HIGH COURT OF DELHI
Bench: Hon'ble Ms. Justice Rekha Palli
Date of Decision: 08.11.2023

O.M.P. 33/2016, I.A. 10716/2016, I.A. 7625/2022 & I.A. 14936/2023, I.A. 2583/2017 & I.A. 16467/2019 & I.A. 14937/2023, I.A. 3059/2022

AIR INDIA LIMITED ..... Petitioner

versus

ALL INDIA AIRCRAFT ENGINEERS ASSOCIATION
..... Respondent

O.M.P. 34/2016 & I.A. 10718/2016 (stay)

NATIONAL AVIATION COMPANY OF INDIA NOW AIR INDIA LIMITED ..... Petitioner

versus

INDIAN AIRCRAFT TECHNICIANS ASSOCIATION & ORS.
..... Respondents

Legislations:
Section 11, 31, 34, 75, 81 of the Arbitration and Conciliation Act, 1996
Section 9 of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994
Article 13, 226, 300 A of the Constitution of India

Subject: Challenge to arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996 pertaining to disputes over wage arrears claims. The court examined the binding nature of the Presidential Directive, the Tribunal's jurisdiction, and the entitlement of employees to wage arrears in line with DPE Guidelines despite the Directive's notional fixation terms. The decision also dealt with the award of compound interest on the entire adjudged amount, including interest.

Headnotes:

Arbitration – Challenge to Arbitral Awards – Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 against arbitral awards in favor of respondents concerning wage arrears claims – Presidential Directives and Settlement Memoranda considered – Tribunal's mandate to adjudicate the quantum of arrears payable from 01.01.1997 to 31.12.2007 upheld – Petitioner's objections regarding scope of the Tribunal's mandate and the legality of the Presidential Directive rejected – Tribunal's findings on admission of dues by Petitioner and direction for payment of arrears including interest upheld – Petitions dismissed. [Paras 2-60]

Presidential Directive – Binding Nature and Tribunal Jurisdiction – Presidential Directives issued under Section 9 of the Air Corporations

(Transfer of Undertakings and Repeal) Act, 1994 are binding on the enterprise but are administrative in nature – Tribunal has jurisdiction to assess legality and validity of directives when referred to arbitration by the Supreme Court – Tribunal's decision to override Presidential Directive for payment of wage arrears based on DPE Guidelines and factual circumstances upheld. [Paras 38-44, 50]

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Interest on Arbitral Awards – Post-award interest on entire adjudged amount – Tribunal empowered to award interest on sum inclusive of the adjudged amount and interest – Decision in Vedanta Ltd. distinguished – Tribunal's direction for payment of compound interest upheld. [Paras 57-59]

Arbitral Awards – Minimal Judicial Interference – Courts to exercise restraint in reviewing arbitral awards under Section 34 of the Act – Judicial review limited to grounds of patent illegality or perversity going to the root of the matter – Tribunal's findings based on careful consideration of submissions and materials, interference by court not warranted. [Paras 55-56]

Labor Disputes – Entitlement to Wage Arrears – Employees' entitlement to wage arrears from 01.01.1997 as per DPE Guidelines despite Presidential Directive stipulating notional fixation – Arbitral Tribunal's finding in favor of employees based on evidence and recommendations by the petitioner to the Union of India – Petitioner's recommendations deemed as admission of liability to pay arrears – Tribunal's decision to award arrears upheld. [Paras 45-47, 53-54]

Referred Cases:

- Ssangyong Engg. & Construction Co. Ltd. V. NHAI, (2019) 15 SCC 131
- Hyder Consulting (UK) Ltd. V. State of Orissa, (2015) 2 SCC 189
- UHL Power Company Ltd. V. State of Himachal Pradesh, (2022) 4 SCC 116
- Delhi Airport Metro Express Pvt. Ltd. V. Delhi Metro Rail Corporation Ltd., (2022) 1 SCC 131
- State of Haryana v. S.L. Arora & Co., (2010) 3 SCC 690
- Associate Builders v. DDA, (2015) 3 SCC 49
- ONGC v. Western Geco International Ltd., (2014) 9 SCC 263
- Larsen Air Conditioning and Refrigeration Company vs. Union of India & Ors., Civil Appeal No.3798/2023

Representing Advocates:
For petitioners/decree holders: Mr. Harish N Salve, Sr. Adv with Ms. Anuradha Dutt, Mr. Lynn Pereira, Ms. Priyanka M.P., Ms. Shivangi Sud, Ms. Srishti Prakash, Mr. Arkaprava Das, Advs. In O.M.P. 33/2016.
For respondents/judgment debtors: Mr. Jay Savla, Sr. Adv. With Mr. Sameer Kumar, Mr. Shah Rukh Ahmad, Mr. Mandeep Baisla & Mr. Ritik Dwivedi, Advs. In O.M.P. 33/2016.

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REKHA PALLI, J
JUDGMENT

1. The present decision disposes of two petitions that have been filed by

Air India Ltd. under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as „the Act"). These petitions challenge two distinct Arbitral Awards dated 25.05.2016, granted in favor of the first respondents in OMP (COMM) 33/2016 and OMP (COMM) 33/2016, i.e., All India Aircraft Engineers" Association and Indian Aircraft Technicians Association, respectively, regarding their claims. The impugned awards issued the following directions to the Petitioner:

"OMP (COMM) 33/2016: Award favour of Claimant/Respondent No.1 No.1	*in OMP (COMM) 34/2016:Award in favour of Claimant/Respondent*
"49. In view of the foregoing "55.	*In view of the foregoing*

discussions, award is passed allowing the claims of the claimants with directions to the respondents to pay to them

a) *Rs.57,92,47,222/- being the principal amount within three months;*

b) *Simple interest at the rate of 12% per annum upon Rs.57,92,47,222/- from 1.9.2006 till the date of the Award within three months from the date of the award.*

c) *Interest at the rate of 18% per annum from the date of award till payment upon the principal sum and interest accrued thereon till the date of the award in case, of failure of the respondents to make the above payments at (a) and (b), within three months from the date of the award.*

d) *Costs of the arbitration proceedings to the tune of Rs 14,53,250/- payable within three months.”*

discussions, award is passed directing

a) *Payment by the respondents to Arup Kumar Bagchi a sum of Rs.7,81,768/- together with simple interest at the rate of 12% per annum from 1.8.2006 till the award within three months and interest at the rate of 18% per annum from the date of award till payment not only upon the said sum but interest accrued thereon as well till the award in case, of failure of the respondents to make payments, as aforesaid, within the time granted for the same.*

b) *Air India to calculate wage arrears payable to other members of the Claimant-Union for the period 1.1.1997 to 31.7.2006 within three months.*

c) *the respondents to pay:*

(i) *sums found due on calculation within three months thereafter*

(ii) *Simple interest at the rate of 12% per annum on the sums found due on calculation from 1.8.2006 till the date of the award within the time provided in (i) above*

(iii) *Interest at the rate of 18% per annum from the date of the*

award till payment not only upon the sums found due on calculation but on interest accrued thereon as well till the award in case of failure of the respondents to make the payments at (i) and (ii) within the time granted thereunder

(iv) Costs of arbitration proceeding to the tune of Rs. 46,61,250/- within three months”

2. The assailed Awards relate to a long-standing dispute that arose almost 15 years ago between the Petitioner"s predecessor-in-interest, Indian Airlines Limited, and its employees. The 2nd Respondent named in both petitions is a proforma party, and is the Union of India through the Ministry of Civil Aviation. The contesting respondents are two trade unions registered in accordance with the Trade Union Act of 1926. The first respondent named in OMP(COMM) 33/2016 is the All India Aircraft Engineers Association, a trade union consisting of aircraft engineers employed by the Petitioner and its predecessor-in-interest. The Association is organized into five regional chapters located in Delhi, Mumbai, Calcutta, Chennai, and Hyderabad and asserts that it represents the interests of 480 members who served as engineers either under the Petitioner or its predecessor-in-interest. The first respondent named in OMP(COMM) 34/2016 is the Indian Aircraft Technicians Association that represents about 2000 aircraft technicians who were previously employed or are currently employed by the Petitioner and/or its predecessor-in-interest.

3. Before dealing with the rival submissions of the parties, a brief overview of relevant facts as emerging from the record may be noted. , (i) When India attained independence, there were eight airlines operating in the country. Pursuant to the enactment of the Air Corporation Act in 1953, the Indian air transport industry was nationalized and two selfgoverning corporations named Indian Airlines and Air India, fully owned by the Government of India, were created. The previously existing eight domestic airlines were merged into Indian Airlines to ply on domestic routes, whereas Air India plied on the international routes. In 1994, upon liberalization, the Air Corporations Act, 1953 was repealed by the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994; all undertakings of Air India and Indian Airlines were transferred and vested in public limited companies named Air India Ltd. and Indian Airlines Limited („IAL" for short) respectively. Members of the Respondent No.1 served as Chief Aircraft Engineers, Deputy Aircraft Engineers, Senior Aircraft Engineers and Aircraft Engineers in the Petitioner Company and its predecessor-in-interest.

LAWYER
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(ii) Against this backdrop on 14.01.1999 the Department of Public Enterprises (hereinafter referred to as „DPE") called for the commencement of the Sixth Round of Wage Negotiations in Public Sector Enterprises and issued guidelines therefor (hereinafter referred to as "DPE guidelines"). This was novel for the nascently formed Air India Limited and Indian Airlines Limited; the last pay revision effected for five years in 1992 had been carried out by the Government of India. The Managements of these public sector aviation enterprises were now charged with conducting wage negotiations with their respective workers, in accordance with the DPE guidelines.

(iii) In the aforesaid guidelines, Section (a) of Chapter IV titled „Wage Policy/Pay Revision/HPPC Recommendations" began by noting that wage negotiations for Central Public Sector Enterprises had fallen due on 01.01.1997. The Managements were urged to commence negotiations with workers" trade unions/associations subject to certain conditions. These conditions were clearly set out. Paragraph 3 recorded that the managements were at liberty to implement the negotiated wages after verifying with DPE and the concerned Ministry that the revisions were within approved parameters and not in conflict with wage revisions of officers and nonunionized supervisors.

(iv) Subsequently on 25.06.1999, the DPE supplemented the aforesaid guidelines by way of OM No. 2(49)/98-DPE(WC) which specified *inter alia* that (i) in enterprises which had adopted pay scales different from those prescribed in the DPE guidelines or had effected increment rates higher than those provided by the DPE, the management was at liberty to introduce certain intermediary scales or appropriately modify the scales provided by the guidelines, so long as the minimum and maximum limits of the individual pay scales remained unaltered. The modifications however could be introduced only in consultation with the administrative Ministries and the DPE; and that (ii) all Ministries/Departments would issue presidential directives in the format prescribed in Annexure IV of the OM and these directives would set out ceilings for pay scales and perquisites, and provide for dearness allowances. As per these guidelines, the next pay scale was to be due after 10 years.

(v) On 11.08.2004, after five years had lapsed since the bell for wage revision was sounded by the DPE, the Respondent No.2 Ministry of Civil Aviation issued a presidential directive to Air India Limited to begin wage negotiations with its workers. The presidential directive given by the Ministry to Air India Limited stated as under:

"… It is suggested that Air India may commence wage negotiations with the Unions/Associations/Guilds etc. subject to the following conditions:

(i) Air India should not deviate in any manner from the various DPE guidelines issued from time to time, in case, any deviation is envisaged during the process of negotiations, Air India would inform the Ministry for appropriate action in consultation with DPE.

(ii) The actual progress in achieving the tangible benefit of Rs. 162 crores as well as the intangible benefits projected by Air India should be intimated to the Board and Ministry before a settlement is finalized with different Unions/Associations/Guilds etc. The various issues discussed in the meeting held on 30.07.2004 at Mumbai should be fully taken into consideration during the negotiations. It should be ensured that the organisation"s interest are fully protected.

(iii) The Management should also have a clear agenda during the negotiations and present their own, "Charter of Demands" to the Unions/Associations/Guilds these should be rationalization of manpower in specific areas, restraining and redeployment, stoppage of wasteful practice, right to outsource services in (illegible), rationalization of numerous allowances, meaningful (illegible) limited incentives, etc.

(vi) On 21.07.2006, the Respondent No.2 issued a presidential directive to Indian Airlines Limited to begin wage negotiations with its workers. The Ministry directed the airlines to conduct these negotiations within certain parameters and the contents of the presidential directive read as under:

"… It has been decided that M/s Indian Airlines Limited may commence wage negotiations with the Union/Associations etc. subject to the following conditions:

(i) "Wage revision would be in conformity to DPE guidelines dated 14th January, 1999 and 25th June, 1999 (copies enclosed).

(ii) IAL to adopt norms similar to the ones adopted by Air India

(iii) IAL to work out savings in allowances/PLI payments in real terms in negotiations with the employees.

(iv) Revisions would be prospective i.e. from the date of issue of Presidential Directive

(v) Notional fixation will be w.e.f. 01.01.1997 and fitment benefit will be made up out of existing allowances including PLI

(vi) Payouts will be contingent upon cash flow and will be staggered over time.

(vii) No budgetary support for wage increase shall be provided by the Government

(viii) Payment of perquisites and allowances shall be a maximum of 50% of basic pay.

(ix) Payment over and above the ceiling of 50% of the basic pay should be entirely in the nature of performance related payments which should not exceed 5% of the distributable profits of the enterprises

(x) All efforts should be made to review manpower reduction and cost cutting should be done while negotiating the wage increase.

(xi) The wage negotiations may be done keeping in view and consistent with the generation of resources/profit by IAL."

(vii) As was practice since 1960, the relationship between the Petitioner and its workers/ Respondent No.1 members was governed by Agreements/Settlement Memorandum they entered into. In accordance the presidential directive, the Petitioner commenced wage negotiations with its engineers" union represented by the Air Corporations Employees Union – who are being represented by the Respondent No.1 in these proceedings. The negotiations resulted in a Memorandum of Settlement dated 29.03.2007 crystallizing the terms of their agreement for wage revision. Clause 1 of the Memorandum set out the agreed upon pay scales for each designation, but Clauses (1.1) and (1.3) recorded that "*the fixation of pay in the revised scales of pay would be effected from 01.01.1997. However, this fixation will be notional from 01.01.1997 and the actual payment would commence from 01.08.2006 in the revised scales of pay*." The express language of the Memorandum of Settlement reiterates everywhere that the revised wages were payable w.e.f. 01.08.2006, barring variations against select wage components. On 28.03.2007, a day after executing this Memorandum, the Respondent No.1 addressed a letter to the Petitioner stating as under:

"To
The Director (P&IR),
Indian Airlines Ltd.,
Head Qtrs., New Delhi

Dear Sir,

Sub: Arrears w.e.f. 01.01.1997 for Wage Settlement reached between AIAEA and IA Management on 29.03.2007

During the negotiations of the subject settlement the Association has raised the issue of the wage arrears w.e.f. 1.1.1997 as a legitimate right of the Association. However the Management has expressed its inability to concede to the demand of the Association owing to the fact that the mandate given by the Ministry for arrears payment is only w.e.f. 1.8.2006.

In view of the above the Association by means of this letter appeals to the Management to further pursue this matter with the Ministry to fulfill our legitimate demand for the subject arrears. However, pending the necessary approval from the Ministry we enter into the

subject settlement without prejudice to our claim for the arrears with effect from 1.1.1997. On obtaining the necessary approval from the Ministry, the same may be extended to us from 1.1.1997. Kindly acknowledge the receipt."

(viii) The Petitioner replied to the aforesaid letter the very same day with the following response addressed to the General Secretary of Respondent No.1:

"Dear Sir,

During the course of discussions, you had raised the issue with regard to payment of arrears w.e.f. 1.1.1997. You have been informed by the Management that arrears are payable effective 01st August 2006 only as provided for in the Understanding in line with the directions issued by the Ministry of Civil Aviation, Govt. of India. However, in case there is any review of the above by the Government of India, Ministry of Civil Aviation corresponding modification to the Settlement arrived at will be effected.

The above is with reference to your letter No. AIAEA-Hyd/GS/07/05 dated 29th March, 2007 on the subject."

(ix) Given this issue, the Petitioner informed the Respondent Ministry of the aforementioned correspondences by way of letter dated 22.05.2007. In response, the Respondent No.2 issued a modified presidential directive to Indian Airlines on 06.06.2007 in respect of wage negotiations with the Air Corporation Employees" Union (ACEU). The letter dated 22.05.2007 stated as under:

"I am directed to refer to your d.o. letter No. CMD/07 dated 22.5.07 and d.o. letter No. CMD/07/386 dated 28.5.07 on the above mentioned subject and to say that Indian Airlines may reach a settlement with the ACEU only within the parameters of DPE"s O.M. dated 14.01.99 and O.M. No. 2(49)/98-DPE(WC) dated 25.6.99, subject to the conditions laid down in this Ministry"s letter of even No. dated 21.7.2006 as modified below:

1. ***Fixation of pay will be notional w.e.f. 1.1.97 and arrears will be payable w.e.f. 1.1.2000****; excluding HRA & CCA, as proposed in CMD"s letter dated 28.5.2007*
2. *Norms similar to the ones adopted by Air India be adopted.*
3. *Savings in allowances/PLI payments in real terms be worked out on adoption of revised scales of pay.*
4. *Payouts on account of wage revision will be contingent upon cash flow and will be staggered over time taking into account the financial position of IAL and that of the merged entity and its ability to absorb such expenditure as prescribed by DPE Guidelines.*
5. *IAL should take into account its committed liabilities and future liabilities.*

6. Payment of perquisites and allowances shall be a maximum of 50% basic pay.
7. Payment over and above the ceiling of 50% of the basic pay should be entirely in the nature of performance related payments *which should not exceed 5% of the distributable profits of the enterprise*
8. *All efforts should be made to review manpower reduction and cost cutting should be done while carrying out the wage revision.*
9. *The wage settlement may be done keeping in view and consistent with the generation of resources/profit by IAL.*
10. *No budgetary support for wage increase shall be provided by the Government.*

In view of the impending merger of IA & AI, all career progression issues should be decided comprehensively after the merger of the two companies."(emphasis supplied)"

(x) On 27.07.2007, the Petitioner Indian Airlines entered into a Memorandum of Settlement for wage revision with its technicians, represented by the Indian Aircraft Technicians" Association. The recital to this Memorandum stated that, "*Whereas Indian Aircraft Technicians Association a trade union registered under the Indian Trade Unions Act, 1925 (hereinafter called „Association") representing the Aircraft Technicians of Indian Airlines and the Management of Indian Airlines Limited (hereinafter called the „Company") have been holding discussions regarding the Associations Demand for the wage period 01.01.1997 to 31.12.2006. Pursuant to the negotiations between the representatives of the Company and the Association the parties hereto agree as follows*". Just like the Memorandum executed with the ACEU, Clause 1 of this Memorandum also reiterated that fixation of revised pay scales, albeit effected from 01.01.1997, was notional from 01.01.1997 and actual payment would only commence from 01.08.2005.

(xi) This led discontent to rise amongst the ranks of IAL employees. Given that IAL had agreed in its settlement with ACEU to make wage arrears payable w.e.f. 1.1.2000, and its counterpart Air India Limited had arrived upon Settlements/Understandings with its own Unions/Associations providing payment of wage arrears w.e.f. 1.1.1997 (excluding HRA and CCA components), the IAL employees who had been denied wage arrears for the period between 1.1.1997 till 30.07.2005 in their respective settlements began seriously agitating the matter with the IAL Management. The aggrieved Unions/Associations of IAL formed a Joint Action Committee (JAC) and issued an agitational action plan. The Chairman and Managing Director of IAL held a meeting with the representatives of the JAC

on 06.03.2008, which led to the JAC partially deferring the action plan but holding on to the call for a one-day strike.

(xii) These events resulted in the office of Chief Labour Commission (Central) taking up the issue for conciliation. Pursuant to meetings held between the IAL Management and the JAC before the Chief Labour Commission (Central) [hereinafter referred to as the „CLC(C)"], the plan for strike was kept in abeyance. Conciliation proceedings were held on 13.03.2008, 17.03.2008, 04.04.2008, 22.04.2008, 22.05.2008 and 23.06.2008. The JAC strongly emphasized their demand for payment of wage arrears to the employees of IAL, and submitted a justification therefor before the Chief Labour Commission (Central) CLC(C). The CLC(C) found merit in the grounds for payment made out by the JAC and on 22.05.2008, advised the Management of IAL to take up the issue with the Union in order to arrive upon a resolution. However, IAL reiterated at this meeting that it was bound by the Presidential directive issued by the Respondent No.2 and there was no scope for the renegotiations being demanded by JAC.

(xiii) In the meanwhile, the Government of India had in 2006 proposed merging IAL and Air India Limited. During conciliation, the CLC(C) took note of this fact and observed that failure to address the demands of the JAC before the merger would greatly aggravate the situation since the merger would increase the difficulty of resolving HR disputes. The CLC(C) noted that the existing wage disparity between IAL and Air India Limited workers would be detrimental for a successful merger since the lesser paid IAL employees and higher paid Air India employees would be merged into a single cadre. The CLC(C) further observed that the merger ought to be on an equal footing and provided IAL time till 23.06.2008 to discuss the matter with Respondent No.2 and arrive upon a resolution.

(xiv) Acting on these instructions by the learned CLC(C), on 18.06.2008 the proposed merged entity, National Aviation Company of India Limited (NACIL) who is the Petitioner"s predecessor-in-interest wrote to the Respondent No.2 exhaustively setting out particulars of the dispute and the suggestions made by the CLC (C) and sought directions in the matter. The directions never came and notwithstanding the pendency of this dispute, the Government of India formalized the merger of IAL and Air India as the NACIL on 24.08.2008.

(xv) Meanwhile in the pending conciliation proceedings before the CLC(C), on 15.04.2009 the NACIL Management gave an assurance that it

was persistently pursuing the Respondent No.2 for a resolution but could not provide a time frame for it.

(xvi) This was at variance with the contents of the letter dated 24.05.2010 addressed by Respondent No.2 to the NACIL specifically referring to past letters dated 26.8.2008, 10.10.2008, 21.10.2008, 25.2.2009, 12.3.2009 and 17.4.2009 whereby it had sought recommendations of NACIL with respect to the demands of the JAC for payment of wage arrears w.e.f. 01.01.1997. The Respondent No.2 stated in that letter that despite its several invitations to do so, the NACIL had not made any recommendations of its own regarding the demands of JAC which was compelling it to once again call upon NACIL to make appropriate recommendations.

(xvii) From the record, it transpires that the NACIL did proceed to make recommendations by way of a letter dated 04.06.2010 in which it proposed accommodating the demands of the JAC, but on 04.08.2010 the Respondent No.2 wrote back to NACIL that the proposal submitted by it had not worked out savings in allowances/PLI payments in accordance with the DPE Guidelines dated 14.01.1999 and 25.06.1999. The Respondent No.2 further reminded the NACIL that its financial health was deteriorating, before rejecting the NACIL proposal entirely.

(xviii) On 25.10.2010, NACIL replied to the Respondent No.2"s rejection and prefaced it by saying that the proposal submitted by it was not for wage revision of employees of NACIL, but in respect of residual employees of erstwhile IAL who had been denied revision for the period between 01.01.1997 and 31.12.2006. The letter pointedly noted that while denying these employees the revision, the Respondent No.2 had allowed arrears to be paid to approximately 17,000 Air India employees for this period and 13,000 IAL employees for the period effective from 01.01.2000. It was further stated that there was no ground to say that the conditions set out in its previously submitted proposal made it not possible to agree to the demand for payment of arrears by IAL employees. The letter reiterated that the residual employees of the erstwhile IAL had alleged discrimination at various forums, and the rejection of the proposal by Respondent No.2 on 04.08.2010 only confirmed their allegations. NACIL concluded the letter by urgently requesting the Respondent No.2 to convey its approval for payment of the arrears w.e.f. 01.01.1997 as proposed by it.

(xix) In response to the aforementioned letter, Respondent No.2 communicated on 01.12.2010 that due to the payment of Performance Linked Incentives (PLI) to the NACIL employees (in violation of DPE

Guidelines), there was no room to grant the JAC's demand for wage arrears as it would result in additional costs for the Company. Respondent No.2 further communicated that, only after withdrawal of PLI, the demand for wage arrears could be considered.

(xx) At the same time, in the Minutes of the conciliation proceedings recorded on 19.01.2012, the CLC(C) recorded the submissions of Respondent No.1 that Respondent No.2 had agreed in principle during various meetings to pay wage arrears and that only the payment modalities needed to be determined.

(xxi) Meanwhile, at the forefront of this conversation was the Ministry‟s insistence that the airlines were faring poorly. As a part of its Turn Around Plan (TAP) for IAL and Air India Ltd., the Respondent No.2 decided to hive off/demerge the engineering department of NACIL to a newly created subsidiary company, Air India Engineering Services Limited (AIESEL). This decision was made without providing any prior notice thereof to the affected NACIL employees, which made them wary of its possible ramifications on their employment status. In its capacity as their representative, Respondent No.1 herein preferred a writ petition under
Article 226 of the Constitution of India before the Hon‟ble High Court of Judicature at Bombay assailing the demerger on the ground that it violated *inter alia* fundamental rights of the workers under Articles 14 and 21, principles of natural justice and specific provisions of the Industrial Disputes Act, 1947. In paragraph 13 of this petition, the Respondent No.1 mentioned the dispute in respect of outstanding wage arrears in the following manner:

"Further, as a matter of fact, at present, Respondent No.1 owes a staggering amount of approximately Rs. 50 crores by way of arrears due for the period 01.01.1997 to 31/12/2006 which as per the Memorandum of Settlement dated 07.05.2007, should have been paid in specified installments in October 2009, May 2010, and 2010-2011. Further, till date, last three months‟ PLI (Productivity Linked Incentive), amongst other amounts and benefits have not been paid to the employees of the Engineering Department."

(xxii) The aforesaid petition, along with other writ petitions filed by similarly aggrieved Unions/Associations of the NACIL, was disposed of by the Hon‟ble Bombay High Court by way of a common order dated 02.04.2013. The Hon‟ble High Court dismissed the petitions on the ground that the demerger was an executive decision made by the Government which did not merit interference, but observed that no prejudice was caused to the aggrieved

employees on account of the Petitioner‟s statements that their service conditions were protected and continuity of service to protect their past period of service was assured as well.

(xxiii) Subsequently Respondent No.1assailed the aforesaid judgment of the Hon‟ble High Court by way of a special leave petition numbered as SLP (C)No.16397/2013. On 09.05.2013, when the petition was taken up for hearing with other connected petitions, the Apex Court noted that:

"3. Before the High Court, in the Writ Petition filed by the petitioners, the grievance has been raised that the respondent No. 1 - Air India Limited owes a staggering amount of Rs. 50 crores by way of arrears due for the period 1.1.1997 to 31.12.2006 which should have been paid in specified installments in October, 2009, May, 2010 and 2010-2011 but has not been paid so far.

4. On behalf of respondent No. 1 through Mr. S. Venkat - Director (Finance), an undertaking has been filed before this Court today i.e. May, 9, 2013 which reads as under:

"In respect of workman belonging to All India Aircraft Engineers‟ Association and another, who have been transferred to Air India Engineering Services Limited (AIESL), a claim was raised in Writ Petition No 2896/12 (SLP No. 16397 of 2013) on arrears from 1.1.1997 to 31.12.2006. In this regard respondent No. 1 Air India Limited undertakes to clear all admitted dues, if any, within a period of 18 months from the date of transfer in equal monthly installment under the following head:

1. *Basic pay*
2. *Conveyance Allowance*
3. *House Rent Allowance*
4. *City Compensatory Allowance*
5. *Shift Maintenance Allowance*
6. *Education Allowance*
7. *Uniform Maintenance Allowance*
8. *Telephone Allowance*
9. *Certificate of Competency Allowance*
10. *RT Allowance*
11. *Direct Reading Contact Fringe Allowance.*

Sd/-

(S.Venkat)

Director-Finance

5. A further undertaking has been filed by the Union of India through Ms. Puja Jindal, Director, Ministry of Civil Aviation which reads as under:

" UNDERTAKING

I have seen the undertaking given by Air India in SLP (C) No. 16397 of 2013 arising out of W.P. No. 2896 of 2012, which is annexed hereto. I, on behalf of Union of India, do hereby undertake and ensure that Air India discharges its obligation under the said undertaking failing which the Government of India would provide the necessary funds for discharging this undertaking.

New Delhi

09.5.2013

Director

M/O Civil Aviation"

6. Mr. Ranjit Kumar, learned senior counsel for the petitioners submits that since the parties are not ad idem about the quantum/heads of arrears from 1.1.1997 to 31.12.2006, a mediator may be appointed to adjudicate the amount payable by respondent No. 1 to the concerned employees.

7. Mr. Girish Kulkarni is not opposed to the above proposal made by Mr. Ranjit Kumar.

8. Learned senior counsel for the petitioners and learned counsel for the respondent Nos. 1 and 2 agree that for this purpose, Mr. Justice B.N. Agarwal, a former Judge of this Court, may be appointed as a mediator to adjudicate the quantum/heads of arrears from 1.1.1997 to 31.12.2007 payable by respondent No.1 to the concerned employees. We order accordingly."

(xxiv) Thus, the aforesaid extract from the Order passed by the Hon‟ble Supreme Court shows that the SLP was disposed of in view of several undertakings given in Court by the Petitioner and Respondent No.2. The Petitioner undertook that all employees will be assured and protected with all current service conditions, including continuity of service. Additionally, the Petitioner pledged to clear all admitted dues of Respondent No.1‟s workmen members in equal installments within 18 months from their transfer to Air India Engineering Services Limited. Respondent No.2undertook that in the event Air India Limited failed to meet its obligations, the Union of India would provide the necessary funds to fulfill the undertaking given by it. Be that as it may, given the dispute between the parties concerning the quantum/heads of arrears for the period between 01.01.1997 to 31.12.2006, the Apex Court appointed Mr. Justice B.N. Agarwal, former Judge of the Supreme Court of India as a Mediator with the consent of the parties to determine the

quantum/heads of arrears payable by the Petitioner to the affected employees during the said period. Similar directions were given by the Hon‟ble Supreme Court in relation to the claims of Respondent No.1 on 16.08.2013 in the special leave petition filed by it.

(xxv) In the preliminary hearing before the esteemed Mediator on 17.08.2013, the Petitioner asserted a preliminary objection as to the extent of the reference before the Mediator. The Petitioner contended that the learned Mediator could not assume responsibility for resolving disputes between the parties, as the reference made by the Apex Court only sought to facilitate negotiations towards determining the amount and types of arrears and did not entail adjudicating their respective claims. Nonetheless, given that the learned Mediator directed the parties to submit their statements of claim and defense, the Petitioner submitted an application before the Apex Court requesting clarification of the Order dated 09.05.2013. In its application, the Petitioner stated that since Respondent No.1 had sought a reference under the Industrial Disputes Act, 1947 for adjudication of its claim for payment of arrears towards wage revision for the period between 01.01.1997 and

31.12.2006, it had already availed of a statutorily available legal remedy which was now pending; therefore, the proceedings before the learned Mediator should not be converted into an adjudicatory process.

(xxvi) On 09.05.2014, while disposing of the aforesaid application, the Apex Court clarified that the word „Mediator‟ would be construed to mean „Arbitrator‟ and that "Mediation" would be construed to mean „Arbitration‟.

(xxvii) Upon receiving the aforementioned clarification, the learned Arbitral Tribunal entered upon reference on 13.06.2014. Respondent No.1 subsequently filed a Statement of Claim arraying Air India Engineering Services Ltd. as Respondent No.2 and Union of India as Respondent No.3. By 16.09.2014, pleadings stood completed and the learned Tribunal framed the issues arising for its consideration. However, in pursuance of a request to that effect made by the Respondent No.1/Claimant, the learned Tribunal permitted deletion of Air India Engineering Services Limited and Respondent No.2 from the array of parties.

(xxviii) In a subsequent reversal, on 15.11.2014 the Arbitral Tribunal heard the parties, with their consent, on the advisability of serving notice to the Union of India once again. After hearing their submissions on this point, the learned Tribunal found it fit to issue notice to the Union of India and grant it time to

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file its statement of defense. Once pleadings stood completed, the learned Tribunal framed the following issues for its consideration:

"1. Whether the Respondent has admitted the dues of the Claimants w.e.f. 01.0I.1997 ?

2. *If the answer to Issue No. 1 is in the negative, whether the Claimants are otherwise also entitled for payment of arrears w.e.f. 01.01.1997 to 31.12.2006**?***
3. *Whether the Claimants are entitled to interest as claimed?*
4. *Relief."*

(xxix) On 12.08.2015, the parties concluded their arguments and the Tribunal reserved orders. The awards in both arbitrations came to be pronounced on 25.05.2016.

(xxx) Upon considering the submissions and evidence presented by the parties, the learned Tribunal concluded that the Petitioner had unequivocally admitted the wage arrears claimed by the Respondent No.1. It was further held that even otherwise, without such an admission, the employees were held entitled to the arrears as of 01.01.1997, and that the presidential directive issued by the Respondent No.2 on 21.07.2006 could not come in the way of their claim to these arrears which fell due to them w.e.f. 01.01.1997. The learned Tribunal also considered the given made by both parties before the Apex Court, and rejected the Petitioner‟s argument that payment of the arrears was contingent on its financial condition. Accordingly, vide the impugned Award in OMP (COMM) 33/2016, the Petitioner has been ordered to pay the sum of Rs. 57,92,47,222/- along with interest at a rate of 12% from 01.09.2006 until the date of award, plus arbitration costs of Rs. 14,53,250/-.In OMP (COMM) 34/2016, the Petitioner has been directed to pay Mr. Anup Kumar Bagchi the sum of Rs. 7,81,768/- plus interest at a rate of 12% from 01.08.2006 until the date of the impugned Award. The learned Tribunal further ordered that if the awarded amount was not paid within three months, the amount owed will accrue interest at a rate of 18%.

4. Aggrieved by the decision of the learned Tribunal, the Petitioner approached this Court in 2016 by way of the present petitions under Section 34 of the Act, assailing the Awards dated 25.05.2016.

5. In support of the petition, Mr. Harish Salve learned senior counsel for the Petitioner began by urging that the impugned Award was manifestly unlawful as the learned Tribunal rendered decisions on disputes which lay beyond the scope of its mandate. By drawing my attention to the writ petition filed before the Bombay High Court, and the assertions made in the SLP, he contended that the purview of the matter before the Bombay High Court and

the Supreme Court was limited to the acknowledged dues, if any, payable to the employees. The parties had not envisaged adjudicating on the claims of the employees, seeking the benefit of wage revision for the period between 01.01.1997 to 31.12.2006. He contended that the usage of the term "arrears" not only in the writ petition but also in the SLP, by the employees themselves, demonstrated that the learned Tribunal was only expected to compute the quantum of the amount already admitted as a liability. This interpretation, he contended, did not authorize the learned Tribunal to determine whether the employees were entitled to demand the benefits of wage revision for the period preceding 31.12.2006. The learned Tribunal was only obliged to evaluate the quantum of the amount previously ascertained, either under the law or under a settlement between the parties. He contended that the learned Tribunal, by venturing to determine the eligibility of the employees to demand the benefit of wage revision for the period between 01.01.1997 to 31.12.2006, had not acted in accordance with his lawful authority, and therefore, the award, only on this basis, was liable to be quashed.

6. The learned Senior Counsel then submitted that the learned Tribunal had committed a grave error in rendering a decision that the Presidential Directive issued on 21.07.2006 pursuant to Section 9 of the Air Corporations (Transfer of Undertaking and Repeal) Act, 1994 was subject to being set aside. He submitted that the learned Tribunal lacked the authority to assert that a statutory directive was unlawful or ought to be disregarded, particularly when this issue was already a matter before the Industrial Tribunal. Therefore, the impugned award, which overlooked a valid reference under the Industrial Disputes Act to determine the eligibility of employees to obtain the benefit of the wage revision anterior to 31.12.2006, was unsound.

7. The final submission of Mr. Salve was that the Respondent No.1 employees did in fact concede the validity of the Memorandum of Settlement dated 29.03.2007 which recorded their concession that any arrears related to wage revision will only be paid prospectively w.e.f. 01.08.2006. Therefore, it was clear that no agreement existed between the concerned parties in this regard. It is irrelevant that the said settlement was agreed upon without prejudice to the employees‟ right to seek legal remedies for the grant of arrears for the period prior to 31.12.2006. The learned Tribunal, therefore, lacked the authority to determine the aforementioned claim because the same could have been adjudicated upon only by a competent court of law.

8. Mr. Rajiv Nayyar, learned Senior Counsel representing the Petitioner in OMP(COMM) 34/2016, while adopting the arguments of Mr. Salve, averred

that the impugned award was wholly perverse on the grounds that the learned Tribunal failed to grasp that the presidential directive issued in respect of the employees in question differed from the presidential directive applicable to Air India Ltd. employees. He contended that the matter of wage revision concerning the Air India employees was subject to the presidential directive of 11.08.2004, which included a direction for retrospective date wage revision, while the IAL employees were subject to the presidential directive of 21.07.2006, which specifically provided for prospective wage revision to apply from the date of the presidential directive's issuance, i.e., 21.07.2006. Although the learned Tribunal was cognizant of the fact that the presidential directive of 21.07.2006 issued under Section 9 of the Aircrafts Act was legally binding in nature, the impugned Award equated the statuses of the Air India and Indian Airlines employees and erroneously recorded that a different presidential directive could not be applied to IAL employees.

9. The learned Senior Counsel further submitted that, notwithstanding the failure of other employees to proffer evidence on the matter, the amount and categories of the alleged wage arrears accruing from 01.01.1997 to 31.12.2006 have been computed by the learned Tribunal solely on the uncorroborated submissions of one employee, Shri Anup Kumar Bagchi. In addition, the learned Tribunal wrongly placed the onus of proving the quantum of arrears on the Petitioner and, citing the absence of any calculation sheets from the Management, proceeded to assume the veracity of Mr. Bagchi's claim.

10. The learned Senior Counsel also submitted that the impugned award was manifestly illegal due to the fact that the learned Tribunal has only addressed a portion of the terms of the reference. As per the directions given by the Apex Court on 09.05.2013, the learned Tribunal was obligated to settle the magnitude/characteristics of outstanding payments from 01.01.1997 to 31.12.2006 purportedly due by the Petitioner to the workers. Once the Apex Court had specifically mandated that the learned Tribunal rule on the calculation of arrears payable to the affected employees, it was required to evaluate each employee's demand individually, which it failed to do - thus rendering the award liable to be set aside.

11. The final submission of Mr. Nayyar was that the application of an interest rate of 18% to the entirety of the claim amount, inclusive of any preexisting interest, was unlawful on account of essentially being a direction to pay interest on interest - a disallowed practice. In support of this contention, he placed reliance on the decision of the Hon‟ble Supreme Court

in ***Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd. (2019) 11 SCC 465.***

12. On the other hand, Mr. Jay Savla, learned Senior Counsel representing Respondent No.1 in OMP (COMM) 33/2016, opposed the petitions by contending that none of the grounds taken by the Petitioner were covered under Section 34 of the Act. He submitted that the Petitioner and Respondent no.2 had assured the Apex Court that there was no contention concerning the duration for which the workers were to receive payment for their overdue wage revision, nor was there any dispute regarding their entitlement to said payment. The sole subject of disagreement between the parties, as recorded in the Supreme Court order dated 09.05.2013, was restricted to the quantum/heads of arrears. Once the petitioner had expressly undertaken to pay the accepted dues of its employees, if any, relating to claims for the period from 01.01.1997 to 31.12.2006, it was precluded from denying that any amount was payable for the aforementioned period. Correspondingly, Respondent No.2 had also assented to guarantee that the Petitioner execute its duty to pay the overdue wages, failing which the Government of India would provide funds required by the Petitioner to discharge this commitment. The fact was that notwithstanding the application filed by the Petitioner before the Supreme Court later on, asking for a clarification of the Order dated 09.05.2013 in view of the steps taken under the Industrial Disputes Act and the grievance that the Mediator was erroneously acting as an adjudicator, the Petitioner‟s application was disposed of by clarifying that the mediation was in fact arbitration.

13. The learned Senior Counsel then submitted that the Petitioner's claim that pursuant to the presidential directive dated 21.07.2006, the revised wage arrears could only be paid prospectively to Respondent No.1 w.e.f. 21.07.2006, was wholly misconceived. He submitted that the presidential directive must be taken as a whole and that clause (i) thereof specified that the revision must comply with the guidelines set forth by the Department of Public Sector Enterprise (DPE Guidelines) on 14.01.1999, and 25.06.1999. He referred to paragraph 1 of O.M. dated 14.01.1999, and paragraph 3 of O.M. dated 25.06.1999to argue that the DPE Guidelines unequivocally stated that wage revisions were to be granted to all employees w.e.f. 01.01.1997. He contended that even the draft directive provided by DPE in O.M. dated 25.06.1999 stipulated that wage revision would be applicable from 01.01.1997.Therefore, Mr. Savla contended that since the Petitioner was mandated to issue the presidential directive in conformity with the DPE

Guidelines, the direction given by Respondent No. 2 in the subject PD to make the wage revision prospective was beyond the powers conferred by the Government and contravenes DPE guidelines.

14. Insofar as the Petitioner‟s contention regarding sanctity of the presidential directive dated 21.07.2006 was concerned, the learned Senior Counsel submitted that the directive, even if deemed to have been issued pursuant to Section 9 of the Act, was simply a directive of an administrative nature and lacked statutory force and was not a law under Article 13 of the Constitution of India. Only statutes, regulations, and bylaws have statutory force, and therefore the said presidential directive dated 21.07.2006 was not outside the purview of adjudication by arbitration.

15. Mr. Savla further submitted that the Petitioner‟s contention that the claim for payment of arrears was barred in view of the Memorandum of Understanding dated 07.03.2007, lacked merit. Inasmuch as the Memorandum did state that the employees had agreed to be paid prospectively, Clause 9 thereof explicitly stated that the settlement reached between the parties did not entail any concession or relinquishment of their rights, claims, and contentions, before the NIT, and a clarification to this end was also issued by Respondent No.1 in a letter of the same date which stated that the settlement was executed without prejudice to the right of the employees to claim arrears w.e.f. 01.01.1997. He submitted that in any event, once Air India Ltd. and the Union of India had given their express undertakings before the Apex Court to clear all admitted dues of their employees, the directive issued on 21.07.2006 could not come to the aid of the Petitioner in avoiding the liability to pay wage arrears w.e.f. 01.01.1997.
16. The learned Senior Counsel also submitted that the learned Tribunal was justified in holding that despite the employees of Air India Limited and IAL being covered by two separate presidential directives issued on 11.08.2004 and 21.07.2006 respectively, they were entitled to be treated equally in view of the DPE guidelines and the admitted position that wage revision was due from 01.01.1997. He submitted that once it is an admitted position that the prior wage settlement between the parties expired w.e.f.

31.12.1996, wage revision ought to have been directed retrospectively w.e.f., 01.01.1997 itself. However, the Central Government delayed issuing a directive on wage revision for nine years until 21.07.2006, and thereafter arbitrarily mandated that the revision shall apply only on a prospective basis. He contended that the decade long delay of the Central Government should

not be allowed to cause undue hardship on the affected employees, especially since 17,000 Air India employees and 13,000 former Indian Airlines employees had already received pay revisions with retroactive effect to January 1st, 1997, and January 1st, 2000, respectively. With only 400 members, Respondent No. 1's employees could not be denied arrears of revised wages w.e.f. 01.01.1997.

17. The learned Senior Counsel then submitted that the Petitioner‟s plea that Respondent No.1 had not led any evidence to show that it was entitled to claim arrears of wage revision w.e.f. 01.01.1997,was without any basis. Before the learned Tribunal, Respondent No.1 had presented a comprehensive chart illustrating the complete amount of wage arrears payable to each employee, along with another chart detailing the claims made under different heads. The Petitioner neither disputed the chart filed by them nor produced any other chart to refute the amount of arrears claimed by them. Instead of submitting a separate chart to challenge the amount of arrears, the Petitioner simply denied the claim of wage revision, citing the presidential directive effective dated 21.07. 2006 and the Settlement Memorandum dated 29.0.2007 that stated the wage revision was notional and retrospectively payable. He contended that the learned Tribunal, after considering the documents presented before it, accepted the calculations presented by Respondent No.1. Thus, the Petitioner could not be permitted to argue at this belated stage that the Respondent No.1‟s computation was incorrect, having failed to present any calculations of its own.

18. Lastly, Mr. Savla submitted that the learned Arbitrator was justified in awarding interest on the awarded amount. He submitted that once the interest component was included in the awarded amount, the learned Tribunal had the power to give directions for payment of post-Award interest on the entirety of the awarded amount. He placed reliance on the decisions of the Apex Court in ***Hyder Consulting (UK) vs. State of Orrisa 2015 (2) SCC 189*** and ***UHL Power Company Ltd. vs. State of Himachal Pradesh(2022) 4 SCC 116*** in support of this plea. In conclusion, he submitted that the impugned Award, being a well-reasoned award, did not suffer from any infirmities and therefore prayed that the present petitions be dismissed.

19. Mr. Rakesh Kumar, learned counsel for Respondent No.1 in OMP (COMM) 34/2016 adopted the aforesaid submissions of Mr. Jay Savla, and submitted that there was never any dispute regarding these workmen‟s

entitlement to pay revision. He relied upon the Order of the Hon‟ble Supreme Court to submit that the Petitioner gave an express undertaking to the Apex Court that it would clear in equal installments all admitted dues of Respondent No.1 for the period between 01.01.1997 to 31.12.2006 within a period of 18 months. He contended that this undertaking was made because the Petitioner was always aware of its liability to pay arrears of the revised wages for that period. The Petitioner‟s letter dated 18.05.2010 sent to Respondent No.2 makes it clear that it had no dispute regarding Respondent No.1‟s entitlement to these arrears. In fact, the Petitioner had admitted this liability, and its Director (Finance) was tasked by the Conciliator to draw up a payment schedule thereof, subject to the sole condition that payment of arrears would depend on the Petitioner‟s financial capacity to pay. He submitted that the Petitioner had neither pleaded before the Apex Court nor this Court that it did not have the financial wherewithal to make these payments. Nevertheless, the Petitioner and Respondent No. 1 continued to be bound by their undertaking made before the Apex Court.

20. The learned counsel further submitted that the Petitioner‟s contention that the impugned award is patently illegal is also without any merit. He submitted that the findings of the learned Tribunal, regarding the Management‟s unequivocal admission in respect of the claim for arrears of revised wages, were findings of fact based on a correct appreciation of evidence. He submitted that since the scope of review under Section 34 of the Act is limited, if the arbitrator has taken a possible or a probable view, the same cannot be interfered with by this Court. He also submitted that once it was evident from the various communications placed on record, which were exchanged between the Petitioner and Respondent No.1, that there was an admission all along in respect of Respondent No.1‟s claim for arrears, then the only limited question that remained unresolved were the modalities of payment of the arrears. It was for this purpose that the parties had agreed before the Apex Court to be sent for mediation/arbitration. The Petitioner, having paid the arrears of revised wages to all other categories of employees, was estopped from now disputing the admission it made in respect of the claims of these employees.

21. Lastly, Mr. Kumar contended that the Petitioner‟s plea that as per the Presidential Directive dated 21.07.2006, the wage revision was to be prospective in nature was wholly misplaced. He contended that Section 9 of the Act, whereby the Presidential Directive was issued, empowered the Central Government to give directions to a public sector enterprise to carry

out certain functions, which would then bind the enterprise. This however did not imply that the Central Government could issue directions to a public sector enterprise to not pay the wages due to its employees, especially when these dues were admitted. The right to receive wages, being a fundamental right under Article 300 A of the Constitution of India, could not be denied to these workmen by way of executive directions. In view of the aforesaid, he prayed for dismissal of these petitions.

22. I have considered the submissions of the learned counsel for the parties and perused the record. What emerges is that the Petitioner has challenged the impugned Awards on the following grounds:

(i) The conclusion of the learned Tribunal that Respondent No.1 employees were entitled to be paid arrears of revised wages from 01.01.1997 to 31.07.2006, notwithstanding the admitted Presidential Directive dated 21.07.2006, the Memorandum of Settlement dated 29.03.2007, and the pendency of the proceedings under the Industrial Disputes Act, 1947, was patently illegal.

(ii) The directions passed by the learned Tribunal effectively supersede the directions given in the Presidential Directive dated 21.07.2006 which holds statutory force, and therefore directions of such nature passed in arbitration are entirely untenable in law.

(iii) The learned Tribunal had erred by treating the employees of Indian Airlines Limited and Air India Limited at par without considering the distinct presidential directives applicable to each of them.

(iv) The learned Tribunal had committed a patent illegality by accepting the Respondent No.1‟s unsubstantiated statement to quantify the arrears, without directing them to produce supporting evidence therefor.

(v) The learned Tribunal gravely erred in awarding compound interest at the rate of 18% per annum on the entire adjudged amount, inclusive of the 12% per annum interest on the arrears of wage revision, without justification.

23. It is evident that the Petitioner's entire case hinges on the presidential directive issued on 21.07.2006. An important line of argument taken by the Petitioner is that the learned Tribunal rendered decisions on disputes which lay beyond its mandate inasmuch as it lacked the authority to assert that a statutory directive in the form of the Presidential Directive was unlawful or ought to be disregarded, particularly when this issue was already a matter before the Industrial Tribunal. It is therefore considered fitting and proper to begin assessing the Petitioner's case from that point.

24. The Guidelines issued by Department of Public Enterprises ("DPE") on 14.01.1999 state that the pay revision undertaken in 1992 was valid for a duration of five years, and as such, has since lapsed. Hence, it is imperative to commence negotiations towards a wage revision that is satisfactory, agreeable, and fitting, under the circumstances. The guidelines clarified that no budgetary support was going to be provided by the Government, and directed the Ministries/Departments to negotiate wage settlements in accordance with parameters stipulated in the guidelines. By Clause 5 of the guidelines contained in the notification numbered as DPE/Guidelines/IV(a)/11, the Ministries/Departments were requested to issue suitable instructions to the public sector enterprises under their administrative control, under intimation to the Department of Public Enterprises ("DPE").

25. The DPE Supplementary Guidelines on Wage Policies and Related Matters, issued on 25.06.1999 provided helpful clarifications and additional instructions on wage policies and related matters. Clause 9 of the Guidelines, contained in Notification DPE/Guidelines/IV(a)/14, states that Administrative Ministries/Departments shall issue Presidential directives indicating salary scales as a maximum limit, with actual payments dependent on the enterprise's capacity to pay. It was clarified that salary and wage increases must be funded by the public sector enterprise internally from improved productivity and profitability, rather than government funding. It was further provided that presidential directiveswill include guidelines for dearness allowances and perquisite ceilings, and a format for the presidential directive was set out in Annexure IV of this guideline. 26. It is apposite to take a look at the format for a Presidential Directive (hereinafter referred to as "PD") provided by the DPE in Annexure IV of the Notification DPE/Guidelines/IV(a)/14.

"ANNEXURE IV

Draft directive to be issued by the administrative Ministries/Departments to the Central Public Sector Enterprises under their administrative control regarding pay revision and other benefits for Board level and below Board level executives.

The scale of pay of the incumbents of the Board level and below Board level executives were last revised by the Government w.e.f. 1.1.92. Government have now decided that the pay revision and other benefits for these executives w.e.f. 1.1.97 may be implemented through Presidential Directives.

2. In exercise of the powers conferred by Article ______ of Articles/ of Associations of ________/* Section ______ of the ______ Act setting up ________ (name of the PSE), the President is pleased to direct the ________ (name of the PSE) that the approved pay scales, fitment*

formula, DA, guidelines and ceiling on perquisites for Board level and below Board level executives w.e.f. 1.1.97 may be implemented.

**delete whichever is not applicable"*

27. The PD issued by the Petitioner in respect of Respondent No.1"s employees on 21.07.2006 has been extracted in Paragraph 3(v) hereinabove. Upon comparison, it is apparent that the PD dated 21.07.2006 issued by Respondent No.2 deviated significantly from the format outlined by the DPE on 25.06.1999. While such deviation was permissible as the format was only suggestive, the question arises as to what elements of the DPE guidelines were mandatory for the Ministry to adhere to when issuing presidential directives.

28. The O.M. dated 25.06.1999 stated that the Ministry must indicate in the PD the ceiling limits for revised pay scales, dearness allowance, and perquisites that should be observed by enterprises during wage negotiations with workers unions. The O.M. dated 14.01.1999 stated that after conducting wage negotiations in accordance with the PD, the public enterprises were to confirm with the Ministry and the DPE that the proposed revisions were within approved parameters.

29. Notably, the guidelines did not provide for the Ministry to make prohibitions on wage payments for certain periods in the PD; rather the guidelines appear to recognize categorically that worker wages were due from 01.01.1997 as a matter of right. Yet the PD issued by Respondent No.2 on 21.07.2006 states that revisions would only apply from the date of issue of the presidential directive while notional fixation will be effective from 01.01.1997. It also provides that fitment benefit will be made up out of existing allowances, including Performance Linked Incentives (PLI).

30. As a consequence of the mandate given to the IAL in PD dated 21.07.2006, during negotiations for wage revisions conducted between the Respondent No.1's members and the IAL Management, the Management expressly informed the former that they were fully precluded from requesting any wage arrears for the period between 01.01.1999 and 31.07.2006 and the Management had no intention of providing the same. Should any wage revisions occur, they must be made in accordance with the PD, and for the period beginning on 01.08.2006. As a result, the Memorandum of Settlement executed between Management and workers noted that the pay fixation was notional as of 01.01.1997, while actual payment would begin on 01.08.2006.Respondent No.1, as a precautionary measure, undertook

certain actions to safeguard its entitlement to pursue the payment of outstanding wages. This was accomplished by incorporating a provision within the General Clauses of both Memoranda, stipulating that the executed Memorandum of Settlement does not signify any form of concession or waiver on the part of the workers' union regarding their concerns, rights, and arguments before the National Industrial Tribunal. Furthermore, Respondent No.1, in the first petition, corresponded with IAL on the same day, explicitly indicating that "*we agree to the settlement without prejudice to our claim for the arrears with effect from 01.01. 1997*".

31. Having examined where the presidential directive came from, how it was issued, and the impact thereof, it is important to ask whether the learned Tribunal exceeded its mandate in giving a ruling that rendered the presidential directive null and void. But that begs the question, what exactly was the mandate of the learned Tribunal?

32. The learned Arbitral Tribunal was constituted as per the directions of the Hon‟ble Supreme Court in special leave petitions filed against a judgment of the Bombay High Court in several writ proceedings instituted by employees' unions of Air India Limited and Indian Airlines, opposing the amalgamation of the two airline companies. On 09.05.2013, in response to a plea for appointment of a Mediator to adjudicate the quantum/heads of arrears payable from 01.01.1997 to 31.12.2007 by the Petitioner, the Hon‟ble Apex Court had appointed a Mediator with the consent of all parties herein.

33. Once mediation began, the Petitioner disagreed with the manner in which it was being conducted. The Petitioner thus approached the Hon‟ble Supreme Court with an application seeking modification/clarification of the Order dated 09.05.2013. The following paragraphs of the Petitioner‟s aforesaid application numbered as IA 2/2014 in SLP(C) No. 16397/2013 are relevant to this discussion:

"7. That the Applicant-Respondent at the very first opportunity strenuously raised an objection to the practice/procedure adopted by the Learned Mediator which in actuality amounted to adjudication of the disputes by applying judicial mind as this was never intention or the purpose for which the parties were referred to mediation by this Hon'ble Court and also as the Petitioners have already invoked the legal remedy available to them as per law and proceedings under the Industrial Disputes Act, 1947 are pending between the parties. However, the learned Mediator orally brushed aside the said concern so raised by stating that this Hon'ble Court vide order dated 09.05.2013 has directed the Mediator to ***adjudicate*** *upon the quantum/heads of arrears payable by the Applicant-Respondent No.1 to the Petitioner which in letter and spirit amounted to settlement of sum*

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legally payable which necessarily requires taking in to consideration relevant documents/evidence presented by the parties.

8. That it is most humbly submitted that when IA No. 2/2014 preferred in SLP (C) 16181 of 2013 came up for hearing before this Hon'ble Court on 14.03.2014, the Applicant-Respondent opposed the plea of the Applicant therein to refer the grievances raised to mediation for the reason that the Learned Mediator has been adjudicating upon the disputes which is not permissible in process like mediation. At that stage, this Hon'ble Court orally clarified that the Mediator is proceeding on a wrong premise if he undertakes adjudication while carrying out mediation proceedings. In the said IA, this Hon'ble Court eventually referred the claimed raised therein for settlement through mediation. The Copy of the order dated 14.03.2014 passed by this Hon"ble Court in SLP(C) 16181 of 2013 is annexed herewith and marked as ***ANNEXURE A-3****.*

9. That it is settled proposition in law that mediation is an alternative dispute resolution technique where disputes are resolved by concrete efforts of the mediator who lends assistance to the parties in order to arrive at an amicable settlement. Mediation is a negotiation process and not an adjudicatory process. The purpose of mediation is to arrive at an agreeable resolution by providing parties a uniform platform where they could successfully enter into dialogues with each other which facilitates them to reach at an agreement. The procedure and settlement cannot be controlled, governed or restricted by the statutory provisions thereby allowing flexibility and freedom. Also a binding settlement is reached only when the parties arrive at a mutually acceptable agreement irrespective of their rights and liabilities and the role of the mediator is to facilitate the process so that fruitful results are achieved.

10. That it is imperative to bring to the notice of this Hon'ble Court that the Learned Mediator in mediation proceedings pending between the parties under the guise of conducting mediation is virtually proceeding in manner which conforms to standards being adopted in an adjudicatory process which cannot permitted in out of court settlement through mediation which is voluntary process requiring active participation of parties in a congenial manner.

11. That it is most respectfully submitted that the if the Mediator proceeds in the manner as is evident from the order dated 17.08.2013 (Annexure A-3) in the mediation proceedings pending between the parties, the very purpose for which the parties were referred to mediation would stand defeated.

12. That pertinently, the Petitioners have already invoked the legal remedy available to them as per law and thus, proceedings under the Industrial Disputes Act, 1947 are pending between the parties. It is further submitted that if the learned Mediator continues adjudicating the claims of the parties, it is apprehended that it may have an adverse impact on the legal proceedings pending between the parties.

13. In view of above facts, it is most humbly prayed that this Hon'ble Court may be pleased to clarify that in a settlement through a voluntary process of mediation, the learned Mediator does not adjudicate upon disputes referred to mediation merely due to the reason that this Hon'ble Court in the order dated 09.05.2013 has mentioned the word mediation/adjudication and directed the Learned Mediator to adjudicate upon the quantum of heads/arrears"

34. The prayer clause of the aforesaid modification application sought a clarification from the Hon‟ble Supreme Court that the Mediator shall not adjudicate the matter and will limit himself to mediating, thus dispelling any confusion that may have arisen on account of the usage of „mediation/adjudication‟ in the order dated 09.05.2013.

35. When the aforesaid application was taken up on 09.05.2014, the Hon‟ble Supreme Court disposed of it with the modification that in its Order dated 09.05.2013 passed in SLP(C) 16397/2017, the words „mediator‟ and „mediation‟ shall be read as „arbitrator‟ and „arbitration‟ respectively. This modification order is a pivotal moment in the legal dispute subsisting between the parties. It was in direct response to the Petitioner objecting to the way the Mediator was handling the proceedings, and its contention that since Respondent No.1 has sought commencement of proceedings under the Industrial Disputes Act, 1947, the dispute ought to be resolved in those proceedings. However, the only clarification offered instead by the Hon‟ble Supreme Court was that the proceedings before Mr. Justice B.N. Agarwal (Retd.) directed *vide* the Order 09.05.2013 was in fact arbitration, i.e., an adjudicatory process. In my view these Orders dated 09.05.2013 and 09.05.2014 must be read in conjunction with each other, as it is clear that they are meant to be considered as related and interdependent. The mandate of the learned Tribunal, therefore, was to adjudicate the dispute between the parties regarding the quantum/heads of arrears from 01.01.1997 to 31.12.2007 payable by the Petitioner to Respondent No.1.

36. Notably, while passing the aforesaid order dated 09.05.2014, the Apex Court did not find any merit in the Petitioner‟s objection that the dispute could not be resolved through arbitration because a reference to the Industrial Disputes Act, 1947 was pending. I may also note that despite Petitioner‟s objection that the matter regarding reference to the Industrial Tribunal was pending consideration, the Apex Court proceeded to clarify that the disputes would be resolved through arbitration by the learned Tribunal. The Apex Court thus in its wisdom felt that the dispute should be resolved through arbitration and not through the industrial disputes tribunal, and therefore the Petitioner‟s plea that the claim of the Respondent No.1 needs to be adjudicated under Industrial Disputes Act, 1947 has to necessarily be rejected.

37. Now, the Petitioner‟s argument concerning the mandate of the learned Arbitral Tribunal, that the Supreme Court‟s order did not include examining

the Presidential Directive, appears to lack logical reasoning. All this time, even before this Court, the claim for wage arrears for the period between 01.01.1997 to 31.12.2007 has been hotly contested by the Petitioner on the ground that the aforesaid presidential directive precluded it from paying any wage arrears for that period. In light of this circumstance, it is perplexing to consider how the Petitioner claims an adjudicatory process aimed at determining the quantum/heads of wage arrears during the period between 01.01.1997 and 31.07.2006 could proceed without acknowledging the significance of the Presidential Directive and examining its legality and validity.

38. Next, the Petitioner contended that the Presidential Directive had statutory force and, therefore, it was illegal for the learned Tribunal to pass an award which superseded a statutory directive. It is the petitioner‟s plea that the learned Tribunal‟s decision to ignore the Presidential Directive and render a finding that wage revision by IAL should have been on an equal footing with Air India Limited, which was governed by an entirely different presidential directive issued on 11.08.2004, was unsustainable. Mr Salve vehemently urged that unlike a Constitutional Court or an Industrial Adjudicator acting under the Industrial Disputes Act, 1947, an arbitral tribunal has no jurisdiction to ignore a statutory provision and grant any benefit beyond it. The Petitioner contended that the findings in the impugned Award also neglected (i) the concession recorded by the employees to accept wage revision only w.e.f. 01.08.2006 w.e.f. 21.07.2006 and (ii) the reference under Industrial Disputes Act, 1947 pending before the learned National Industrial Tribunal, in respect of Respondent No.1‟s claim for wage arrears w.e.f. 01.01.1997. In order to fully appreciate these submissions, I deem it necessary to refer to the manner in which the learned Tribunal dealt with this aspect.

39. Issue No.2 framed by the learned Tribunal set out as to whether the Respondent No.1‟s members were otherwise entitled for payments of arrears w.e.f. 01.01.1997 to 31.12.2006, irrespective of their admission of dues by the Petitioner. The findings in this regard have been set out in the following paragraphs of the impugned Award:

"35. Question arises as to whether the Central Government was justified in issuing such an order directing that although the wages would be revised with effect from 1.1.1997, but the employees of the erstwhile Indian Airlines like the Claimants would not be entitled to wage arrears for the period from 1.1.1997 to 31.07.2006. In the case of Air India another order was issued on 11/13.8.2004 wherein also wages were revised with effect from 1.1.1997, but there was no such condition like

order dated 21.07.2006 as such payment was made in the revised scale from 1.1. 1997. Even in the case of employees represented by ACEU though they also belonged to the erstwhile Indian Airlines, the benefits were granted to them with effect from 1.1.2000 excluding HRA and CCA. According to the management the employees of erstwhile Air India belonged to a different company and those of erstwhile Indian Airlines represented by ACEU another category. In my view on these grounds, there was no justification at all for making differentiation with the Claimants.

36. *The various correspondence referred to above between the management and the Ministry of Civil Aviation (in short, "the Ministry") would depict the state of affairs mentioned hereunder.*

At the time of merger it was provided that the employees of erstwhile Air India and the Indian Airlines should be treated on equal footing as such efforts were being made by the management to bring equality in their status as it stood prior to the merger. The Chief Commissioner of Labour during the course of conciliation found that there was justification for payment of wage arrears to the Claimants [or the period in question. The Parliamentary Standing Committee and Committee on Public Sector Undertakings recommended for making payment of wage arrears.

37. *During the course of review meeting the Minister, Civil Aviation had with the Secretary and other Officials of the Ministry, it was suggested that as the total financial liability was provided in the books of accounts of the erstwhile Indian Airlines, the matter can be examined for payment of wage arrears in instalments.*

38. *Undisputably revision of wages became due on 1.1.1997 when the period or settlement made earlier between the parties expired. The subsequent settlement should have been entered into immediately after 1.1.1997, but the same was deferred on one ground or the other and after nine years order was issued by the Central Government on 21.07.2006 whereby wages were revised with effect from 01.01.1997 but it was directed that revision would be notional and financial benefits will be given from the date of order, i.e., 21.7.2006 on the ground that financial health of the company was not good.*

39. *The management has nowhere stated that there was financial crunch in the erstwhile Indian Airlines at the time the revision of wages became due on 1.1.1997. The employees can not be made to suffer (or no fault of theirs as the Central Government had taken nine years' time in issuing the order of revision without there being any justification whatsoever and, accordingly, they were entitled LO payment of wage arrears from 1.1.1997 to 31.12.2006. In case the Central Government would have taken decision on 1.1.1997 or immediately thereafter revising the wages, there could not have been any difficulty in making payment to the Claimants from 1.7.1997.*

40. *Ordinarily, when revision is made effective from a particular date, payment is required to be made from that date. There was no extraordinary situation or refusing payment to the employees. However, at the most payment can be deferred on the ground of financial stringency but the same cannot be refused for all time to come, especially when other employees have been duly paid.*

41. *The management was of the view that the payment of wage arrears would not add to the losses to the company since liability was provided in the books of accounts. In the letter dulysigned by the then Chairman-cum-Managing*

Director of the management it was candidly stated that under the same conditions enumerated in the letter, the Ministry allowed payment of arrears to approximately' 17000 employees of the erstwhile Air India with effect from 1.1.1997 as also approximately 13000 employees represented by other Union of the erstwhile Indian Airlines with effect from 1.1.2000. It was further stated that when the matter came up for payment of arrears to residual employees of the erstwhile Indian Airlines, like the claimants, with effect from 1.1.1997 why the conditions enumerated in the letter aforesaid made it not possible to agree to the demand for payment of wage arrears to the Claimants. The management strongly recommended to the Ministry for modification of the Government Order. On these facts a clear-cut case was made out for modification of Government Order but in spite of this no direction was given to the management for making payment of wage arrears to the Claimants.

42. *The matter can be examined from another angle. The only ground taken is alleged financial stringency of the management in not paying wage arrears to the Claimants. In the present case an undertaking in writing was given on behalf of Ministry before the Hon'ble Supreme Court which has been incorporated in order dated 09.05.2013 referred to above, to the effect that in case the management is not in a position to make payment of wage arrears, the Central Government shall pay the same. Thus, the Central Government is obliged to make payment undertaken by them even if there is justification for not modifying Government Order. This being the position, I hold that the Claimants arc entitled to payment of wage arrears from 1.1.1997 to 31.07.2006."*

40. The aforesaid extract from the impugned Award makes one thing clear, the learned Tribunal never lost sight of the fact that the Presidential Directive dated 21.07.2006 was a directive issued by the Central Government through Respondent No.2, under section 9 of Air Corporation (Transfer of Undertakings and Repeal) Act, 1994. However, upon careful consideration of the factual situation and the language of the DPE Guidelines, which informed the directive in question, the learned Tribunal concluded that the Central Government was not justified in declining to grant arrears w.e.f 01.01.1997.In fact, Mr Salve vehemently assailed this aspect of the impugned Award by asserting that as the learned Tribunal is not a judicial authority or a Court of law, it had no authority to declare a presidential directive as arbitrary or bypass it. He, therefore, contended that any finding/direction passed in supersession of the PD deserved to be set aside.

41. In my view, this is where it got complicated. It is a settled position of law that presidential directives issued by the Administrative Ministry of a public enterprise bind the enterprise in question. The Petitioner was undoubtedly bound by the PD and conducted itself in accordance therewith. This can be seen from the terms of the Memorandum of Settlement dated 29.03.2007. I may however note that nowhere in the record does it show that the Petitioner drew the attention of the Hon‟ble Supreme Court to the presidential directives

when the Hon‟ble Court was contemplating sending the dispute for mediation in May 2013, or at the very least when the clarification order was sought in May 2014. This omission is surprising given that throughout the course of this dispute starting from the wage negotiations held in 2007, the Petitioner has defaulted to presenting the Presidential Directive as its sole explanation for denying claims for wage arrears. If the Petitioner was of the view that on account of the presidential directive, no amount could accrue to Respondent No.1 employees at all for the period between 1.01.1997 and 31.7.2006, it should have resisted the matter being referred to arbitration since the only question being referred to arbitration was to quantify the amounts payable to them for this period.

Having failed to do so, it is not open to the Petitioner to now contend that the learned Arbitrator could not have directed payment of any arrears for this period.

42. Nevertheless, I have examined the Petitioner‟s plea at some length and find that although its claim of the presidential directive having statutory force appears attractive on the first blush, it cannot be accepted. No doubt, presidential directives hold significant weight and serve as a clear instruction from the parent Ministry of the concerned enterprise. They are orders issued by the Administrative Ministry directing specific actions or policies within the enterprise but are ultimately, at their core, only *instructions* from the Administrative Ministry.

43. The Administrative Ministry which issued the PD this case is concerned with, is Respondent No.2/Ministry of Civil Aviation. Inasmuch as at the time of submitting its Statement of Claim, Respondent No.1 had arrayed Ministry of Civil Aviation as a party respondent in the arbitration, it was deleted from the array of parties on a subsequent date with the permission of the learned Tribunal. However, just as final arguments were to be advanced on behalf of the Claimant/Respondent No.1, the learned Tribunal proposed to the parties to consider and present arguments regarding the feasibility of re-impleading the Ministry in the proceedings. Clearly, the matter could not be adjudicated in compliance with the directions of the Hon‟ble Supreme Court without hearing Respondent No.2. In my view this approach adopted by the learned Tribunal was correct as it cannot be denied that the stand of Respondent No.2 was critical in ensuring fair and equitable adjudication of the matter.

44. As per the DPE guidelines, wages last fixed in 1992 had lapsed w.e.f. 01.01.1997 and the Administrative Ministry‟s presidential directives were to indicate ceiling limits for revised pay scales, dearness allowance, and

perquisites that should be observed by enterprises during wage negotiations with workers unions. For reasons best known to it, Respondent No.2 waited seven years to issue the presidential directives in accordance with the DPE Guidelines issued on 14.01.1999 and 25.06.1999, and the format used by it was its own. I must note at this juncture how deeply disconcerting it is that Respondent No.1‟s members were forced to continue their employment with the Petitioner on wages fixed in 1992, until 2007. There is no gainsaying the stark differences in the economic realities of India in 1992 and 2007, not to mention the staggering inflation in the country during that period. For context, as per the DPE Guidelines dated 14.01.1999 even the next pay revision was to become due by 2009. Essentially the pay revision that the Respondent No.1 employees were entitled to in 1999 was allowed to them just two years before the next pay revision fell due. Presumably by this point these employees were desperately awaiting a pay revision, and the Management had them over a barrel.

45. The 1999 DPE guidelines were not stringent about the phrasing of the presidential directives and did not say much on the matter, which left the Administrative Ministries at liberty to add their own conditions. This is how Respondent No.2 was able to introduce "notional fixation" of wages w.e.f. 01.01.1997.The Petitioner, thus, had to adhere to notional fixation w.e.f. 01.01.1997 and Respondent No.1 was entirely prevented from seeking wage arrears during negotiations. Given their low wages, it comes as no surprise that these unions were willing to sign a Memorandum of Settlement that recorded concessions from them that they were agreeable to a notional fixation of wages w.e.f. 01.01.1997 till 31.08.2006 and were renouncing their right to seek wage arrears for that period. Notwithstanding the aforesaid, Respondent No.1 was able, to the extent it was permitted by the Management, to secure certain protections for itself in the settlement to agitate the employees‟ claim for wage arrears. The General Clauses of the Memorandum of Settlement reserved the rights and claims of Respondent No.1 before an industrial tribunal, and a letter sent to the Management by Respondent No.1 on the same day of signing the Memorandum expressly reserved its right to claim wage arrears for the period between 01.01.1997 and 31.07.2006. For this reason, I am unable to accept Mr. Salve‟s plea that the Settlement prevented Respondent no.1 from claiming wage arrears for that period. Ample provisions had been made by Respondent Union, to the best of its abilities, to safeguard its right to claim arrears of revised wages.

46. Be that as it may, the guidelines issued by the DPE consistently affirmed

on 14.01.1999 and then 25.06.1999 that the revised wages were payable as of 01.01.1997. Therefore, it is difficult to reconcile the „notional fixation‟ concept with the actual intention of the guidelines. The notional fixation was more of a verbal acknowledgement of the wage revision which was rightfully due, rather than an actual pay increase. It seems that the term „notional fixation‟ was used merely to make the presidential directive sound consistent with the DPE guidelines, without actually making any changes.

47. A perusal of the documents placed on record indicate that the Respondent No.2 had likely postponed the presidential directive and incorporated the rule for notional wage fixation, because it was unwilling to increase the wages. This is evident from the records of conciliation that took place between the parties for 6 years. It appears that IAL employees were being denied wage arrears on account of a conflict regarding the payment of Productivity Linked Incentives (PLI) being paid to some employees by the company, these PLI had been regulated by the 1999 DPE Guidelines but Respondent No.2 felt that the wage settlements drawn up did not bring the PLI-related payments in conformity with the DPE Guidelines. Thus Respondent No.2 wanted to stop PLI payments and claimed the same had driven up the cost to the company. This assertion was made by Respondent No.2 to the Petitioner in its letter dated 01.12.2010, and the same read as under:

"GOVERNMENT OF INDIA
MINISTRY OF CIVIL AVIATION
New Delhi
1st December 2010
Shri Arvind Jadhav,
Chairman & Managing Director,
National Aviation Company of India Limited
Air India Building, Nariman Point

Demand of wage arrears by employees of erstwhile IAL-reg.

I am directed to refer to your letter No. HPD02/7311 dated 25th October 2010 subject noted above and to say that matter has been examined again by the Ministry. Since the employees in NACIL continue to be paid PLI against the DPE guidelines, it may not be possible for this Ministry to increase the -illegible- cost of the Company. Even GOM has desired that NACIL should negotiate the wage agreements with its Unions and to come up with wage revision. It is, therefore, requested that NACIL may bring the wage agreements for arrears strictly in conformity with the DPE Guidelines before the demand -illegible- be considered by the Government."

48. The aforesaid extract shows that Respondent No.2 turned down the

Petitioner‟s request to accommodate the JAC‟s demand for wage arrears because it opposed PLI payments in IAL. When the matter reached the Hon‟ble Supreme Court by way of SLP (C) No. 16397/2013, there was an undertaking given by Respondent No.2 to the Apex Court that it undertook to ensure that the Petitioner discharges its obligation in respect of wage arrears, failing which it would provide necessary funds for discharging the undertaking. Just as the Petitioner, Respondent No.2 also did not provide the Hon‟ble Supreme Court with its reasons for refusing payment of wage arrears.

49. The non-disclosure of their defense of presidential directive and the issue of PLI payments by the Petitioner and Respondent No.2 respectively to the Hon‟ble Supreme Court in 2013 and 2014 is in my view very crucial. When it was clarified by the Apex Court in 2014 that the matter would be decided in arbitration, it was reasonably expected that the arbitral tribunal would thoroughly assess the presidential directive and the legality of the decision made by Respondent No.2 to withhold payment of arrears. A necessary corollary thereof was that the learned Tribunal could then find merit in Respondent No.1‟s claim, issue a determination in its favor and pass directions for the settlement of wage arrears. If the Petitioner maintained the belief that the matter was subject to the presidential directive and that any ruling favoring Respondent No.1 would encroach upon it, thereby exceeding the jurisdiction of the competent Tribunal, it was incumbent upon the Petitioner to bring forth this issue before the Hon'ble Supreme Court. Similarly, Respondent No.2 should have articulated before the Hon'ble Supreme Court its contention that the decision to defer wage revisions and outstanding payments for nearly a decade on the basis of disputes regarding PLI (Performance-Linked Incentive) payment arrangements fell outside the jurisdiction of the competent Tribunal. It is imperative to remember that the learned Tribunal was formed pursuant to a court-ordered arbitration under Section 11 of the Act. Consequently, it would have been prudent to seek elucidation from the Supreme Court on this matter. In its absence, it becomes apparent that the parties herein had tacitly consented to the authority of the competent Tribunal over these issues.

50. The arbitration therefore, involved the Ministry of Civil Aviation, the Company, and the aggrieved employees‟ unions. The learned Tribunal then thoroughly examined (i) merits of Respondent No.1‟s claims, (ii) legality of the Wage Settlements, and (iii) with Respondent No.2‟s complete acceptance of the Tribunal‟s authority, the validity of the presidential directive issued by it. Once

the Apex Court had rejected the Petitioner‟s objection that this issue should be decided by the industrial tribunal and had specifically, with the consent of parties, referred the matter to arbitration, it cannot be said that the learned Tribunal could not have passed directions that the Petitioner claims is in conflict with the PD of Respondent No.2.When the matter was referred to arbitration, the Petitioner was well aware that there was a PD prohibiting payment of wage arrears w.e.f. 01.01.1997 yet, consented to the claim being sent for arbitration. In these circumstances, the Petitioner‟s plea that because of the PD, the learned Tribunal could not issue directions which were at variance with the PD, cannot be accepted, especially when the Ministry – the issuer of the PD - had not only agreed to such adjudication but had fully participated in it.

51. The Petitioner has further contended that the impugned Awards are vitiated because while calculating the amounts due, the learned Tribunal accepted theRespondent No.1‟s unsubstantiated statement to quantify the arrears, without directing them to produce supporting evidence therefor. Admittedly, before the learned Tribunal, Respondent No.1 produced two charts, one showing the total quantum of arrears of wages of individual employee and the other enumerating details of the claims of the members of Respondent No.1 under different heads. The Petitioner has pleaded in its grounds that both charts produced by Respondent No.1 were denied by it, therefore Respondent No.1 ought to have led evidence in support of its claim. While giving findings in this regard, the learned Tribunal in

Paragraph 43 of the impugned Award in the first petition notes that, "*In the statement of defence filed by the Management it has been stated as per the undertaking submitted before the Hon‟ble Supreme Court to clear the admitted dues within a period of 18 months, it is submitted that there is no such kind of any admitted dues relating to wage arrears to claimant which are pending.*" and that*,"in view of the aforesaid submissions, the respondent denies any of the claims of the claimant as made in the statement of claim. It is respectfully submitted that the claimants are not entitled to any such amount as alleged in the petitions."*. The learned Tribunal observed, and in my view rightly so, that these statements were not specific denials of the two charts presented by Respondent No.1. That, read with the fact that despite multiple opportunities the Petitioner did not produce any calculation sheet in support of what, according to it, were the actual wages and allowances payable to the first Respondents in the event it were directed to make such payments, led the learned Tribunal to accept the Respondent No.1‟s

uncontroverted calculations and pass directions for payments in accordance therewith. Having failed to discharge the burden of proving before the learned Tribunal that the calculations of Respondent No.1 were incorrect, I see no reason to accept the Petitioner‟s attempt to impugn the Awards on this ground today.

52. Furthermore, as noted earlier, it could not have come as a complete surprise to the Petitioner that it was being directed to pay these wage arrears given that the Respondent No.1 has never given up its right to claim the arrears, and has raised it at every possible forum. The Petitioner‟s challenge to the impugned Awards, especially in respect of the findings given for Issue No.1 gain importance here. The learned Tribunal perused various correspondences between the parties herein on this matter, and took note of the letters dated 18.06.2008, 18.05.2010, 04.06.2010, and 25.10.2010 sent by the Petitioner to Respondent No.2, as well as the letter dated 18.05.2010 sent by Respondent No.2 to the Petitioner along with Minutes of the Conciliation proceedings dated 15.04.2009 and 19.01.2012. Relying on these documents, Respondent No.1 before this Court and the learned Tribunal contended that the Petitioner had „admitted‟ the claim for wage arrears, whereas the Petitioner insisted that the Management's statements were merely recommendations to the Ministry for considering the claimants' claims and could not be considered as admissions. The learned Tribunal decided that the Management's stance in the documents was unambiguous and amounted to an unequivocal admission of the claim for wage arrears, despite the use of the words "recommendation" and "approval." The learned Tribunal also took into consideration the fact that there was a provision in the Petitioner‟s books of accounts for financial liability that may arise in respect of the wage arrears, before deciding Issue No. 1 in favor of Respondent No.1.

53. Before this Court as well, the parties have presented these correspondences and made submissions on their implication. However, I am of the view that the findings given by the learned Tribunal in this regard, which is based on appreciation of evidence, can neither be said to be perverse nor it can be said that there is any patent illegality with this finding.

While arguably there is no mention of the word „admission‟ or a derivative adjectives, the contents of these correspondences show that the Petitioner was supportive of the claim for wage arrears made by its employees, and was actively encouraging Respondent No.2 to accede to the demands. In one such correspondence, the Petitioner also noted the following in support of Respondent No.1:

"It is therefore not clear that when it comes to payment of arrears to residual employees of erstwhile Indian Airlines Ltd., effective from 01.01.1997 and to approximately 13,000 employees of erstwhile Indian Airlines Ltd. For the period 01.01.1997 to 31.12.1999, how the conditions enumerated in the letter aforesaid makes it not possible to agree to the demand of payment of arrears."

54. As a matter of fact, even during arguments, learned senior counsel for the Petitioner had not seriously denied that repeated recommendations were made by Indian Airlines to the Union of India for payment of these wage arrears to the employees. The same was however sought to be justified by urging that these were mere recommendations and not binding on the petitioner. In my view, even if the petitioner‟s plea is accepted that these were only in the nature of recommendations made to Union of India, it would still be sufficient to hold that insofar as the petitioner was concerned, it had admitted that the amounts were payable and it is only thereafter that recommendations were made to Union of India to provide funds for the same.

55. At this point, it may also be useful to refer to the contours of judicial power to review arbitral awards under s. 34 of the Act, through the lens of past precedents. The Hon‟ble Supreme Court discussed this in paragraphs 22 to 32 of its judgment in ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd. (2022) 1 SCC 131***. The following paragraphs of this decision have been extracted for ease of convenience:

*"**24.** An amendment was made to Section 34 of the 1996 Act by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter "the 2015 Amendment Act"). A perusal of the Statement of Objects and Reasons of the 2015 Amendment Act would disclose that the amendment to the 1996 Act became necessary in view of the interpretation of the provisions of the 1996 Act by Courts in certain cases which had resulted in delay of disposal of arbitration proceedings and increase in interference by Courts in arbitration matters, which had the tendency to defeat the object of the 1996 Act. Initially, the matter was referred to the Law Commission of India to review the shortcomings in the 1996 Act in detail. The Law Commission of India submitted its 176th Report, recommending various amendments to the 1996 Act. However, the Justice Saraf Committee on Arbitration constituted by the Government, was of the view that the proposed amendments gave room for substantial intervention by the court and were also contentious. Thereafter, on reference, the Law Commission undertook a comprehensive study of the amendments proposed by the Government, keeping in mind the views of the Justice Saraf Committee and other stakeholders. The 246th Report of the Law Commission was submitted on 5-8-2014.*

Acting on the recommendations made by the Law Commission in its 246th Report, amendments by way of the 2015 Amendment Act were made to several provisions of the 1996 Act, including Section 34.

***25.** xxx*

26. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law. …

27. For a better understanding of the role ascribed to Courts in reviewing arbitral awards while considering applications filed under Section 34 of the 1996 Act, it would be relevant to refer to a judgment of this Court in SsangyongEngg. & Construction Co. Ltd.
v. NHAI [SsangyongEngg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] wherein R.F. Nariman, J. has in clear terms delineated the limited area for judicial interference, taking into account the amendments brought about by the 2015 Amendment Act. The relevant passages of the judgment in Ssangyong [SsangyongEngg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC
131 : (2020) 2 SCC (Civ) 213] are noted as under : (SCC pp. 169-
71, paras 34-41)
...
"34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras
18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate Builders [Associate Builders v.
DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] .

35. It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

36. xxx

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes

to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. *Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.*

39. *To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.*

40. *The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).*
41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."

28. *This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them*

as perverse or patently illegal without appreciating the contours of the said expressions.

29. xxx

30.*Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression "public policy of India" and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice."*

56. The aforesaid extract captures a settled principle of law relating to the limited grounds available for courts to annul arbitral awards under s. 34 of the Act. The necessity of showing restraint when examining the validity of arbitral awards was reiterated, while warning against a trend of setting them aside on subjective assessment of the factual matrix of the case. The judgment discusses the insertion of Section 34(2-A) under the 2015 Amendment Act which allows invalidation of an arbitral award on the ground of patent illegality on the face of the award. The ground of patent illegality is different from a mere erroneous application of the law but includes within its fold „a perverse decision", and the illegality in question must go to the root of the matter. However, the Courts are prohibited from re-appreciating the evidence while dealing with this ground. Some situations meriting a challenge to an award on the ground of „patent illegality" include where the arbitrator takes a view that is not even a possible one or commits an error of jurisdiction by dealing with matters outside of the contract. An award with no reasoning, based on no evidence, or arrived at by ignoring vital evidence can also be set aside on the basis of patent illegality. The principles set out in ***Delhi Airport Metro Express (supra)*** were recently reiterated by the Hon"ble Supreme Court in ***M/s Larsen Air Conditioning and Refrigeration Company vs. Union of India &Ors.[Civil Appeal No.3798/2023]*** inasmuch as paragraph 15 of the judgment recorded that the Court, in exercise of its jurisdiction under Section 34 of the Act, should not interfere with the arbitral award in a casual or cavalier manner; only when the Court uncovers a patent illegality or perversity going to the root of the matter shall interference with an award be warranted. The mere likelihood of an alternative view on facts or on interpretation of the terms of the contract/documents is not enough to interfere with an award under Section 34.In the present case I am of the view

that the learned Tribunal has rendered its findings after extensively considering the submissions of all parties as also the material on record. I, therefore, do not see how this Court can exercise its limited jurisdiction under Section 34 to interfere with these well-reasoned Awards.

57. Before I conclude, I may also deal with the Petitioner‟s final contention that the learned Tribunal gravely erred in awarding interest at the rate of 18% per annum on the entire adjudged amount, which already included the quantum towards 12% per annum interest payable on the arrears of revised wages. The Petitioner relied on the decision of the Hon‟ble Supreme Court in ***Vedanta Ltd. (supra)*** to contend that this direction by the learned Tribunal was tantamount to directing payment of „interest on interest‟ which was impermissible.

58. I find no merit in this contention in view of the decisions of the Hon‟ble Supreme Court in ***Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa (2015) 2 SCC 189*** and ***UHL Power Company Limited Vs. State of Himachal Pradesh (2022) 4 SCC 116.*** It may, therefore, be apposite to extract the following paragraphs of the decision ***in UHL Power Company Limited (supra)*** which directly address this contention:

*"**5.** By now, the aforesaid aspect has been set at rest by a three-Judge Bench of this Court in Hyder Consulting (UK) Ltd. v. State of Orissa [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] , that has overruled the verdict in S.L. Arora [State of Haryana v. S.L. Arora & Co., (2010) 3 SCC 690 : (2010) 1 SCC (Civ) 823] . The majority view is that post-award interest can be granted by an arbitrator on the interest amount awarded. Writing for the majority, Bobde, J. (as his Lordship then was) has held thus : (Hyder Consulting case [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] , SCC p. 204, para 21)*

6. *While giving a concurring opinion in the aforesaid case, Sapre, J. made the following pertinent observations : (Hyder Consulting case [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] , SCC p. 206, para 31)*

"21. In the result, I am of the view that S.L. Arora case [State of Haryana v. S.L. Arora & Co., (2010) 3 SCC 690 : (2010) 1 SCC (Civ) 823] is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the award on the substantive claim does not refer to interest pendente lite awarded on the "sum directed to be paid upon award" and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the pre-award period or for the postaward period. Parliament has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language."

"31. Coming now to the post-award interest. Section 31(7)(b) of the Act employs the words, „A sum directed to be paid by an arbitral award …". Clause (b) uses the words "arbitral award" and not the "Arbitral Tribunal". The arbitral award as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". Interest under clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under clause (a)."

7. As the judgment in S.L. Arora [State of Haryana v. S.L. Arora & Co., (2010) 3 SCC 690 : (2010) 1 SCC (Civ) 823] , on which reliance has been placed by the Division Bench of the High Court of Himachal Pradesh, has since been overruled by a three-Judge Bench of this Court in Hyder Consulting (UK) [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] , the findings returned by the appellate court in the impugned judgment to the effect that the Arbitral Tribunal is not empowered to grant compound interest or interest upon interest and only simple interest can be awarded in favour of UHL on the principal amount claimed, is quashed and set aside. As a result, the findings returned in para 54(a) of the impugned judgment [UHL Power Co. Ltd. v. State of H.P., 2011 SCC OnLine HP 1828] insofar as it relates to grant of the interest component, are reversed while restoring the arbitral award on the above aspect in favour of UHL."

59. In the aforesaid extract, the Hon"ble Supreme Court reiterated the legal principle previously settled by it in ***Hyder Consulting (supra)*** that an arbitral tribunal can pass directions for payment of interest upon the amount adjudged payable under the award, which is a sum inclusive of principal sum adjudged as well as the interest payable thereupon. Even so, the Petitioner"s reliance on the decision ***Vedanta (supra)*** is wholly misplaced as the facts therein are distinguishable from those of the present case. Therefore, the Petitioner"s challenge to the direction for payment of interest is also without merit.

60. For the reasons given hereinabove, I find no merit in the present Petitions which are accordingly dismissed along with all pending applications except I.A.14936/2023 in O.M.P. 33/2016, which as prayed for is dismissed as withdrawn with liberty to the applicants to seek appropriate remedies as per law.

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