.)

1. This Commercial Arbitration Appeal filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (for short, 'Act of 1996') raises a challenge to the judgment dated 22/04/2024 passed by the learned District Judge-2, Pune in Civil Miscellaneous Application No.1337 of 2019. By the said judgment, the application preferred by the appellant under Section 34 of the Act of 1996 challenging the award dated 12/02/2019 passed by the learned Arbitrator came to be dismissed. As a result, the said award was upheld.

Admit. The Commercial Arbitration Appeal is taken up for final disposal.

2. The appellant *(hereinafter referred to as 'NAFED')* and the first respondent *(hereinafter referred to as 'REPL')* entered into two Tie Up Agreements dated 24/03/2004 and 30/04/2004 on the basis of which NAFED agreed to extend financial assistance to REPL to the extent of 80% of the value of stock that was to be

procured by REPL. The balance 20% value of the stock was to be procured by NAFED. On differences arising between the said parties, NAFED invoked the arbitration clause by its letter dated 17/03/2008. The disputes were referred to the sole Arbitrator who by his award dated 12/02/2019 dismissed the claim raised by NAFED as made against the first respondent. He further held the claim made against the second and third respondent to be not maintainable in the absence of any arbitration agreement between the parties. The counter claim filed by REPL came to be allowed and NAFED was directed to pay an amount of Rs. 33,97,77,369/- with interest. This award was the subject matter of challenge by NAFED in proceedings filed under Section 34 of the Act of 1996. By the impugned judgment dated 22/04/2024, the application filed under Section 34 of the Act of 1996 came to be dismissed.

3. Dr. Veerendra Tulzapurkar, learned Senior Advocate for NAFED in support of the appeal at the outset submitted that insofar as the findings recorded against Issue nos.1 and 2 by the learned Arbitrator were concerned, the same were not under challenge. The award as passed in favour of REPL was under challenge. Inviting attention to the impugned judgment dated

22/04/2024, it was submitted that though NAFED raised various contentions by submitting its written note of arguments, the grounds raised by it were not considered at all. Only by observing that the learned Arbitrator had passed his award on the basis of material on record, the learned Judge proceeded to dismiss the application filed under Section 34 of the Act of 1996. It was urged that the learned Judge ought to have considered the specific grounds raised by NAFED especially as regards the nature of Tie Up Agreements. It was submitted that the Tie Up Agreements indicated that the relationship between the parties were that of a lender and borrower. The learned Arbitrator erred in recording a finding that the Tie Up Agreements were in the nature of a joint venture or akin to a partnership. The relevant clause of the Tie Up Agreements along with various letters exchanged between the parties clearly indicated that the Tie Up Agreements were in the nature of a loan/finance agreement. A specific ground raised by NAFED in that regard before the learned Judge was not considered in the proper perspective only on the premise that the scope to challenge the arbitral award was limited. NAFED's contentions based on the documents on record had not been considered. It was submitted that the powers conferred under

Section 37 of the Act of 1996 were similar to the powers conferred under Section 34 of the Act of 1996 while considering a challenge to an arbitral award. Reliance was placed on the decision in *Delhi Metro Rail Corporation Ltd. Vs. Delhi Airport Metro Express Pvt. Ltd.* 2024 SCC OnLine 522. In the light of the finding recorded by the learned Arbitrator against Issue no.4, it was necessary for the learned Judge to have considered the challenge within the limits permissible under Section 34 of the Act of 1996. Reference was made to the relevant terms in the Tie Up Agreements and it was urged that the same ought to have been construed in a manner recognised by law. In this regard, reliance was placed on the decisions in *Bangalore Electricity Supply Co. Ltd. Vs. A. S. Solar Power Pvt. Ltd.* (2021) 6 SCC 718, *Ram Charan Das Vs. Girja Nandini Devi and Ors.* (1965) 3 SCR 841, *State of Orissa Vs. Titaghur Paper Mills Co. Ltd.* (1985) (Suppl.) SCC 280, *Commissioner of Income Tax Vs. M/s. U. P. Cooperative Federation Ltd.* (1989) 1 SCC 747, *Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd.* (2008) 10 SCC 345, *V. S. Talwar Vs. Prem Chandra Sharma,* (1984) 2 SCC 420 and *Bhai Jaspal Singh Vs. Assistant Commissioners of Commercial Taxes,* (2011) 1 SCC 39. The conduct of REPL in having issued various cheques in favour of

the appellant from time to time and its effect was not considered by the learned Arbitrator. From their conduct, it was clear that the parties had understood the Tie Up Agreements to be loan/finance agreements and the issuance of various cheques amounted to admission of REPL's liability. It was then submitted that the learned Arbitrator erred in allowing the counter claim preferred by REPL without examining as to whether such claim was in fact maintainable or not. The basis for allowing the claim was the alleged loss of profit. However, there was no evidence on record placed by REPL to support such claim. Only on the basis of assumption, relief was granted to REPL. Since the Tie Up Agreements provided for payment of interest by REPL to NAFED at rates mentioned therein, there was no question of NAFED paying interest to REPL as has been directed by the learned Arbitrator. Moreover, the relief with regard to interest as granted was beyond the pleadings. It was thus submitted that the award as passed was liable to be set aside. The learned Judge having failed to consider various challenges raised to the said award, it was urged that the same be considered in this appeal. The impugned judgment dated 22/04/2024 as well as award dated 12/02/2019 were liable to be set aside.

4. On the other hand, Mr. Ashish Kamat, learned Senior Advocate for REPL supported the impugned judgment. He submitted that the scope for interference under Section 37 of the Act of 1996 was limited as the Court would not sit in appeal over the award as passed and that it would not re-appreciate or re-assess the evidence. Referring to the decisions in *Associate Builders Vs. DDA,* (2015) 3 SCC 49 and MTNL Vs. Fujitshu India Pvt. Ltd. *(2015) 2 Arb LR 332 (Delhi)* it was clear that only if the award was in conflict with the Public Policy of India or if it suffered from patent illegality was there scope to interfere. Perusal of the award would indicate that no such ground in that regard was available. The learned Judge having examined the award within the permissible limits of Section 34 of the Act of 1996, there was no reason whatsoever for this Court to interfere under Section 37 of the Act of 1996. It was then submitted that the learned Arbitrator after considering all relevant aspects had given cogent reasons while dismissing the claim of NAFED and allowing the counter claim preferred by REPL. The Tie Up Agreements were indeed in the nature of joint venture or partnership agreements between the parties. It was not the business of NAFED to grant

any loan under its bylaws. Moreover, REPL was not a member of NAFED which would clearly indicate that the Tie Up Agreements between them were business transactions in the nature of a joint venture / partnership agreement. The evidence on record was duly considered by the learned Arbitrator while allowing the counter claim. The award of interest was within the discretion of the learned Arbitrator. The same had been duly exercised in accordance with Section 31(7)(b) of the Act of 1996. Reference was made to the decisions in *Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa,* (2015) 2 SCC 189 and *Assam State Electricity Board & Ors. Vs. Buildworth Pvt. Ltd.* (2017) 8 SCC 146 in that regard. It was thus submitted that in the light of the fact that the learned Judge in exercise of jurisdiction under Section 34 of the Act of 1996 did not find any merit whatsoever in the challenge raised by NAFED to the award dated 12/02/2019, no case had been made out by NAFED to enable this Court to interfere under Section 37 of the Act of 1996. It was thus submitted that the Commercial Arbitration Appeal was liable to be dismissed.

5. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documentary

material on record. The present appeal having been filed under Section 37(1)(c) of the Act of 1996 raising a challenge to the judgment of the learned Judge refusing to set aside the arbitral award in exercise of jurisdiction under Section 34 of the Act of 1996, it would be necessary to consider the arbitral award and thereafter the adjudication undertaken under Section 34 of the Act of 1996. The contours and scope for interference with an arbitral award under Section 34 of the Act of 1996 has been considered by the Supreme Court in *Associate Builders Vs. Delhi Development Authority,* (2015) 3 SCC 49 and Ssangyong *Engineering and Construction Company Limited Vs. NHAI,* (2019) 15 SCC 131. Interference on the ground of patent illegality is permissible if the decision of the Arbitrator is found to be perverse or so irrational that no reasonable person would have arrived at such decision or the construction of the contract is such that no fair or reasonable person could take such view. A finding arrived at ignoring vital evidence can also be termed to be perverse and liable to be set aside under the head of "patent illegality". Similarly, if a matter not within the jurisdiction of the Arbitrator is decided, it could result in a patent illegally. In *Delhi Metro Rail Corporation Limited (supra)* the Supreme Court has held that the

jurisdiction under Section 37 of the Act of 1996 is akin to the jurisdiction of the Court under Section 34 and is restricted to the same grounds of challenge as Section 34 of the Act of 1996.

The grounds for setting aside an award by the Court have been stated in Section 34 (2) of the Act of 1996. While it is true that the scope for interference under Section 34 (2) of the Act of 1996 would be limited to examining as to whether the contingencies stipulated therein have been satisfied or not, it would nevertheless be necessary for the Court exercising jurisdiction under Section 34 of the Act of 1996 to examine the challenge as raised on such permissible grounds. When a specific challenge in this regard is raised to the award, it would thus be necessary for the Court exercising jurisdiction under Section 34(2) of the Act of 1996 to deal with such challenge. While it is true that in exercise of such jurisdiction the Court does not sit in appeal over the award passed by the Arbitrator, it would be required to refer to and deal with the objections raised to the award. The Court would be expected to assign some reasons for either accepting such challenge or for turning down the same. Merely by stating that the scope for interference under Section 34 was limited, the Court would not be justified in refusing to examine

specific challenges raised to the award on the grounds on which it can be set aside. The order passed under Section 34 of the Act of 1996 therefore ought to indicate consideration of the challenges raised on the touchstone of Section 34 of the Act of 1996 and alteast briefly indicate the reasons for either accepting the same or negating such challenge. The challenge to the impugned judgment passed in exercise of jurisdiction under Section 34 of the Act of 1996 would have to be examined in the aforesaid context.

6. The learned Arbitrator in his award dated 12/02/2019 considered the claim statement submitted by NAFED and the counter claim raised by REPL. 11 issues were accordingly framed. The learned Arbitrator held that the Tie Up Agreements dated 24/03/2004 and 30/04/2004 were not loan agreements but were in the nature of a joint venture. The claim as raised by NAFED was disallowed while the counter claim filed by REPL came to be allowed. The amount adjudicated was directed to be paid by NAFED to REPL with interest @ of 12% per annum with monthly rates.

In the proceedings filed under Section 34 of the Act of 1996 both the parties submitted their written note of arguments. The

grounds raised by the NAFED while challenging the award have been referred to in paragraph 12 of the impugned judgment while the submissions made on behalf of the REPL have been referred to in paragraphs 13 to 16 of the said judgment. The learned Judge observed that the findings recorded against Issue no.3 could not be said to be without evidence or against public policy. It was further held that NAFED could not show that the impugned award was in conflict with the fundamental principles of Indian law or in conflict with the public policy of India. In paragraph 24 of the impugned judgment reference was made to about 11 decisions relied upon by NAFED and it was stated that the same were not useful for justifying the grounds put forward by NAFED. On that basis, the application filed under Section 34 of the Act of 1996 was dismissed on 22/04/2024.

7. The principal contention raised on behalf of NAFED in the present appeal is that the learned Judge while exercising jurisdiction under Section 34 of the Act of 1996 failed to specifically consider the various challenges raised by NAFED. It would thus be necessary to consider the grounds of challenge as raised in the written note of arguments by NAFED and the

response given by REPL in its written note of arguments which would enable consideration of the grounds as raised in that regard.

8. One of the grounds of challenge raised by NAFED was that the Tie Up Agreements were in the nature of loan agreements and not in the nature of any joint venture or partnership agreement. This aspect has been considered by the learned Arbitrator while answering Issue no.4. It has been held that the Tie Up Agreements were not in the nature of loan agreements but in the nature of a joint venture or akin to partnership. He has further observed that the Tie Up Agreements did not mention anything about the sharing of profit and loss by both the parties and has relied upon Clauses 7 and 8 thereof which indicate payment of service charges and interest. This finding was challenged by NAFED in the proceedings filed under Section 34 of the Act of 1996. The same has been referred to by the learned Judge in paragraph 12 (e) of the impugned judgment. In the written note of arguments of NAFED, Ground VI has been raised in support of the contention that the Tie Up Agreements were in the nature of loan agreements and that the finding recorded by the learned Arbitrator was in the

absence of any evidence on record thus resulting in the impugned award suffering from patent illegality. Ground VI thereof reads as under:-

> VI. FINDING WITH RESPECT TO THE NATURE OF SAID AGREEMENTS IS DE-HORS THE CONTENTS AND NATURE THEREOF :
>
> The Hon'ble Arbitrator has, while arriving at the finding in respect of the issue no. 4, wrongly held that the Agreements dated 24.03.2004 and 30.04.2004 were not in the nature of loan agreement but were in the nature of joint venture or akin to a partnership.
>
> The Hon'ble Arbitrator, while arriving at the said finding, lost sight of the nature and contents of the said Agreement. The Respondents had approached the Applicant to issue financial assistance to them for the purpose of their business. The said Agreements specifically record that the Respondents had approached the Applicant 'for financing purchase and stock of ...' and that the Applicant has 'agreed to finance for the purchase and stock of...'. The Applicant was to 'finance' 80% of the value of the goods purchased under the said Agreements by the Respondents. It is also pertinent to note that, the said Agreements record payment of only interest and service charges, and not sharing of profit and loss between the Applicant and the Respondents. It is further pertinent to note that the Applicant had no say in the

commercial and business decisions of the Respondent.

The Hon'ble Arbitrator, however, has come to the aforesaid finding that is *de-hors* the facts, circumstances and evidence on record.

The aforesaid finding by the Hon'ble Arbitrator in the impugned Award displays the total absence of application of the fundamental principles and provisions of law by the Hon'ble Arbitrator.

The impugned Award suffers from patent illegality. The impugned Award is in contravention of the Indian law including The Indian Contract Act, 1872 and the principles and provisions thereof, and is in conflict with the public policy of India. The impugned Award is blatantly hit by Section 34 of the Arbitration Act, particularly clause (ii) of clause (b) of sub-section (2) and sub-section (2-A) thereof.

9. In response to the aforesaid stand of NAFED that the Tie Up Agreements were in the nature of loan agreements, REPL in its written note of arguments at paragraph 15(j) has stated as under:-

"It is further submitted that the Tie Up Agreements do not mention anywhere the word "loan" but refer to the financial participation of the Claimant in the business as "investment". In fact it has been admitted by the Claimant's witness that the bye laws of the Claimant organization permit the Claimant organization to

give loans only to its members, who are cooperative societies. Admittedly, the Respondent No.1 is neither a cooperative society nor a member of the Claimant organization. Further the said Tie Up Agreements do contain any stipulation of a repayment period. It is further admitted by the witness of the Claimant that the officers of the Claimant actively participated in the business by visiting the vendors of the Respondent No.1, approving the vendor's facilities and also approving the quality of the goods. From the facts and circumstances it is clear that the said Tie Up Agreements were clearly not loan agreements but akin to a joint enterprise, which placed a higher responsibility of diligence upon the Claimant in respect of the goods in their custody."

10. It can thus be seen that the conclusion recorded by the learned Arbitrator that the Tie Up Agreements were in the nature of joint enterprise was the subject matter of contest before the learned Judge in the application filed under Section 34 of the Act of 1996. In paragraph 18, the learned Judge has observed that he had gone through the written note of arguments submitted by NAFED below Exhibit-31. Perusal of the impugned judgment thereafter indicates that this challenge as raised by NAFED as to the nature of the Tie Up Agreements has not been dealt with at all. Except for observing that the findings rendered by the learned

Arbitrator were by appreciating the evidence on record and applying certain legal provisions, the learned Judge has disposed of that challenge. The parties being at issue on this aspect, it was necessary for the learned Judge to have considered the rival contentions and expressed his opinion so as to reflect its judicial consideration, albeit within the scope permissible under Section 34 of the Act of 1996. The same has however not been done.

11. Coming to the counter claim that was preferred by REPL, it may be noted that in the written note of arguments, REPL had stated that after sale of the goods procured having value of Rs.26,37,49,000/-, it would have made a profit of Rs.13,36,77,339/- which was about 5% of the value of the goods procured. Perusal of the award indicates that while allowing the counter claim, the learned Arbitrator in paragraph 23 (B) as proceeded on the basis that the loss of profit would be 20%. REPL in its written statement cum counter claim claimed loss of profit as per the calculation at Exhibit R-11. The calculation made thereunder indicates such profit to be 20% to 21% of investments. In its written note of arguments, NAFED raised the ground that the pleadings of REPL and the submissions made were inter se

contradictory and inconsistent. In paragraph IX (b) it was stated as under:-

> *"(b) <u>Respondents' pleadings and submissions are inter se contradictory and inconsistent</u> :*
>
> *(i) The Respondents, on one hand have sought assumed return of investment or loss of profit at 20-21% as stated by the Hon'ble Arbitrator, while in contradiction thereto, appear to contend presumption of alleged loss of profit at the rate of 5% as stated in the Respondents' written arguments (Reference: paragraph (c) of paragraph 16 thereof) filed in the arbitration (which written arguments have been filed as annexure Exhibit AA in the present proceedings).*
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> *(ii) The Hon'ble Arbitrator has failed to consider and appreciate the Respondents' apparent contradictions and inconsistencies inter se their own pleadings and submissions. The Hon'ble Arbitrator ought to have considered and appreciated that the claims of the Respondents are devoid of any merits."*

12. Perusal of the impugned judgment does not indicate consideration of this aspect by the learned Judge. Except for observing that it would not be permissible to enter into merits and replace the view of the learned Arbitrator, the learned Judge

declined to go into the said aspects. Considering the fact that the ground raised by NAFED was that the counter claim had been allowed notwithstanding contradictory pleadings of REPL and also by failing to consider and apply basic principles and provisions of Indian Law thus rendering the impugned award liable to be interfered with on the ground of patent illegality, it was necessary for the learned Judge to have considered the said challenge under Section 34 of the Act of 1996 and recorded his findings in that regard. The same however does not appear to have been done.

13. Yet another contention raised on behalf of NAFED is the grant of interest by the learned Arbitrator @ 12% per annum with monthly rests from 31/08/2015 till realisation. In this regard if the counter claim made on behalf of REPL is considered, it can be seen that it has claimed interest on the claim amount @ 12% per annum without any monthly rests. It was thus submitted by NAFED that as interest was not claimed with monthly rests by REFL in its counter claim, the learned Arbitrator was not justified in granting the same. Grant of such interest amounted to the learned Arbitrator travelling beyond the pleadings and reliefs sought by REPL. This aspect has not been considered by the

learned Judge in the impugned judgment when the grant of relief as prayed for in the counter claim was under challenge by NAFED. It was necessary for the learned Judge to have considered this aspect while deciding the challenge to the impugned award under Section 34 of the Act of 1996.

14. On the finding recorded by the learned Arbirator that the affidavit-cum-undertakings dated 31/12/2005, 15/02/2006 and 22/05/2006 were obtained by NAFED from REPL under coercion, the learned Arbitrator while answering Issue no.3 has held so in favour of REPL. In the written note of arguments NAFED has specifically challenged this finding by urging that the same had been recorded without there being any evidence on record. It was stated that though the affidavit cum undertakings were executed in the year 2006, a grievance in that regard of the same having been obtained under coercion was raised for the first time in August 2015 in the statement of defence filed by REPL. There was no declaration sought by REPL in that regard.

This aspect going to the root of the matter ought to have been considered by the learned Judge when the same was raised in challenge to the award in the proceedings under Section 34 of

the Act of 1996. The impugned judgment however does not indicate so.

15. In paragraph 25 of the award while answering Issue no.11 a finding has been recorded that the post dated cheques issued by REPL had not been issued towards any legally enforceable date.

The said finding according to NAFED was hit by Section 34(2) (b)(i) of the Act of 1996. In paragraph 12 of the impugned judgment, reference has been made to the challenge in this regard. However, the same does not appear to have been specifically dealt with by the learned Judge.

16. We may state that on behalf of NAFED, it was contended that it did not desire to pursue its claim against respondent nos.2 and 3 who were Directors of REPL. On this basis, it was urged by REPL that in view of this stand of NAFED, Issue nos.1 to 3 answered by the learned Arbitrator had attained finality. In re-joinder, it was contended by NAFED that giving up the claim against respondent nos.2 and 3 did not imply that the challenge to Issue no.3 was also given up. Issue no.3 pertains to the stand

of REPL that the affidavit-cum-undertakings dated 31/12/2005, 15/02/2006 and 22/05/2006 were obtained by coercion.

In the light of the directions proposed to be issued, it is not necessary for this Court to consider the effect of the claim against respondent nos.2 and 3 being given up vis-a-vis Issue no.3. This aspect is kept open for being urged in the proceedings under Section 34 of the Act of 1996.

17. Thus taking an overall view of the matter, it can be seen that NAFED in its grounds of challenge raised under Section 34 of the Act of 1996 as well as its written note of arguments had specifically assailed the award on various counts. Though the learned Judge noted some of the grounds of challenge in the impugned judgment, there has been no adjudication of the grounds as raised. Merely by stating that the scope for interference under Section 34(2) of the Act of 1996 was limited and that re-appreciation of evidence was not permissible, the challenge has been turned down. In our view, it was necessary for the learned Judge to have considered the grounds of challenge and recorded findings on the basis of such challenge by either

accepting them or rejecting such grounds. Such exercise was expected to be undertaken within the permissible limits of Section 34(2) of the Act of 1996. The challenge as raised could not have been answered merely by stating that there was a limited scope for interference or that the findings were based on appreciation and application of legal provisions without indicating the manner in which the same was done. We are therefore of the considered view that the challenge as raised by NAFED to the award dated 12/02/2019 deserves to be re-considered on merits by the Court under Section 34 of the Act of 1996. It may be stated that the learned counsel for the parties addressed the Court on the merits of such challenge and defence. However, in exercise of jurisdiction under Section 37 of the Act of 1996 we are not inclined to examine such grounds in absence of the same being considered by the Court in exercise of jurisdiction under Section 34 (2) of the Act of 1996. We therefore find that a case has been made out to set aside the impugned judgment to facilitate a re-consideration of the proceedings under Section 34 of the Act of 1996. For this reason, we have not referred to all the decisions relied upon by the learned counsel in support of their respective contentions.

18. Accordingly, for the reasons afore-stated, the judgment dated 22/04/2024 passed by the learned District Judge-2, Pune in Civil Miscellaneous Application No.1337 of 2019 is quashed and set aside.

i) The proceedings in Civil Miscellaneous Application No.1337 of 2019 are restored for being considered afresh under Section 34 of the Act of 1996 in accordance with law.

ii) It is clarified that this Court has not examined the respective submissions of parties on merits and all grounds of challenge/defence raised are open for being urged in the proceedings under Section 34(2) of the Act of 1996. Any observations made in this judgment shall not be treated as expression of any opinion by this Court on the merits/demerits of the impugned order. Since the award was passed on 12/02/2019 and as the pleadings of the parties with regard to the proceedings under Section 34 of the Act of 1996 are complete, Civil Miscellaneous Application No.1337 of 2019 shall

be decided on its own merits and in accordance with law within a period of three months from today. The amount deposited by NAFED pursuant to the order dated 03/07/2024 shall remain invested in deposit and would be subject to outcome of the proceedings under Section 34 of the Act of 1996. The Commercial Arbitration Appeal is allowed in aforesaid terms leaving the parties to bear their own costs.

[RAJESH PATIL, J.] **[A.S. CHANDURKAR, J.]**