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ARBITRATION AND CONCILIATION

36% Rate Survives and Arbitration Triumphs in BPL v. Morgan Securities

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The Simple Deal That Turned Sour

BPL Limited needed goods from BPL Display Devices Ltd. (BDDL). Facing cash flow issues, they approached Morgan Securities for bill discounting facilities worth over Rs. 12 crores. Under sanction letters dated December 27, 2002 (Rs. 6 crores) and June 11, 2003 (Rs. 6.5 crores), Morgan paid BDDL upfront against bills of exchange (hundis) drawn by BDDL on BPL. These were due within 150 days. Both BPL and BDDL were jointly and severally liable for repayment. Interest was concessional at 22.5% per annum upfront, but rose to 36% per annum with monthly compounding if payments were late. Electronic Research Pvt. Ltd. (ERPL) guaranteed part of the 2003 facility with post-dated cheques. By 2004, Rs. 25.79 crores became due and unpaid, despite reminders, assurances, and two Rs. 50 lakh payments by BPL in August 2005. BPL also sent a debt acknowledgement letter on February 2, 2007. Morgan invoked arbitration on June 28, 2007.?

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Arbitration: The Arbitrator's Clear Rulings

A sole arbitrator heard claims for Rs.7,27,05,579/- (2002 letter) and Rs.20,62,28,681/- (2003 letter), plus interest. Key issues included liability, limitation, and interest rates. The arbitrator ruled this was a commercial transaction, not a loan, so usury laws did not apply, citing cases like?Class Motors Ltd v. Maruti Udyog Ltd?(1996 SCC OnLine Del 872),?Modi Rubber Ltd v. Morgan Security and Credits?(2002 SCC OnLine Del 546), and?West Bengal Cement Ltd v. Syndicate Bank?(2009 SCC OnLine Del 3318). These supported contractual interest rates in similar deals. BPL and BDDL were held jointly liable. Claims against BDDL were dropped due to its liquidation; ERPL was discharged because Morgan did not present its cheques (Harish Chander v. Ganga Singh and Sons, 1973 SCC OnLine PH 40). BPL lost on limitation, part payments and the 2007 letter extended the time limit (Central Bank of India v. Ravindra, 2001 SCC OnLine SC 1266). The arbitrator awarded principal amounts plus 36% interest (monthly rests) from due dates until the award on December 14, 2016, and 10% post-award until payment.?

High Court: Mostly Upholds the Award

BPL challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996. A Delhi High Court single judge partly allowed it, setting aside one time-barred bill (OMR-35, Rs. 75,39,304/-), but upheld the rest. The judge confirmed joint liability, rejected Negotiable Instruments Act, 1881 caps on interest (Section 64 and Section 80), and said 36% was per contract, not unconscionable.

BPL's appeal under Section 37 was dismissed by the High Court, which held that neither the arbitrator nor the Single Judge had committed any patent illegality or perversity while adjudicating the dispute. Although the arbitral award prescribed a high rate of interest, the Court found it not so unfair or unreasonable as to shock its conscience. There was no evidence to suggest that the award was contrary to public policy or unenforceable.

Subsequently, a review petition was filed against the High Court's judgment, which was also dismissed. The review petition was dismissed, upholding the findings of the arbitral tribunal and the High Court, and confirming the enforceability of the contractual interest rate.

Supreme Court Dissects 36%: Precedent Power Plays

Hon'ble Justice J.B. Pardiwala, in a meticulous 120-page judgment, systematically dismantled BPL's arsenal: addressing penal interest under Section 74 of the Contract Act, claims of public-policy violation under Section 34(2)(b)(ii) of the Arbitration Act, 1996, deficiencies in statutory notice, the contra-proferentem rule (verba chartarum fortius accipiuntur contra proferentem), and issues of limitation.

The Supreme Court ruled that the bill discounting facility constituted a commercial transaction between sophisticated parties, not a loan, and therefore fell outside the scope of the Usurious Loans Act, 1918. The Court stressed that when parties voluntarily enter into contractual agreements, including those with high interest rates, they cannot later challenge such terms as unconscionable or contrary to public policy, especially if no objections were raised at the time of contract formation or during arbitration. Relying on established precedents and statutory provisions, particularly Section 31(7) of the Arbitration and Conciliation Act, 1996, the Court affirmed that parties are free to agree on interest rates, and such agreements must be honoured unless there is a clear violation of statutory law or public policy. ?

In considering arguments about penalty interest and public policy, the Supreme Court referred to both Indian and international case law, including the landmark UK Supreme Court decision in Cavendish Square Holding BV v. Talal El Makdessi (2015), which clarified that a clause prescribing high interest rates is not automatically penal or unconscionable if it serves a legitimate business interest and is agreed upon by informed parties. The Supreme Court highlighted the principle of party autonomy and the sanctity of contracts, stating that judicial interference with contractual terms should occur only if there is clear evidence of unconscionability, fraud, or statutory violation. Ultimately, the Supreme Court upheld the arbitral award and the High Court's judgment, affirming that the contractual interest rate of 36% per annum was valid and enforceable.

Key points: Commercial, not loan, bill discounting justifies 36% (Usurious Loans Act inapplicable per Section 31(7)(a)). Section 31(7)(a) and Section 31(7)(b) enforce agreed rates. Section 74 limits penalties to damages, but this is risk pre-estimate (Cavendish principle), not fine. Public policy: High rates okay for savvy businesses. Defenses failed, no notice needed; joint liability clear; limitation saved;?verba chartarum?inapplicable to mutual terms. High Court affirmed.?

What This Means for Business and Law

This ruling gives certainty to trade finance: clear, agreed high interest is enforceable in arbitration. Courts cite robust precedents (Central Bank,?DMRC, global cases) to back party autonomy. Businesses get predictable deals, but must read terms carefully. Lenders gain confidence. For lawyers, it limits challenges, fewer interest wars ahead. Boosts India's arbitration ecosystem as finance grows.

India's Arbitration Ascendancy Over Paternalism

The BPL Limited v. Morgan Securities?(2025 INSC 1380) solidifies party autonomy as the bedrock of Indian arbitration, rejecting judicial overreach in high-stakes commercial trade where bill discounting carries inherent risks of default, cash flow volatility, and massive financial exposure. Upholding the 36% interest as valid risk compensation, grounded in Section 31(7)(a) and Section 31(7)(b),?Central Bank of India v. Ravindra, and Cavendish-aligned global precedents, the Supreme Court safeguards arbitral awards from Sections 34 and Section 37 erosion, positioning India as a premier arbitration hub where hard-bargained trade finance terms remain inviolable, unshackled from retrospective fairness claims.

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