

RESERVED ON 25.06.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JULY, 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

COMMERCIAL APPEAL NO. 523 OF 2025

BETWEEN:

1. M/S R.B. SETH SHREERAM NARASINGDAS
A PARTNERSHIP FIRM
HAVING ITS OFFICE AT NO.1499/1
P.B.NO.38, KARIGANUR POST
HOSPET - 583 201
REPRESENTED BY ITS PARTNER
SHRI AJAY SARAF
S/O LATE GOVIND DAS AGARWAL
AGED ABOUT 58 YEARS

...APPELLANT

(BY SRI LAKAMAPURMATH CHIDANANDAYYA.,ADVOCATE)

AND:

1. MONITORING COMMITTEE
CONSTITUTED BY THE HON'BLE
SUPREME COURT OF INDIA
KHANIJA BHAVAN, R.C. ROAD
BENGALURU - 560 001
REPRESENTED BY ITS CHAIRMAN
2. JUSTICE DEEPAK GUPTA (RTD)
D-1/48, 2ND FLOOR, VASANT VIHAR,
NEW DELHI -110 057

...RESPONDENTS

(BY SRI THOMAS VELLAPALLY, ADVOCATE)

Digitally
signed by K
P SWEETHA
Location:
High Court
of Karnataka

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURTS ACT , PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE ORDER DATED 28/07/2025 PASSED BY THE LEARNED LXXXVI ADDL. CITY CIVIL AND SESSIONS JUDGE COMMERCIAL COURT, BENGALURU (CCH-87) IN COM.A.P. No.129/2024 DISMISSING THE PETITION FILED UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, VIDE ANNEXURE-A & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed this appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] read with Section 13(1A) of the Commercial Courts Act, 2015 [**CC Act**], impugning the order dated 28.07.2025 [**impugned order**]. passed by the learned LXXXVI Additional City Civil and Sessions Judge, Commercial Court, Bengaluru [**the Commercial Court**], in Com. A.P. No.129/2024. The appellant had filed the said petition under Section 34 of the A&C Act seeking the setting aside of an arbitral

award dated 03.07.2024 [**the impugned award**] passed by Respondent No.2 [**the Arbitral Tribunal**]. The Arbitral Tribunal had rendered the impugned award dismissing the appellant's claim petition with costs of ₹29,25,000/- and reserved liberty to the claimant to apply for a refund of taxes, royalty, VAT, CST, and FDT amounting to ₹3,47,43,367/-.

2. The learned Commercial Court delivered the impugned order dismissing the appellant's petition to set aside the impugned award.

PREFATORY FACTS

3. The appellant is a partnership firm registered under the Indian Partnership Act, 1932. At the relevant time, the appellant was engaged in the business of beneficiating iron ore at its plant situated in Sankalapur Village, Kariganur Post, Hospet Taluk, Bellary District (now Vijayanagar District), Karnataka.

4. Respondent No.1-Monitoring Committee [**MC**] is a body constituted by the Hon'ble Supreme Court of India in W.P.No.562/2009 (*Samaj Parivartana Samudaya and others V. State of Karnataka*), pursuant to the recommendations of the Central Empowered Committee [**CEC**], inter alia, for the sale of iron ore extracted in the three districts of Karnataka to plants within the

State by e-auction. By an order dated 18.04.2013 in the said writ petition, the Hon'ble Supreme Court accepted the CEC's recommendation and permitted MC to sell sub-grade ore, subject to the condition that the iron content of such ore be at least Fe 45%.

5. MC finalised standard bid documents governing the sale of iron ore through e-auction, which included, *inter alia*:

- a. Clause 3, prescribing the period within which the successful bidder was required to lift the allotted quantity;
- b. Clause 9, providing that in the event a buyer failed to lift the entire allotted quantity within the contract period, the advance amount equivalent to the unlifted quantity would be refunded to the buyer, with forfeiture of the security deposit; and
- c. a condition that the sale was on "as is where is and no complaint basis".

6. MC issued an e-auction notice dated 24.08.2013 and put to auction on 30.08.2013, *inter alia*, for Lot No.1R/SG (approximately 1,00,000 MT of sub-grade ore from the mining lease of M/s. Sandur Manganese and Iron Ore Limited [**SMIORE**]). The appellant participated in the e-auction, and its offer of ₹2,000/- per MT was declared the highest. The bid was accepted by Letter of Acceptance dated 02.09.2013 [**LOA**]. The appellant deposited the entire sale

consideration of ₹26,61,00,000/-, inclusive of royalty, taxes, and other statutory levies in advance.

7. Thereafter, the appellant lifted 47,441.20 MT of ore but did not lift the balance quantity. The appellant claimed that the balance material did not meet the minimum specification of Fe 45%. It claimed that, since the iron content was below the minimum specification, the balance quantity of 52,558.80 MT did not qualify as sub-grade ore. M/s SGS India Pvt. Ltd. (following a meeting dated 23.05.2014 between the Appellant and SMIORE) carried out the chemical analysis of the balance material and reported that the balance material had an Fe content of approximately 41.43%, which was below the prescribed threshold. The appellant represented to MC, by letter dated 14.08.2014, seeking short-closure of the contract for Lot No.1R/SG and refund of the amount equivalent to the unlifted quantity, in terms of Clause 9 of the bid document. The appellant states that SMIORE also joined the appellant in the said representation.

8. By order dated 31.01.2015, the MC rejected the aforesaid representation on the ground that the sale was as a single lot and on an "as is where is" basis. The appellant filed W.P.No.14134/2015

(GM-MM_S) before this Court, which was dismissed with liberty to invoke arbitration. Thereafter, the appellant approached the CEC's Chairman for the appointment of an arbitrator under Clause 19 of the Bid Documents. Since no appointment was made within the stipulated time, the appellant filed a petition (CMP No. 223/2016) under Section 11 of the A&C Act. During the pendency of the said CMP, the CEC's Chairman unilaterally appointed Justice Anil Kumar, a former judge of the Delhi High Court, as the Sole Arbitrator. The appellant's objection to the said appointment was overruled, and by an arbitral award dated 20.05.2019, the learned arbitrator rejected the appellant's claims in their entirety.

9. The appellant challenged the said award under Section 34 of the A&C Act (Com.A.S.No.129/2019) before the Commercial Court, Bengaluru. By the order dated 09.12.2021, the Commercial Court (CCH-86) set aside the award, inter alia, holding that:

- a. the appointment of the learned Arbitrator during the pendency of C.M.P.No.223/2016 was null and void; and
- b. the award was, in any event, contrary to the express language of Clause 9 of the bid document. MC's appeal against the said order in Commercial Appeal No. 57/2022 was dismissed by a Division Bench of this

Court on 28.01.2022, thereby confirming the order of the Commercial Court.

10. MC assailed the order dated 09.12.2021 before this court in Commercial Appeal No. 57/2022. By judgment dated 28.01.2022, a Division Bench of this Court dismissed the appeal and expressly confirmed the order dated 09.12.2021, passed by the learned Commercial Court was expressly confirmed.

11. MC approached the Supreme Court and filed a petition, SLP(Civil) No.5255/2023, under Article 136 of the Constitution of India seeking leave to appeal the order of the learned Commercial Court and the order of this Court.

12. By order dated 05.12.2023, the Supreme Court appointed Respondent No.2, Justice Deepak Gupta, former Judge of the Supreme Court of India, as sole arbitrator and the Arbitral Tribunal was constituted. The Supreme Court directed that the proceedings be conducted on the basis of the existing arbitral record, testimonies and material, uninfluenced by the observations of the Commercial Court or of this Court.

13. It was contended on behalf of the MC before the learned Arbitral Tribunal that the appellant lacked *locus standi* to maintain

the claim as the correspondence invoking arbitration had been issued on the letterhead of M/s. Rai Bahadur Seth Shreeram Narasingdas Pvt. Ltd.

14. The Arbitral Tribunal delivered the impugned award dated 03.07.2024 and rejected the Appellant's claims on, essentially, two grounds. First, the Arbitrator found that the Appellant had transferred its assets, including the beneficiation plant, to a Private Limited Company, M/s Rai Bahadur Seth Shreeram Narasingdas Pvt. Ltd., and that the arbitration clause had been invoked on the letterhead of the said Company and not of the appellant firm. Since the appellant had not produced documents evidencing the transfer of the assets to the said company, the Arbitral Tribunal drew an adverse inference that the appellant firm had assigned all its assets and liabilities and thus had no locus standi to maintain the claim.

15. Second, the Arbitral Tribunal held that on a conjoint reading of Clause 9, Clause 15 (which reserves the right of termination to the MC alone) and Clause 3 (which prescribes the contract period), Clause 9 is triggered only when the MC terminates the contract, and not when the bidder fails or refuses to lift the balance quantity. However, the Arbitral Tribunal directed the MC to permit the

Appellant to apply to the competent authority for a refund of taxes, royalty, VAT, CST, and FDT amounting to ₹3,47,43,367/-.

16. Aggrieved by the impugned award, the appellant preferred a petition (Com.A.P.No.129/2024) under Section 34 of the A&C Act, before the Commercial Court, Bengaluru. The appellant assailed the impugned award on multiple grounds, including that the finding on *locus standi* was rendered without any issue having been framed in that regard and was based on surmises; that the Arbitral Tribunal's interpretation of Clause 9 amounted to rewriting the contract; and that the impugned award was contrary to Section 28(3) of the A&C Act. MC contested the said petition and supported the findings and conclusion of the Arbitral Tribunal.

17. By the impugned order dated 28.07.2025, the learned Commercial Court dismissed Com. A.P.No.129/2024, holding: (i) that the Arbitrator's adverse inference regarding *locus standi* was grounded in the appreciation of evidence, including admissions in cross-examination, and did not warrant interference under the limited scope of Section 34 of the A&C Act; and (ii) that the Arbitrator's interpretation of Clause 9, read conjointly with Clauses 3 and 15, was a plausible view that a court exercising jurisdiction

under Section 34 of the A&C Act could not substitute for another interpretation, even if such other interpretation were possible.

18. Being aggrieved by the said order dated 28.07.2025, the appellant has preferred the present appeal.

SUBMISSIONS

19. The learned counsel appearing for the appellant contended that the impugned award is vitiated by patent illegality as it disregards the express terms of the contract. The learned counsel also refers to Clause 9 of the terms and conditions of the e-auction and submitted that it expressly provided that in the event the entire quantity is not lifted, the advance amount equal to the value of the unlifted quantity would be refunded to the buyer, and the security deposit would be forfeited. He submitted that, therefore, the advance consideration paid by the appellant could not be forfeited on account of failure to lift a part of the quantities.

20. Insofar as the appellant's *locus standi* is concerned, he contended that the decision of the Arbitral Tribunal is perverse as there is no dispute that appellant was the auction purchaser and had deposited the money with the MC. Thus, the appellant's *locus* to seek a refund of the part of the consideration paid for the quantity

of iron ore that was not lifted could not be questioned. He also submitted that the onus to establish that the appellant did not have any locus, as it had transferred its right to seek a refund of the amount to another company, lay with MC. However, there was no evidence to show that the appellant had transferred or assigned its right to seek a refund to any other entity.

21. The learned counsel for the appellant also contended that the remaining quantity of iron ore was of little value as it was not ore but mud. The appellant could neither use it in its beneficiation plant nor sell it. He submitted that the Fe content was below the specified threshold required for use of the beneficiation plant, and, at the material time, further sale of iron ore was prohibited. The Supreme Court had permitted the sale of ore only for captive units; therefore, the appellant could not resell the iron ore.

22. The learned counsel appearing for MC countered the said submissions. He submitted that the scope of examination under Sections 34 and 37 of the A&C Act is limited. He submitted that the Arbitral Tribunal's view under the impugned award is a plausible view and therefore could not be interfered with under Sections 34 or 37 of the A&C Act. He also referred to decisions of the Supreme

Court in **Punjab State Civil Supplies Corporation Limited and another v. Sanman Rice Mills and others**¹ and **Jan De Nul Dredging India Private Limited v. Tuticorin Port Trust**² in support of his contention.

23. He referred to the Memorandum of Association [**MoA**] of M/s Rai Bahadur Seth Shreeram Narasingdas Pvt. Ltd. and submitted that the said company had been incorporated to take over the assets of the appellant, and therefore, it has to be assumed that the appellant had assigned its rights in respect of the subject claim to the said company. He submitted that since the appellant had not produced the Asset Transfer Agreement, the Arbitral Tribunal's decision to take an adverse view could not be interfered with. He also contended that the terms of the e-auction were clear and that the appellant had purchased the entire quantity as a single lot. Thus, it was not open to the appellant to take delivery of part of the lot with a high Fe content and leave the remaining quantity of lower Fe value. He submitted that the Arbitral Tribunal had correctly interpreted the terms and conditions of the e-auction and thus, the present appeal is liable to be dismissed.

¹ (2025) 13 SCC 789

² (2026) 3 SCC 186

REASONS AND CONCLUSIONS

24. At the outset, it is relevant to state that there is no cavil that the scope of examination under Sections 34 and 37 of the A&C Act is limited to examining whether an arbitral award is vitiated by patent illegality or is liable to be set aside on other grounds as set out under Section 34 of the A&C Act. In the present case, the appellant's contention that the impugned award is liable to be set aside essentially rests on the contention that it is vitiated by patent illegality.

25. In **Punjab State Civil Supplies Corporation Limited and another** (*supra*), the Supreme Court had referred to earlier decisions including **MMTC Limited v. Vedanta Limited**³, wherein the court had observed that " 'patent illegality' itself has been held to mean contravention of the substantive law of India, contravention of 1996 Act and contravention of the terms of the contract".

26. We may also note that in **Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited**⁴, the Supreme Court had read the ground of patent illegality restrictively and held that patent illegality as contemplated under Section 34

³ (2019) 4 SCC 163

⁴ (2022) 1 SCC 131

(2A) of the A&C Act is one that strikes at the root of the matter and an erroneous application would not be a sufficient ground to set aside the arbitral award.

27. In **Jan De Nul Dredging India Private Limited** (*supra*), the Supreme Court further observed at para 36 that the scope of interference of the court with arbitral matters is virtually restricted and an arbitral award cannot be interfered with unless "it is contrary to the substantive provision of law or any provision of the Act or the terms of the Agreement".

28. Bearing the aforesaid in mind, we may now examine the question whether the impugned award is liable to be set aside as vitiated by patent illegality.

29. As noted above, the impugned award is founded on two findings. First, that the appellant did not have any *locus standi* to raise a claim, and second, that clause 9 of the terms and conditions was inapplicable in cases where the bidder refuses to lift the balance material.

RE: LOCUS STANDI

30. The appellant is a partnership firm. It participated in the e- auction and deposited ₹26,61,00,000/- (Rupees Twenty Six Crores and Sixty One Lac only). The said amount comprised' 20 crores for 1,00,000 metric tonnes of sub- grade iron ore at the rate of ₹2,000/- per metric tonne, with the remaining amount on account of royalty, taxes, etc. The appellant lifted 47,441.20 metric tonnes of sub- grade ore and claimed a refund of ₹13,98,58,967/-, being the cost of 52,558.80 metric tonnes of sub-grade ore which was not lifted. Since the appellant is the auction purchaser and had deposited the advance amount, there could be no issue as to its locus standi to maintain the claim, unless it was established that the appellant had alienated its interest. The issue regarding the appellant's locus arose because it was contended on behalf of MC that the appellant had transferred all its rights and liabilities to a private limited company named M/s Rai Bahadur Seth Shreeram Narasingdas Pvt. Ltd. The letterhead of the said company had been used in some of the communications, including in regard to the request for appointment of the arbitrator. MC also referred to an ICRA report dated 24.01.2017 (Exhibit CW- 1/R 1), which mentioned that the appellant had been set up as a partnership firm

in 1951 and that its corporate status was changed to a private limited company with effect from 09.04.2015. MC also produced the MoA of M/s. Rai Bahadur Seth Shreeram Narasingdas Pvt. Ltd (Exhibit RW 1), which indicates that one of the objects of the company was to take over the assets and liabilities of the firm. However, concededly, MC did not produce any material to establish that the appellant had transferred or assigned the subject claim to the said company. The witness examined on behalf of the appellant (CW-1) was cross-examined in this regard. He acknowledged that some of the firm's assets had been transferred to a private company. However, unequivocally stated that the firm continued to subsist. He also confirmed that the mining lease and the beneficiation plant had been transferred by the firm to the said company.

31. The Arbitral Tribunal, *inter alia*, had noted the responses of cross-examination of CW-1. Paragraphs 38 and 39 of the impugned award, which set out the responses of CW-1 are reproduced below:

"38. The respondent also relies upon the answer to question no. 5 in the cross-examination of CW-1 which reads as follows:

"Q.5 Please see the ICRA dated 24th January, 2017 which states that the corporate status of the firm

was changed to a private limited company with effect from April 9 2005 (the said document is produced today and the witness is confronted with the same)?

Ans. Some of the assets of the partnership has been converted into a private limited company. However, the partnership still subsist. The ICRA report dated 24.01.2017 is exhibit CW-1/R1."

The witness of the claimant admitted that some of the assets of the partnership firm were converted to Private Limited Company.

39. Question Nos. 85 to 87 and their answers are also relevant which read as follows:

"Q. 85. I put it to you that 17.09.2012 is the memorandum of association of Rai Bahadur Seth Shreeram Narasingha Das Put Limited?

Ans. It is correct. The Memorandum is exhibit RW 1/X.

Q. 86. Is it correct the mining lease and the beneficiation plant has been transferred by the firm to the company?

Ans. Some of the part of the beneficiation plant has been transferred by the firm to the company.

Q. 87. What business is the firm carrying on now after the transfer?

Ans. I have no idea now."

32. The Arbitral Tribunal drew an adverse inference against the appellant, as the letter invoking arbitration was sent on the letterhead of the company, M/s Rai Bahadur Seth Shreeram Narasingdas Pvt. Ltd. and was signed on behalf of the company. In this regard, the Arbitral Tribunal observed as under:

"This leaves no manner of doubt that the arbitration clause was invoked by the company. It could have done so only if all the assets and liabilities of the beneficiation plant have been transferred to it."

33. Having concluded that the beneficiation plant had been transferred, the Arbitral Tribunal held as under:

"45. An adverse inference has to be drawn against the claimant that it has transferred the entire beneficiation plant to the claimant. Therefore, even if the claimant partnership firm still exists, it has no right to file the present proceedings. Merely because it exists or continues to have some loans and facilities is not sufficient to show that the beneficiation plants still belong to the firm. It may have other business but we are concerned mainly with the beneficiation plant.

46. In the Apex Court order, it is clearly laid down that only the Steel Industries and Beneficiation Plants can take part in the auction. Therefore, the right to claim refund, if any, will be of the entity which owns the beneficiation plant. CW-1 admitted that a part of the business of the beneficiation plant had been transferred to the private company. The witness could not give details of what

was transferred. The document of transfer executed between the partnership firm and the private company has been withheld from this Arbitral Tribunal. In view of the above and especially the fact that the claimant has withheld the most relevant documents, I hold that beneficiation plant is no longer owned by the partnership firm. Therefore, the claim is not maintainable."

34. There is no dispute that the appellant had transferred its beneficiation plant to M/s. Rai Bahadur Seth Shreeram Narasingdas Pvt. Ltd. In his cross-examination, CW-1, in response to question No. 86, clearly stated that the firm had transferred the beneficiation plant to the company. The Memorandum of Association of M/s. Rai Bahadur Seth Shreeram Narasingdas Pvt. Ltd. also indicated that it was formed with the principal object of taking over certain assets. However, as noted above, there is no material on record to show that the right to recover the advance amount had been transferred to the said company. It is also material to note that on the strength of the ICRA report, MC argued that the firm had been converted into a company. Thus, the control and management of the company were in the same hands as those of the appellant firm.

35. It is important to note that there was no averment made by MC in its statement of objections to the effect that the appellant had transferred all its assets and liabilities and thus had no right to

recover any amount. The question of whether the appellant had transferred all its assets and liabilities to another entity was not an issue that arose from the pleadings of the parties.

36. The only objection raised by MC in its statement of objection was that the statement of claim was not maintainable as the letter dated 11.04.2016 was addressed by a different entity. The averment made in this regard is reproduced below:

"It is further stated that the letter dated 11th April, 2016 (Annexure 23 to the Statement of Claim) is addressed by a different entity and therefore it is submitted that this Statement of Claim is not maintainable on this ground alone."

37. The appellant had controverted the said averment in the rejoinder and had averred as under:

"That the Claimant reiterates the statement made in Para 1 of the Statement of Claim and denial of the same at Para 17 of the Statement of Objection is totally incorrect and without any basis. That the Claimant is the firm and firm participated in the Tender and Firm purchase the iron ore mineral and therefore the claim is made by the firm before this Hon'ble Tribunal."

38. It is not MC's case in its pleading that the appellant had transferred all its assets and liabilities to the company, which required the appellant to controvert that assertion. In this view, no

adverse inference could be drawn against the appellant from withholding the agreement for not producing the documents showing the transfer of assets.

39. MC's objection in its statement of objections was to the effect that the arbitration was not invoked by the appellant firm but by a company, and thus the appellant could not maintain any claim. The Arbitral Tribunal has not rejected the appellant's claims on the ground that the appellant had not invoked the arbitration; the Arbitral Tribunal rejected the appellant's claims on the ground that it had no locus to raise such claims. MC had not raised any such ground in its pleadings.

40. There is no dispute that the appellant had transferred its mine and the beneficiation plant. It is solely on the basis that the Arbitral Tribunal concluded that the appellant had no right to claim the refund, as is apparent from paragraphs 45 and 46 of the impugned award. As noted above, the Arbitral Tribunal drew an adverse inference against the appellant. The Arbitral Tribunal reasoned that since the appellant had transferred the beneficiation plant, the right to claim a refund, if any, would be of the entity which owns the beneficiation plant. The Arbitral Tribunal further held that since only

steel industries and beneficiation plants can participate in the auction, the right to make a claim would be available only to the entity owning such steel plant(s) or beneficiation plant(s).

41. There is no dispute that the appellant owned the beneficiation plant on the date of the auction. There is no dispute that the appellant – and not the company – participated in the auction and deposited the funds. There is also no allegation that the appellant was ineligible to participate in the auction on account of not owning a beneficiation plant. MC does not dispute that the appellant was eligible to, and did participate in the auction or that the appellant's claim was for a refund of the money it had deposited. There is no basis for the assumption that such a claim could only be made if the appellant continued to hold the beneficiation plant. The beneficiation plant was an asset of the appellant-firm, and it was admittedly transferred to another entity. However, the locus of the appellant to make the claim is not based on its ownership of the beneficiation plant. The appellant's claim is merely for a refund of its deposit. Its claim is for a *chose in action* and the conclusion that the appellant has no locus to make such a claim because it has sold or assigned one of its real assets, a beneficiation plant, is without any basis. It

would be equally erroneous to hold that only the entity holding the beneficiation plant could claim such a refund.

42. The Supreme Court had restricted the sale of ore for captive use only. Thus, an entity that does not operate a steel plant or a beneficiation plant would not be eligible to participate in the e-auction. But there is no principle that requires it to continue operating the plant to make a monetary claim. There is no basis to assume that the sale or transfer of the plant would denude the entity of its locus to make a monetary claim.

43. In our view, the Arbitral Tribunal's conclusion that the appellant had no locus to maintain the claim because it had transferred the beneficiation plant is erroneous and vitiates the impugned award.

RE: TERMS AND CONDITIONS OF THE AUCTION

44. The principal dispute on the merits is whether the appellant is entitled to recover the value of unlifted iron ore under the terms and conditions of the e-auction. It is MC's case that the entire lot had been auctioned as a single lot on an "as is where is" basis. Thus, it was not open for the appellant to selectively take delivery of a part of the lot with a higher Fe content and leave the balance.

45. There is no dispute that the lot was auctioned on "as is where is" basis. The relevant extract of the auction notice as set out in the impugned award is reproduced below:

"Qty 100000 (+/-10%) MT. type of ore Sub Grade ROM, Bidding Basis concerned stack pile (1R/SG) (Mixed with Oversized Boulders). Bidder may use rock breaker while loading, in the presence of DMG officials). M/s SMIORE ML. NO. 2580 Auction for entire lot is on- as is where is basis- (AIWI) EMD of Rs. 15,00,000/- is required to be deposited."

46. As noted above, it is the appellant's contention that it had lifted 47,441.20 metric tonnes of sub-grade ore. However, it was found that the Fe content in the remaining quantity was less than 45% and thus, it did not qualify as an iron ore. According to the appellant, the remaining quantity was just mud. MC argued that the entire lot was a homogeneous lot and the average Fe content was higher than 41%. It is pointed out that the same is also established from the tabular statement as set out in the impugned award. The said statement indicates the Fe content of the quantity lifted by the appellant and the Fe quantity of the remaining material based on the analysis report furnished by the appellant. The said tabular statement as set out in the impugned award is reproduced below:

Material lifted/ Remaining (M*T*S)	Fe Content (%)	Total Fe Content
Lifted 47,441.2	57.30%	2719329.59
(Remaining) 52,558.80	41.43%	21775111.084
Total	48.96%	4896840.674

47. The Arbitral Tribunal accepted MC's contention that the entire lot was a homogeneous lot and it was sold on "as is where is" basis. Thus, the appellant could not selectively lift quantities with higher Fe content and leave the balance. The Arbitral Tribunal's view in this regard cannot be faulted. It may not be open for the appellant to reject the balance quantity of 52,558.80 metric tonnes as the terms and conditions of the e-auction were unambiguous in this regard. The appellant submitted a bid for the entire quantity as a singular lot on an "as is where is" basis.

48. The principal question to be addressed was whether, under the terms and conditions of the auction, the appellant was entitled to the value of the remaining quantity if it did not lift the entire quantity of iron ore as auctioned. In this regard, it is relevant to refer to the auction's terms and conditions, which are central to the dispute. Clauses 1, 3, 8, 9 and 15 of the tender conditions are relevant and are set out below:

"1. Product & Indicative Specifications:

Specifications of iron ore mentioned in the e-auction schedule are only Indicative. The Iron ore is offered on "As is Where is and no complaint basis". Therefore firms may satisfy themselves about the quality specifications of the product (Chemical and Physical) and acquaint themselves with other operational aspects relating to logistics etc, (without in any manner causing any hindrance to the operations of MONITORING COMMITTEE) before bidding. If bidder wishes they can collect reasonable quantity of representative samples from a designated place in consultation with Monitoring Committee. Monitoring Committee will not have any binding on the results so obtained from the samples collected. However for the purpose of collecting of samples, the In-charge officer of the mine/stock can be contacted and the same can be collected in his presence.

"In case of supplies with Fe content less than the Indicative specifications mentioned above, there shall not be any claim from the successful bidder."

"Any dispute by any Lessee/Stock Yard Holder regarding the Fe Grade/Floor Price etc., should be given in writing to the DMG/Moncom Convenor within 3 working days after successful completion of the e-auction. If on enquiry the objection raised by the Lessee turns out to be frivolous/baseless suitable action including levy of penalty will be considered by the Monitoring Committee".

"If any Lease holder raises objection/dispute within 24 hours of the e-auction, either he himself or his authorized representative should be present on the notified date and time or the third day after the e-auction at 11.00. A.M. for re- analysis. If the 3rd day happens to be a Sunday or General Holiday, re-analysis will be taken up on the following

day at 11.00 A.M. No objection will be accepted with regard to the procedure of evaluating the Fe grade".

**

**

**

3. Contract period: The periods of contract for various quantities of materials are as given below. The period is reckoned from the date of Acceptance letter Issued by the MONITORING COMMITTEE.

QUANTITY OF IRON ORE BOOKED	PERIOD OF CONTRACT
UPTO 20000 WMT	20 CALENDAR DAYS
Above 20000 WMT	ADDITIONAL 5(FIVE) CALENDAR DAYS FOR EVERY 4000 WMT SUBJECT TO MAXIMUM PERIOD OF CONTRACT THAT IS 60 DAYS

The successful bidders have to lift the allocated quantity under this contract within the contractual period as mentioned above. Time is the essence of the contract. The time period given is firm and fixed. Any extension of time may be granted in exceptional circumstances at the sole discretion of the MONITORING COMMITTEE. This contract does not in any way grant the successful bidder any right to claim extension of time. The bidder shall acquaint him with the local conditions and shall not complain on any issue later.

**

**

**

8. Security Deposit (SD): On issuance of Acceptance Letter by the Monitoring Committee, the EMD amounts, corresponding to the Nos, of lots allotted, paid by the successful bidder, will be automatically converted Into Security

Deposit. The security deposit will not carry any Interest.

The Security deposit will be returned only after satisfactory performance of contract of sale upon written request from the successful bidder. In case, MONITORING COMMITTEE is held liable to pay, any claims to outside agencies due to lack of diligence, skill or care in the performance of duties of the successful bidder, such claims will be recovered from the security deposit. If the amount of such claims exceeds the SD amount, the differential amount shall also be paid by the successful bidder.

The Security deposit will be forfeited in case successful bidder fails to comply with all or any of the Terms & conditions regarding the online auction or to lift allocated quantity within the contract period.

9. PAYMENT: Full payment shall be made for the entire allotted quantity in advance in the form of Demand Draft within 21 (Twenty one) days from the date of issuance of acceptance letter. IN CASE OF NMDC, DONIMALAI MATERIALS, THE PAYMENTS SHALL BE MADE WITHIN 7 (SEVEN) DAYS FROM THE DATE OF ISSUANCE OF THE ACCEPTANCE LETTER. The advance amount shall include the bid value, royalty, sales tax, forest development tax (wherever applicable) and any other statutory duties, levies and taxes etc. In addition to the above, the Party has to deposit in cash @ Rs.200/- per tonne to meet the variance in royalty, or other taxes, which may arise in future.

All payments are to be, made in the form of Demand Draft: in favor of "MONITORING COMMITTEE" drawn on a Scheduled Commercial / Nationalized bank payable at Bangalore. Bank charges if applicable shall be borne by the successful bidder.

Failure to deposit above/any payments within the stipulated period as per acceptance letter may result in termination of contract without any notice to the successful bidder and forfeiture of SD. All such payments would be non interest bearing and advance amount would be adjusted against the material value dispatched from time to time.

In the eventuality of buyers falling to lift entire quantity within the contract period, the advance amount equal to the value of the unlifted quantity will be refunded to the buyer and the security deposit will be forfeited.

**

**

**

15. Right to Terminate: If the successful bidder falls to perform the contract as per terms and conditions as stipulated in our acceptance letter, MONITORING COMMITTEE reserves the right to terminate the contract with immediate effect and forfeit the Security deposit. Consequential losses and additional expenditure If any incurred by MONITORING COMMITTEE to carry on operations or for making alternative arrangement for the balance-period of agreement would be to the account of the successful bidder. MONITORING COMMITTEE shall have the right to recover the losses / expenditures from the security deposit of the firm to the extent possible. The successful bidder shall also replenish the amount paid if any, in addition to the amount recovered from the security deposit. In the event of irregularities/illegalities or violation of any acts or rules by the successful bidder the Monitoring Committee shall have unilateral right to terminate the contract without any prior notice to the bidder.

49. It is clear from the above that the auction of the ore was on a “no complaint basis” and thus the appellant could not make any complaint regarding the quality of the ore. Therefore, the appellant's complaint regarding the Fe content of the auctioned lot is unsustainable.

50. Clause 3 of the terms and conditions defines the term 'Contract Period'. It is 20 calendar days for Iron ore booked for up to 20,000 metric tonnes and an additional 5 calendar days for every 4,000 metric tonnes, subject to a maximum period of the contract of 60 days.

51. The successful bidder was obliged to lift the allocated quantity within the ‘contract period’. The contractor was to further apprise himself of the local conditions and was precluded from making any complaint in that regard.

52. Under clause 8 of the tender conditions, the bidder was required to submit an EMD, which would be converted into an interest-free security deposit. The security deposit would be returned only on the satisfactory performance of the contract.

53. Clause 9 of the terms and conditions expressly provides that if the buyers fail to lift the entire quantity within the contract period, the

advance amount equal to the value of the unlifted quantity would be refunded, and the security deposit would be forfeited.

54. In terms of clause 15 of the terms and conditions, MC reserves the right to terminate the contract and forfeit the security deposit if the bidder fails to perform the contract according to the terms and conditions as stipulated in the acceptance letter.

55. There is no ambiguity in the terms and conditions of the tender conditions. In the event, the bidder fails to perform its obligations in terms of the acceptance letter, MC could terminate the contract and forfeit the security deposit. It could also recover the consequential losses and any additional expenditure incurred by it in carrying on operations or in making an alternative arrangement for the balance period of the arrangement. Thus, the liability of a bidder who fails to perform its contract was limited to a) forfeiture of the security deposit and b) any loss, damage or costs incurred by MC as a consequence of the said breach.

56. In conformity with the said scheme, clause 9 of the terms and conditions provided that if the buyer failed to lift the entire quantity, it would be entitled to an amount equal to the value of the unlifted quantity. There is no ambiguity in the language of the terms and

conditions. However, the Arbitral Tribunal found that clause 9 of the terms is inapplicable on the ground that it would not make any commercial sense if a bidder decided not to lift the material and also claim the value of the unlifted material.

57. Paragraph 71 of the impugned award, which sets out the said reasoning is reproduced below:

"71. Though on first blush, clause 9 supports the case of the claimant but on a conjoint reading of all the clauses of the contract, I am clearly of the view that the only reasonable and commercial interpretation which can be given is that if the contract is terminated by the Monitoring Committee for any reason whatsoever then the claimant (bidder) will have the right to get the value of the unlifted material. However, in case, the bidder refuses to lift the balance material then clause 9 will not be applicable. The documents would make no commercial sense if a party can decide not to lift the material and also claim that it must get the value of the unlifted material."

58. The said view runs contrary to the unambiguous language of clause 9 as well as the entire scheme of the terms and conditions of e-auction. MC had specified the contract period, and the bidder was given a limited window of time to lift the quantity of iron ore; if it failed to lift the same, it would suffer the consequences. The consequences being i) the security deposit would be forfeited; and

ii) that the MC could terminate the contract and also recover the loss suffered by it as well as the costs incurred.

59. It would be contrary to the law of damages if, in such circumstances, the non-defaulting party is entitled to (i) retain the consideration for the quantity that is not lifted; (ii) forfeit the security deposit, the purpose of which was to secure MC for due performance of the contract; and (iii) claim any damages suffered by it. In case of a breach of a contract, under Sections 73 and 74 of the Indian Contract Act 1872, the non-defaulting party can recover reasonable damages. In this case, the terms and conditions expressly provide for the same. MC is entitled to forfeit the EMD and also recover any damages that it has suffered on account of failure on the part of the bidder to perform its obligations. There is no ground, whatsoever to hold that the express terms of the auction do not make commercial sense; thus necessitating the Arbitral Tribunal to redraft it.

60. The learned counsel for MC submitted that, in the present case, clause 9 of the terms and conditions would not make commercial sense, as the entire quantity of 1,00,000 metric tonnes was auctioned as a single lot. He submitted that the appellant could

not pick and choose the quantity which has a higher Fe content and leave the remaining balance and claim a proportionate refund. This would make the auction unworkable. However, we find no substance in this contention. This proceeds on an erroneous premise that clause 9 of the terms and conditions requires MC to refund the consideration in proportion of the quantity that remained to be lifted. The language of clause 9 is unambiguous. It does not require that the advance amount, in proportion to the unlifted quantity, be refunded; it clearly provides that the advance amount equal to “the value” of the unlifted quantity would be refunded. Thus, MC is required to ascertain the value of the un-lifted quantity and refund that amount.

61. The Arbitral Tribunal's interpretation of clause 9 runs contrary to its plain language. A plain reading of the clause does not lead to any absurdity that would require it to be construed as anything other than what it reads. Thus, the Arbitral Tribunal's conclusion is clearly contrary to the plain language of the contract. Consequentially, our conclusion to the aforesaid effect warrants the setting aside of the impugned award on the ground of patent illegality.

62. In view of the above, the present appeal is allowed, and the impugned award and the impugned order are accordingly set aside.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**

KPS