Arbitral award is liable to be set aside under Section 34 of the Arbitration Act where the arbitral tribunal continues proceedings and grants relief in respect of a debt that is subject to interim moratorium under Section 96 of the Insolvency and Bankruptcy Code

The **Bombay High Court** in the case of **Ajeet Madhukar Mulay vs Abhyudaya Co-Operative Bank Limited [Commercial Arbitration Petition No. 843 of 2024] dated June 09, 2026**, has clarified that an arbitral award is liable to be set aside under Section 34 of the Arbitration Act where the arbitral tribunal continues proceedings and grants relief in respect of a debt that is subject to interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, since such continuation disregards binding law that the moratorium attaches to the debt in its entirety.

The Court also laid down that refusal of a party's request to cross-examine the opposing witness, in a case where evidence has been led and material facts such as execution of documents are in dispute, violates the principles of natural justice and Sections 18 and 24 of the Arbitration and Conciliation Act, and may also render the resulting findings patently illegal. Further, arbitral directions amounting to enforcement of mortgage by sale are non-arbitrable because they concern rights in rem. At the same time, the Court reaffirmed that in a Section 34 proceeding, it will not undertake factual reappreciation on issues such as interpretation of guarantee terms or sufficiency of stamp duty where those matters require merits review.

The Court observed that the challenge under Section 34 of the Arbitration and Conciliation Act, 1996 had to be tested within the limited statutory grounds, including conflict with the fundamental policy of Indian law, violation of natural justice, and patent illegality. It found that the arbitral tribunal had continued the proceedings against some guarantors even though interim moratorium under Section 96 of the Insolvency and Bankruptcy Code had commenced on personal insolvency applications filed by other guarantors.

Relying on the settled position that the moratorium under Section 96 operates in respect of the debt and not merely the debtor, the Court held that the arbitral tribunal could not bifurcate the debt and continue proceedings against only some co-obligants. The Court also found that refusal to permit cross-examination of the Bank's witness violated Sections 18 and 24 of the Arbitration Act, especially when the Bank had led affidavit evidence and the execution of guarantee and related documents was specifically disputed. It further observed that the tribunal's findings that the Bank's claim stood proved were rendered without affording a fair opportunity to test that evidence and therefore suffered from patent illegality.

On the issue of guarantor discharge owing to restructuring and on the stamp duty objection, however, the Court held that those issues would require factual appraisal or merits review, which is impermissible in a Section 34 challenge. The Court also held that the arbitral directions permitting enforcement by sale of mortgaged property were non-arbitrable because enforcement of mortgage is a right in rem, to be decided by courts and not arbitral tribunals.