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HIGH COURT OF CHHATTISGARH AT BILASPUR**Reserved for Judgment on : 23.09.2026****Judgment Delivered on : 08.10.2026****Judgment Uploaded on : 09.10.2026****ARBA No. 57 of 2019**

M/s Orissa Concrete And Allied Industries Ltd. Through Its Authorized Signatory, Mr. Banshi Chowdhury, S/o Late Ramrenu Chowdhury, Age 60 Years, At Plot No.53, Bhanpuri Industries Area, Post Office Birgaon, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

--- Appellant**versus**

The Union Of India Through, Its General Manager (Engineering) South East Central Railway, Bilaspur, Chhattisgarh.

--- Respondent

For Appellant	: Mr. Chandresh Shrivastava, Advocate with Ms. Mahi Pandey, Advocate
For Respondent	: Mr. R.K. Mishra, DSGI with Mr. Rishabh Dev Singh & Ms. Shweta Rai, Advocates

Division Bench**Hon'ble Shri Parth Prateem Sahu, Judge****Hon'ble Smt. Sushma Sawant, Judge**

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CAV Judgment

Per Parth Prateem Sahu, J

1. Appellant has filed this arbitration appeal U/s. 37 (1) (C) of the Arbitration and Conciliation Act, 1996 (In short 'the Act, 1996') read with Section 13 of the Commercial Court Act, 2015 (In short 'the Act, 2015') questioning the legality and sustainability of the order dated 30.08.2019, passed in MJC No.34 of 2018, whereby learned Commercial Court (District Level), Atal Nagar, District – Raipur (C.G.) has dismissed the application filed U/s. 34 (2) (b) (ii) of the Act, 1996 affirming the arbitral award 21.09.2016, wherein the Sole Arbitrator rejected the claim of appellant holding it to be barred by limitation.
2. Brief facts of the case are that appellant firm M/s. Orissa Concrete & Allied Industries Ltd. is engaged in the manufacture of Concrete Mono Block Sleepers. Respondent/South Easter Center Railway, Bilaspur floated a tender vide NIT dated 07.02.2006 for manufacture and supply of Mono Block Pre-Stressed Concrete (PSC) Sleepers. Appellant participated in the said tender and, being the successful bidder, was awarded the work for manufacture and supply of 3,50,779 units of PSC Sleepers at the rate of Rs. 865/- per unit, within the stipulated period of two years and one month commencing from 26.12.2005. During subsistence of contract, due to certain variation in the contractual quantity under the terms of contract, appellant supplied 2,54,445 units of PSC Sleepers out of 3,50,779 units to respondent.
3. On 24.02.2009, contract between the parties came to be terminated. In May, 2009, respondent demanded liquidated damages to the tune of Rs.54,20,100/- from appellant. Being disgruntled by demand of

liquidated damages, appellant invoked the arbitration clause stipulated in the agreement vide letter dated 27.06.2009. The Arbitrator entered into reference on 09.10.2009 to decide the legality of termination of contract, which is still pending for adjudication. As per appellant, bills of appellant regarding payments against supplied sleepers and other heads were passed and paid by respondent. Payments related to inspection charges, excise duty on PVC bills, entry tax on cement etc. were made in installments and last such payment was made by respondent to appellant on 15.02.2010. It is case of appellant that apart from bills paid by respondent, certain claims were due for payment. Appellant wrote various letters requesting for payment of bills pending towards respondent but his request was denied and last denial for payment by respondent against the PVC bills raised by appellant was vide letter dated 07.01.2013. Being disgruntled by denial of payments of alleged dues, appellant invoked the arbitration clause on 25.04.2013 and requested the respondent to appoint an Arbitrator and pursuant thereto Mr. A.K. Pandey, Chief Engineer (Con.) SECR, Nagpur was appointed as Sole Arbitrator. Appellant filed its Statement of Claim before the learned Sole Arbitrator, raising seven claims/bills aggregating to a total amount of Rs. 2,36,46,182/-, along with interest at the rate of 18% per annum on the respective amounts from the dates of the respective bills.

4. Respondent filed reply to the claim of appellant pleading that all the payments claimed by appellant in contract were finalized before March, 2009. It was further pleaded that minor amount of miscellaneous bills like insert inspection charges to RITES, service tax on insert inspection charges, excise duty on last PVC bills and entry

tax on cement were submitted and passed on 24.04.09, 24.07.09, 24.07.09, 21.01.10 and 15.02.10. Appellant/claimant was advised in May, 2009 to deposit liquidated damages. Being aggrieved with the recovery of liquidated damages, appellant/claimant had sought arbitration pursuant thereto arbitration tribunal was constituted on 24.07.2009. The Arbitrator entered into reference on 09.10.2009, which is still under adjudication. It was further pleaded that appellant/claimant sought another arbitration under the same agreement on 25.04.2013. It was further pleaded in the reply that under doctrine of constructive res-judicata that appellant cannot be allowed to relitigate the matter again as one arbitration reference is pending consideration on the same contract. He submits that after passing of the bills only, there can be cause of action. Therefore, all the claims should have been raised together as splitting of cause of action is not allowed under the doctrine of constructive res-judicata. It was pleaded that appellant's application for appointment of an arbitrator was made after expiry of three years from the accrual of cause of action and was, therefore, barred by limitation. It was pleaded that the last supply was made by appellant in March 2009, whereas the payment against the bills raised by the appellant had already been made by 23.12.2008. Despite this, appellant submitted its application seeking appointment of an arbitrator only on 25.04.2013, i.e., after the expiry of the prescribed period of limitation and prays for rejection of claim of appellant.

5. After hearing both parties, learned Sole Arbitrator, vide arbitral award dated 21.09.2016, rejected the appellant's claim as barred by limitation. The Arbitrator held that cause of action arose upon

termination of contract on 24.02.2009, and that application for appointment of an arbitrator was required to be made within three years thereof. Since appellant submitted the application only on 25.04.2013, the claim was held to be beyond the prescribed period of limitation.

6. Being aggrieved by rejection of its claim by learned Arbitrator, appellant filed an application under Section 34(2)(b)(ii) of the Act, 1996, before the Commercial Court (District Level), Atal Nagar, Raipur. The said application also came to be dismissed vide impugned order, whereby the learned Commercial Court dismissed the application under Section 34 of the Act of 1996 observing that there is no merit.
7. Learned counsel for appellant would submit that the impugned order passed by Sole Arbitrator rejecting the claim of appellant on the ground of limitation, which has subsequently been affirmed by the Commercial Court is erroneous, contrary to the facts and law. He submits that the impugned order passed by Sole Arbitrator as well as by Commercial Court is illegal and violates the principles of natural justice, as the Arbitrator decided the issue of limitation, which is a mixed question of law and facts, without giving the parties an opportunity to produce evidence. He next contended that learned Commercial Court has wrongly treated 15.02.2010, the date of the last payment, as the date from which the limitation period should be counted. He submits that although last payment was made by respondent on 15.02.2010, however certain other claims of appellant remained due and payable. Appellant, from time to time, addressed letters to the respondent requesting for payment of outstanding claims.

However, the respondent repeatedly returned the said letters without making payment. Ultimately, respondent, vide its communication dated 07.01.2013, denied the appellant for payment in respect of the bills raised. He next contended that, after denial by respondent on 07.01.2013, the appellant, within the period of limitation from the date of such denial, requested for appointment of an Arbitrator for resolution of the dispute, therefore, claim of appellant is well within limitation. In support of his contention, he placed reliance upon the judgment of High Court of Andhra Pradesh at Hyderabad in case of **State of Andhra Pradesh Vs. P. Somasekhara Rao and Ors.**, reported in **1997 SCC OnLine AP 256** and also the decision of Hon'ble Supreme Court in case of **Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority**, reported in **(1988) 2 SCC 338**. He also submits that before final payment made on 15.02.2010, respondent had not decided/denied any of claims raised by appellant, therefore, the date of final payment could not be treated as the date for counting the limitation period of all the claims.

8. Learned counsel for respondent opposes the submission made by learned counsel for appellant and supports the impugned order. He submits that appellant failed to supply the quantity of the Sleeper as per the contract, agreement was terminated and as per Clause 3 of the purchase order, penalty of liquidated damages of Rs.54,20,100/- was imposed upon appellant. He submits that appellant has invoked the arbitration clause against imposition of liquidated damages as also against termination of contract and that arbitration proceeding is still pending adjudication. Appellant was free to raise his further dues and claims during the course of the said arbitral proceedings, however, he

failed to do so and after expiry of three years from the date of termination of contract, appellant has again moved an application for appointment of Arbitrator on 25.04.2013, which is barred by limitation. He submits that period of limitation for invocation of arbitration clause would start from the date when the last payment was made to the appellant i.e. 15.02.2010, however, appellant requested for appointment of Arbitrator for adjudication of the demanded bills on 25.04.2013, which is after three years from the receiving of last payment. Accordingly, the claim of appellant is beyond the prescribed period of limitation.

9. We have heard learned counsel for parties and also perused the record.
10. Undisputedly, the parties entered into contract agreement for work of supply of Mono Block Pre-stressed Concrete Sleeper (Pre Tensioned Type) for board gauge against tender No. CS-156 of 2005 vide contract agreement No. Engg./TP/OCAIL/Bhanpuri/CS-156/1008 DT. 07.02.2006 for completion of work upto two year one month w.e.f. 26.12.2005 i.e. up to 25.01.2008. According to the terms of agreement, 350779 nos of concrete sleeper were to be supplied at a rate of Rs.865/- per sleeper. Value of above agreement was Rs.30,34,23,835/-. The period of supply was extended up to 10.09.2008 vide letter dated 18.01.2008. Contract was terminated by respondent on 24.02.2009. Claimant submitted application for appointment of Arbitrator on 25.04.2013. The sole Arbitrator entered into reference on 22.10.2013 and thereafter, the statement of claim

was submitted on 18.11.2013 to which respondent also submitted its statement of defence 28.01.2014.

11. Respondents made prayer for rejection of claim on 19.02.2014 on the ground that all payments claimed by claimant in the contract were finalized before March, 2009. Minor amount miscellaneous bills like insert inspection charges to RITES, service tax on insert inspection charges, excise duty on last PVC bill and entry tax on cement were submitted and passed on 24.04.2009, 24.07.2009, 24.07.2009, 21.01.2010 and 15.02.2010, hence, application for arbitration submitted on 25.04.2013 is barred by limitation. One of the ground which is taken for rejection of claim is that after passing of final bill there can only be one cause of action therefore, all the claims could have been raised together, as splitting of cause of action is not allowed under the doctrine of constructive res-judicata. The sole Arbitrator upon considering the rival submission made by parties based on the documents placed in the arbitral proceedings, has taken into consideration the fact that contract was terminated on 24.02.2009, therefore, the claimant could have raised the claim as raised in the arbitration proceedings before the Arbitrator earlier appointed on 24.07.2009. The cause of action has been taken from the date of termination of contract and taking period of limitation to be three years from the date of cause of action, dismissed the claim.
12. Award passed by the Arbitrator was put to challenge by appellant herein by filing application U/s. 34 of the Act, 1996 in particular Section 34 (2) (b) (ii) of the Act, 1996, before the Commercial Court and the Commercial Court by impugned order has dismissed the application

holding that according to the facts and circumstances of the case and the law of limitation, conclusion arrived by the learned Arbitrator that claim of claimant was barred by limitation cannot be said to be erroneous and no ground is made out to interfere with the findings of learned Arbitrator. Learned Commercial Court for arriving at such conclusion as observed thus :-

“33. The law is trite, limitation under Article 137 of Limitation Act, 1963 begins to run from the time when the right to apply accrues. The expression "when the right to apply accrues" in its ordinary connotation to mean when the right to apply first accrues. Ignorance of the accrual of the right in his favour on the applicant's part, will not postpone the starting point of limitation.

34. In the instant case, the cause of arbitration first arose when the final supply bill was passed by the Railways (non-applicant) on dated 02.01.2009, then secondly arose when the contract was terminated by the non-applicant on 24.02.2009, thereafter again arose when final PVC bill was passed on 19.03.2009 and finally arose when miscellaneous bill like insert inspection charges to RITES, service tax on insert inspection charge, excise duty on last PVC bill and entry tax on cement dated 24.04.2009, 24.07.2009, 24.07.2009, 21.01.2010 and 15.02.2010 were passed by the non-applicant and received by applicant without any demur. Quite naturally, while receiving the above payments, the applicant was well aware about the fact that some bills, as sought by him in arbitration proceeding, were not passed or paid to him. Therefore, the right to claim those bills accrued finally on 15.02.2010 when the last payment was made to the applicant and hence the limitation started from the date

15.02.2010 and the period of three years shall be counted from 15.02.2010 and elapsed on 15.02.2013.

35. It is settled law that once the period of limitation begins to run, it does not stop. The letters and remainders sent by the applicant to the non-applicant does not stop and save limitation. Therefore, the commencement of Arbitration (25.04.2013) in this matter is barred by limitation in view of Article 137 of schedule of limitation Act which prescribes limitation period of three years from time when right to apply accrues.

36. The applicant invoked Arbitration clause on 25.04.2013 which is after three years of the last payment to the applicant e.g. dated 15.02.2010. Apart from that, the applicant has not even filed an application for condonation of delay before the Learned Arbitrator regarding his claims.

37. In view of the aforesaid reasons, none of the judgments on the point of limitation, relied upon by the learned counsel for applicant are of any avail to it, because the facts and circumstances of the case in hand are quite distinguishable from the citations relied upon by the applicant.”

13. So far as the grounds raised by learned counsel for appellant that learned Commercial Court while exercising his jurisdiction under Section 34 of the Act, 1996 could not have dismissed the application under Section 34 of the Act, 1996 on other ground is concerned that Arbitrator has dismissed the claim observing that claim is barred by limitation. Upon minute perusal of the award enclosed along with this appeal would show that the objection is raised by respondent therein/respondents herein of the claim to be beyond period of limitation, has clearly mentioned the dates and events, of the

submission of minor amount miscellaneous bills like insert inspection charges to RITES, service tax on insert inspection charges, excise duty on last PVC bill and entry tax on cement were submitted and passed on 24.04.2009, 24.07.2009, 24.07.2009, 21.01.2010 and 15.02.2010, whereas application for arbitration was submitted on 25.04.2013, which is beyond the period of limitation prescribed under Section 137 of the Limitation Act, 1963 (In short 'the Act, 1963').

14. The law applicable with regard to the limitation for claiming arbitration and disputes are governed by provisions under Section 43 of the Act, 1996 and Article 137 of the Act, 1963.
15. Under the Act, 1996, a dispute is to be referred for arbitration which means a claim asserted by one party and its denial by repudiation by other. In the facts of the case it has been considered by Arbitrator as also the Commercial Court in exercise of powers under Section 34 of the Act, 1996 and arrived at a conclusion that claim is barred by limitation as it is beyond the period of limitation of three years.
16. Learned Commercial Court in para 24 of its order impugned has considered that contract was terminated on 24.02.2009, final bill for the supply of sleepers was passed on 02.01.2009 and final PVC bill (including freight charges) was passed on 19.03.2009. The said fact has been recorded based on the arbitral record available before the Arbitrator and it further taken note of the submission of minor miscellaneous bills, last bill, paid is dated 15.02.2010, therefore, from the aforementioned facts it is apparent that from the records as submitted by the parties before the Arbitrator, all the payments made/bills passed was of either 15.02.2010 or prior to it, therefore, the

period of limitation with regard to last bill passed would be 15.02.2013 by latest, whereas the arbitration application has been filed on 25.04.2013 after period of three years.

17. It is also not in dispute that after passing of final bill and termination of contract, claimant/appellant has invoked the arbitration clause by submitting an application for appointment of Arbitrator vide letter dated 27.06.2009 and pursuant thereto, Arbitral Tribunal was constituted by competent authority vide its letter dated 24.07.2009. The Arbitrator entered into reference on 09.10.2009. Perusal of the claim would show that PVC bills for the period from March, 2005 to December, 2005 was claimed. In reply/Statement of defence, there is clear pleading that letter of acceptance was issued on 12.01.2006 as the alleged supply was prior to the letter of acceptance and further PVC formula is not applicable to sleepers manufactured and supplied prior to the date of acceptance, it is pleaded that claim to that head is not admissible. The date of letter of acceptance is not disputed by learned counsel for appellant. Copy of letter of acceptance is also forming part of the record of arbitration. The terms and conditions as mentioned in the letter of acceptance would not be made applicable to the railway sleepers manufactured prior to issuance of letter of acceptance. Letter exchanged between parties is also part of records. Transaction, after the contract agreement will only be governed under the terms and conditions of that contract agreement.
18. From perusal of the records it is apparent that the Arbitrator as also the Commercial Court in the proceeding under Section 34 of the Act, 1996 clearly observed that claim of appellant is barred by limitation. A plain

reading of Article 137 of the Act, 1963 would make it clear that period of limitation in cases covered by Article 137 is three years and the said period would begin to run when the right to apply accrues.

19. Section 9 of the Act, 1963 talks of continuous running of time and it provides that "Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it". Under proviso to Section 9 it is provided that where letters of administration to the estate or creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.
20. Hon'ble Supreme Court in case of **Inder Singh Rekhi v. DDA, (1988) 2 SCC 338**, while dealing with the issue with regard to starting point of limitation has observed thus :-

"4. Therefore, in order to be entitled to order of reference under Section 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. The question is for the present case when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and therefore, the appellant became entitled to the payment from that date and the cause of action under Article 137 arose from that date. But in order to be entitled to ask for a reference under Section 20 of the Act there must not only be an entitlement to money but there must be a difference or

dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on 28-2-1983 and there was non-payment, the cause of action arose from that date, that is to say, 28-2-1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under Section 8 or a reference under Section 20 of the Act. See *Law of Arbitration* by R.S. Bachawat, first edition, page 354. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or a request. Whether in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case.”

21. Hon’ble Supreme Court in case of **Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643**, has considered that what will be the breaking point at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration and observed thus :-

“28. Having perused through the relevant precedents, we agree that on a certain set of facts and

circumstances, the period during which the parties were bona fide negotiating towards an amicable settlement may be excluded for the purpose of computing the period of limitation for reference to arbitration under the 1996 Act. However, in such cases the entire negotiation history between the parties must be specifically pleaded and placed on the record. The Court upon careful consideration of such history must find out what was the “breaking point” at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration. This “breaking point” would then be treated as the date on which the cause of action arises, for the purpose of limitation. The threshold for determining when such a point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore delaying formal adjudication of the claim.

29. Moreover, in a commercial dispute, while mere failure to pay may not give rise to a cause of action, once the applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration. It does not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim and because they were writing representations and reminders to the respondent in the meanwhile.”

22. In the case at hand, one of the argument raised based on the facts that subsequently miscellaneous claims have also been made, which

came to be rejected in the year 2011-12 etc., however, those claims were denied earlier as pleaded in the statement of defence. Hence, submitting multiple repeated applications thereafter will not make out such claim within the period of limitation, stating that lastly the claim has been rejected on 07.01.2013

23. Hon'ble Supreme Court in case of **BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738**, had an occasion to consider about the several communications have been exchanged between petitioners and respondents ever since the dispute has arisen between the parties, regarding non-payment of amounts due under the tender document and observed thus :-

“**51.** The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [*S.S. Rathore v. State of M.P.*, (1989) 4 SCC 582 : 1990 SCC (L&S) 50; *Union of India v. Har Dayal*, (2010) 1 SCC 394; *CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd.*, (2020) 5 SCC 185] or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that: “where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.” There must be a clear notice invoking arbitration setting out the “particular dispute” [Section 21 of the Arbitration and Conciliation Act, 1996.] (including claims/amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail.

24. In appeal filed under Section 37 of the Act, 1996, this Court have very limited jurisdiction to interfere with the order U/s. 34 and award. Interference is permissible only on the grounds as provided under Section 34 of the Act, 1996 is made out. The grounds enumerated for interference in the award under Section 34 is extracted below for ready reference :-

“34. Application for setting aside arbitral award.-(1)

Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]-

- (i) the party was under some incapacity,
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force,
- (iii) the party making application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case,
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or it contains decisions on matters beyond the scope of the submission to arbitration.

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the

arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

25. Hon'ble Supreme Court in case of **Rajasthan State Mines & Minerals Ltd. v. Eastern Engg. Enterprises, (1999) 9 SCC 283**, has explained the scope of Section 34 of the Act, 1996 and observed thus :-

“44. From the resume of the aforesaid decisions, it can be stated that:

(a) It is not open to the court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion.

(b) It is not open to the court to admit to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the award.

(c) If the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the court cannot interfere.

(d) If no specific question of law is referred, the decision of the arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where a specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the

parties, then the finding of the arbitrator on the said question between the parties may be binding.

(e) In a case of a non-speaking award, the jurisdiction of the court is limited. The award can be set aside if the arbitrator acts beyond his jurisdiction.

(f) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. The arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award.

(g) In order to determine whether the arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the arbitrator. If there is a specific term in the contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim then the award passed by the arbitrator in respect thereof would be in excess of jurisdiction.

(h) The award made by the arbitrator disregarding the terms of the reference or the arbitration agreement or the terms of the contract would be a jurisdictional error which requires ultimately to be decided by the court. He cannot award an amount which is ruled out or prohibited by the terms of the agreement. Because of a specific bar stipulated by the parties in the agreement, that claim could not be raised. Even if it is raised and referred to arbitration because of a wider arbitration clause such claim amount cannot be awarded as the agreement is binding between the parties and the arbitrator has to adjudicate as per the agreement. This aspect is absolutely made clear in *Continental Construction Co. Ltd.* [(1988) 3 SCC 82 : (1988) 3 SCR 103] by relying upon the following passage from *Alopi Parshad v. Union of India* [AIR 1960 SC 588 : (1960) 2 SCR 793] which is to the following effect: (SCC p. 88, para 5)

“There it was observed that a contract is not frustrated merely because the circumstances in which the contract was made, altered. The Contract Act does not enable a party to a contract to ignore the express covenants thereof, and to claim payment of consideration for performance of the contract at rates

different from the stipulated rates, on some vague plea of equity. The parties to an executory contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, a wholly abnormal rise or fall in prices, a sudden depreciation of currency, an unexpected obstacle to execution, or the like. There is no general liberty reserved to the courts to absolve a party from liability to perform his part of the contract merely because on account of an un contemplated turn of events, the performance of the contract may become onerous.”

(i) The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract. A deliberate departure or conscious disregard of the contract not only manifests the disregard of his authority or misconduct on his part but it may tantamount to mala fide action.

(j) The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks just and reasonable; the arbitrator is a tribunal selected by the parties to decide the disputes according to law.”

26. In **Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1**, Hon’ble Supreme Court while considering the scope of interference of Court under the Act, 1996 has observed thus :-

“**25.** Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

27. In case of **Somdatt Builders-NCC-NEC (JV) v. NHAI, (2025) 6 SCC 757**, Hon’ble Supreme Court has relied upon its earlier decision, has observed thus :-

“45. In *MMTC Ltd. v. Vedanta Ltd.* [*MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , this Court held that as far as Section 34 is concerned, the position is well settled that the Court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the Court is shocked or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. As far as interference with an order made under Section 34 by the Court under Section 37 is concerned, it has been held that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision.”

28. Hon’ble Supreme Court in case of **Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, (2025) 7 SCC 757**, has held that the arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of

interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of Section 34. It is a restrictive jurisdiction and has to be invoked in a conservative manner.

29. Considering the facts of the case as discussed above in light of the decision of Hon'ble Supreme Court we are of the considered view that no case is made out for interference with the order passed by the Commercial Court (District Level) dated 30.08.2019 as well as with the award passed by the Arbitrator.
30. Accordingly, the appeal being sans merit is liable to be and it is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sushma Sawant)
Judge