

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

**RESERVED ON: 17.11.2025
DELIVERED ON: 12.12.2025**

**PRESENT:
HON'BLE JUSTICE GAURANG KANTH**

**AP-COM 183 OF 2024
IA NO: GA 2 OF 2023**

**HINDUSTAN CABLES LIMITED
VS
M/S. JOY MAA SANTOSHI SAW MILL**

Appearance:

***Mr. Tilak Kr. Bose, Sr. Adv.
Mr. Pranit Bag, Bar-at-Law.
Mr. Debabrata Das, Adv.
Mr. Rohit Mukherji, Adv.
Mr. Tirthankar Nandi, Adv.
Mr. A. Das, Adv.***

..... For the petitioner

***Mr. Swatarup Banerjee, Adv.
Mr. Pratip Mukherjee, Adv.
Mr. Abhishek Baran Das, Adv.
Mr. Sariful Haque, Adv.***

..... For the respondent

JUDGMENT

Gaurang Kanth, J.:-

- 1.** The present petition under Section 34 of the Arbitration and Conciliation Act, 1996, has been filed by the Petitioner assailing the Arbitral Award dated 28.01.2020 passed by the learned Sole Arbitrator, Mr. Justice Prabhat Kumar Dey (Retd.), in the arbitral proceedings between M/s. Joy Maa Sanoshi Saw Mill and Hindustan Cables Ltd.
- 2.** The relevant facts, in brief, are as follows:

3. The Petitioner is a public limited company engaged in the manufacture and supply of cable wires across the country and, at the relevant time, had manufacturing units at Rupanarayanpur, West Bengal, and Hyderabad.
4. The dispute arises out of various purchase orders issued by the Petitioner pursuant to Tenders bearing Nos. CC-10/2000, CC-19/2001 and CC-19/2002 for procurement of wooden cable drums required for the Petitioner's Rupanarayanpur Unit. The Respondent participated in the said tenders and was declared successful, whereafter multiple purchase orders were issued to it for supply of wooden cable drums.
5. As per the Petitioner, each purchase order constituted a separate agreement. It was stipulation under each purchase order that, in the event of rejection of the supplied goods, the Respondent would be liable to replace the rejected materials at its own cost within 15 days of intimation, failing which ground rent would be levied.
6. The Petitioner asserts that several consignments supplied by the Respondent were defective and were accordingly rejected upon inspection. The Respondent, on the other hand, contends that the supplies were made in accordance with the respective purchase orders and that it was the Petitioner who failed to release payments in time.
7. The last business transaction between the parties took place in December 2003. Owing to disputes regarding supply and payment, the Respondent, by letter dated 26.09.2013, invoked the arbitration clause contained in the General Terms and Conditions of the tender. Initially, the Petitioner appointed departmental officials as Sole Arbitrators; however, they were unable to continue with the proceedings. Consequently, by order dated

20.07.2017, this Court appointed Mr. Justice Prabhat Kumar Dey (Retd.) as the Sole Arbitrator.

8. The parties thereafter filed their respective claims, replies, and rejoinders. Evidence was led, and the arbitral proceedings were concluded. During the pendency of the proceedings, this Court, by order dated 23.09.2019, extended the mandate of the Tribunal till 31.01.2020. The learned Arbitrator published the Award on 28.01.2020.
9. Aggrieved thereby, the Petitioner has filed the present petition under Section 34 of the Act.

Submission on Behalf of the Petitioner

10. Learned Counsel for the Petitioner submits that the impugned Award is contrary to the fundamental policy of Indian law and is in conflict with basic notions of morality and justice. It is urged that the Award is based on surmises and conjectures, is devoid of cogent reasons, and completely disregards the documentary evidence placed on record by the parties. Reliance is placed on the decisions in ***I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.***, reported as **(2022) 3 SCC 121**, ***Steel Authority of India Limited Vs TLT Engineering India Pvt Ltd*** in FMA 406/2020, ***Ssangyong Engineering & Construction Co Ltd Vs NHAI*** reported as **2019 (15) SCC 131**, wherein it was held that an arbitral award which fails to provide intelligible and adequate reasons or ignores vital evidence amounts to perversity and falls within the scope of “patent illegality” under Section 34. Learned Counsel submits that the present Award suffers from these very infirmities.

- 11.** Learned Counsel further submits that the learned Sole Arbitrator failed to adjudicate the issue of limitation, although the same was specifically raised during the arbitral proceedings. The last transaction between the parties admittedly took place on 09.12.2003 and the corresponding bill was raised on 06.01.2004. However, arbitration was invoked only on 26.09.2013, after an inordinate delay of nearly ten years. It is thus contended that the claims were ex facie barred by limitation. Learned Counsel places reliance on ***State of West Bengal v. BBM Enterprise***, reported as **2023 SCC OnLine Cal 2134** wherein this court held that failure of an arbitrator to adjudicate a foundational issue such as limitation renders the award vulnerable to challenge under Section 34. Despite this, no finding has been recorded on the limitation objection raised by the Petitioner.
- 12.** It is next submitted that several contemporaneous letters placed on record by the Petitioner established that the goods supplied by the Respondent were defective. However, the learned Sole Arbitrator failed to consider or even discuss these documents, thereby overlooking a vital issue which went to the root of the dispute. This omission, according to the Petitioner, vitiates the Award as it demonstrates complete non-application of mind.
- 13.** Learned Counsel submits that the Sole Arbitrator erroneously assumed that the Petitioner was liable to make payment within 15 days from the date of supply, without examining the Petitioner's specific contention that no such payment obligation arose in cases where the goods were found to be defective. It is submitted that instead of relying on the evidence on record, the Arbitrator proceeded on his "firm belief," rendering the finding unsustainable in law.

- 14.** It is further submitted that the learned Sole Arbitrator awarded a sum of Rs. 21,14,519/- towards alleged pending bills, despite the Respondent having failed to establish its entitlement to that amount. The Petitioner relied upon a reconciled Statement of Accounts acknowledging only Rs. 15,27,936.34/- as payable towards goods supplied, and Rs. 40,000/- towards security deposit as on 31.03.2010. It is contended that the learned Arbitrator completely disregarded these admitted figures and failed to assign any reasons for doing so.
- 15.** Learned Counsel submits that the finding regarding Claims (ii) to (v), under which the Arbitrator awarded Rs. 12,00,000/- towards alleged idle labour, wastage of raw materials, office expenses, and additional expenses for plant and machinery, are wholly arbitrary and unsupported by evidence. The Petitioner emphasizes that even the Arbitrator himself recorded that he was unable to ascertain whether any labourers were engaged or whether tools or machinery were deployed at the work site. In spite of such express doubt and absence of proof, the Arbitrator proceeded to award Rs. 12,00,000/- out of the claimed amount of Rs. 41,40,420/-. It is submitted that this exemplifies an arbitrary exercise of discretion, thereby rendering the Award patently illegal.
- 16.** The Respondent had also claimed Rs. 4,93,387/- on account of alleged blocked capital. It is contended that no evidence whatsoever was adduced in support of this claim; nevertheless, the Arbitrator awarded Rs. 2,00,000/-, being approximately 50% of the claim, without assigning any rationale or reasoning. Such an approach, according to the Petitioner, is inconsistent with settled principles governing the award of damages.

- 17.** The Petitioner has additionally assailed the rate of interest awarded by the learned Sole Arbitrator, as well as the award of Rs. 2,00,000/- towards litigation costs, both of which are stated to have been awarded without any basis or justification.
- 18.** In view of the above submissions, Learned Counsel for the Petitioner contends that the Award is perverse, patently illegal, and contrary to the public policy of India. It is urged that the findings recorded are unsupported by evidence, fundamental issues such as limitation have been ignored, and vital documents have not been considered. Hence, the impugned Award deserves to be set aside.

Submission on behalf of the Respondent

- 19.** Learned Counsel for the Respondent, per contra, supports the impugned Award and submits that the scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996, is narrow, restrictive, and strictly circumscribed by statute. Placing reliance on the settled jurisprudence, it is contended that this Court does not act as a Court of appeal over the findings of the learned Sole Arbitrator nor can it substitute its own view merely because a different interpretation of the evidence may also be possible.
- 20.** Learned Counsel further places reliance upon the judgment of the Hon'ble Supreme Court in ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.***, reported as **(2019) 20 SCC 1**, wherein the Supreme Court held that Courts must adopt a hands-off approach while examining arbitral awards and must refrain from a hyper-technical or overly pedantic scrutiny of the reasoning. It was emphasised that an award must be read as a whole in a fair and reasonable manner, and that minor ambiguities or imperfect

reasoning cannot justify interference so long as the Arbitrator's view is a plausible one based on the material available on record.

- 21.** To fortify the above submission, Learned Counsel places particular reliance on the recent decision of the Hon'ble Supreme Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***, reported as **(2025) 7 SCC 1**, wherein the Court reiterated that Section 34 is not intended to function as a de facto appellate mechanism. The Hon'ble Supreme Court held that the arbitral process accords primacy to party autonomy and finality of findings, and the Court cannot re-appreciate evidence, re-assess factual conclusions, or interfere merely on the ground that an alternative view is conceivable. Interference is warranted only when the award is vitiated by perversity, patent illegality, jurisdictional error, or a violation of the fundamental policy of Indian law.
- 22.** Learned Counsel submits that the Petitioner is effectively seeking a re-evaluation of evidence and re-examination of factual findings, which is impermissible within the narrow confines of a proceeding under Section 34 of the Arbitration and Conciliation Act. It is emphasized that the learned sole Arbitrator has duly considered the pleadings, scrutinized the documents on record, and assessed the evidence led by both parties before rendering detailed findings. It is argued that the Award is neither perverse nor unsupported by the materials on record. The Petitioner has failed to demonstrate any patent illegality, perversity or irrationality of such a nature that no reasonable person could have arrived at the conclusions reached by the learned sole Arbitrator.
- 23.** In these circumstances, it is submitted that the present challenge is a thinly veiled attempt to secure a re-trial under the guise of a Section 34

petition, which is wholly outside the jurisdiction of this Court. Accordingly, as no grounds for interference are made out, and the petition deserves to be dismissed.

Legal Analysis

24. This Court has heard the arguments advanced by the learned Counsel for the parties and has carefully examined the pleadings, contemporaneous correspondence, documentary evidence placed on record, and the impugned Award.
25. Upon such examination, this Court is satisfied that the Award suffers from a series of grave infirmities, both procedural and substantive, which cumulatively render it unsustainable in law. The deficiencies identified go beyond mere erroneous appreciation of evidence and fall squarely within the categories of patent illegality, perversity, and violation of fundamental policy of Indian law as contemplated under Section 34 of the Arbitration and Conciliation Act, 1996.

Failure to decide the foundational issue of Limitation

26. The Respondent invoked arbitration only on 26.09.2013. The Petitioner's case is that the last transaction between the parties took place in December 2003, and the corresponding invoice was raised in January 2004. Thus, on the date of invocation, the claim was ex-facie barred by limitation. The Sole Arbitrator framed Issue No. 1, *"Is the arbitration proceeding initiated by the Claimant maintainable in law as well as in fact?"*, but despite acknowledging that limitation is a "mixed question of law and fact," he conducted no inquiry into the factual matrix, nor did he examine the statutory scheme under the Limitation Act, 1963.

27. A bare reading of the Award shows that the Arbitrator did not analyse the dates of invoices, payments, acknowledgments (if any), or whether any continuing cause of action existed. The issue of limitation, despite being jurisdictional in nature, remained wholly undecided. Such non-decision of a jurisdictional objection violates Sections 16 and 31(3) of the Arbitration and Conciliation Act, 1996. More recently, in ***Gayatri Balasamy*** (*supra*), the Hon'ble Supreme Court reiterated that failure to adjudicate a jurisdictional objection renders the Award patently illegal and liable to be set aside. This foundational defect, therefore, vitiates the entire arbitral proceedings.

Findings unsupported by Evidence and Contrary to the Record (Claim No. 1)

- 28.** As regards Claim No. 1, the Respondent alleged that a sum of Rs. 21,14,519/- remained unpaid towards the supply of cable drums. To substantiate its stand, the Respondent produced a statement of bills allegedly raised amounting to Rs. 49,27,197/-, against which it was asserted that Rs. 28,12,678/- had been paid.
- 29.** The Petitioner, however, consistently asserted that several goods supplied were defective and had been rejected, and produced multiple letters recording such defects. The Petitioner also relied upon a reconciled Statement of Accounts indicating that, as on 31.03.2010, only Rs. 15,27,936.34/- was payable towards supplies and Rs. 40,000/- towards security deposit.
- 30.** The learned sole Arbitrator neither examined the letters alleging defects, nor evaluated whether the supplies in question had been accepted. He also failed to scrutinize the reconciled accounts. Instead, the arbitrator placed reliance upon an alleged “uncontroverted salary bill,” which does not exist

on record. This finding is factually incorrect and indicative of non-application of mind.

- 31.** An award which records findings contrary to the record and unsupported by evidence is perverse and stands vitiated. In **Dyna Technologies Pvt. Ltd.** (supra), the Hon'ble Supreme Court held that courts may interfere where a Arbitrator's findings suffer from non-application of mind or are unsupported by any evidence. Similarly, in **Ssangyong Engineering & Construction Co. Ltd.** (supra), the Hon'ble Supreme Court held that a finding based on no evidence constitutes patent illegality. The findings under Claim No. 1 thus cannot be sustained.

Award of Damages Based on Assumptions and Subjective Belief (Claim Nos. ii-v)

- 32.** The Respondent raised multiple monetary claims under various heads, including idle labour for the period from 06.01.2004 to 31.10.2006 amounting to Rs.31,79,420/-, wastage of raw materials due to suspension of work amounting to Rs.8,43,000/-, off-site expenses amounting to Rs. 60,000/-, and additional deployment of machinery amounting to Rs. 58,000/-, aggregating to a sum of Rs. 41,40,420/-. These claims were sought to be substantiated through certain third-party documents which were neither authenticated nor proved in accordance with law. Significantly, the Respondent failed to examine any witness to establish the veracity, authorship, or admissibility of these documents. Despite this fundamental evidentiary deficiency, the learned sole Arbitrator failed to address the crucial issue as to whether the Petitioner was contractually or legally liable to compensate the Respondent for any such alleged overheads or incidental expenses.

- 33.** The learned sole Arbitrator expressly acknowledged the absence of evidence, recording that “*I cannot quantify the amount in absence of any evidence,*” and “*I cannot exactly ascertain whether such labourers were employed... or whether the claimant had actually deployed tools and machinery at the work site.*” Despite these observations, the Arbitrator proceeded to award a sum of Rs. 12,00,000/- solely on the basis of a prima facie view that the Respondent “must have been compensated” for the alleged losses incurred during the period when work orders were not issued.
- 34.** The award of damages without proof and based on purely personal belief is legally impermissible. In ***Associate Builders v. DDA***, reported as **(2015) 3 SCC 49**, the Hon’ble Supreme Court held that an award is perverse if findings are based on conjectures or if the Arbitrator ignores evidence. The Judgment in ***Gayatri Balasamy*** (supra) further reiterated that damages must be strictly proved; they cannot be granted on the presumption of the Arbitrator assumes that loss must have occurred. The grant of Rs. 12,00,000/- in the absence of foundational evidence is therefore arbitrary, perverse, and legally unsustainable.

Arbitrary Award of Interest on Blocked Capital

- 35.** The Respondent claimed Rs. 4,93,387/- towards interest on alleged “blocked capital.” No calculation sheet, ledger, financial statement, or record was produced to demonstrate how the amount was computed. Despite the complete absence of any documentary evidence the Arbitrator awarded Rs. 2,00,000/- being 50% of the claimed amount, holding that the claim was “justified to some extent.”

- 36.** The Arbitrator failed to consider the foundational issues that went to the root of the Respondent's claim. The Tribunal did not examine whether the Petitioner was contractually obligated to compensate the Respondent for any alleged loss arising from "capital blockage," nor did it determine what capital was purportedly blocked, the duration of such alleged blockage, or whether the underlying principal amount was payable in the first place. The Tribunal also failed to assess whether the Respondent had, in fact, suffered any financial detriment supported by cogent and admissible evidence.
- 37.** This determination violates Section 31(3) which mandates that an arbitral award shall state the reasons upon which it is based. In ***Som Datt Builders Ltd. v. State of Kerala***, reported as **(2009) 10 SCC 259**, the Hon'ble Supreme Court held that an award rendered without reasons is liable to be set aside. ***Antrix Corporation Ltd. v. Devas***, reported as **(2022) 8 SCC 426**, the Court reiterated that conclusions unsupported by evidence or reasons constitute patent illegality.

Cumulative Effect: Award is Patently Illegal and Contrary to Fundamental Policy of Indian Law

- 38.** The cumulative defects in the impugned award demonstrate that the Arbitrator failed to decide a core jurisdictional issue of limitation, material evidence produced by the Petitioner was ignored, findings were recorded contrary to the record, damages were awarded despite admitted absence of proof, quantification was based on personal assumptions, and the Award lacks the reasoning mandated under Section 31(3). These defects are not mere errors but strike at the root of the arbitral determination. As

explained in **Ssangyong Engineering** (*supra*) and **Associate Builders** (*supra*), an award that is perverse, based on no evidence, or ignores vital evidence is liable to be set aside under Section 34. The Award, therefore, suffers from patent illegality on the face of the record and violates the fundamental policy of Indian law. This Court is, therefore, of the considered view that the impugned Award is unsustainable and liable to be set aside.

Conclusion

39. For the reasons discussed in the foregoing analysis, this Court is satisfied that the impugned Award suffers from serious and incurable infirmities. The learned Sole Arbitrator failed to adjudicate the foundational objection regarding limitation, despite framing a specific issue on maintainability. The findings on the principal monetary claim are unsupported by the evidentiary record and, in fact, proceed on an incorrect assumptions of documents that do not exist on record. The substantial claims for damages were awarded notwithstanding the Arbitrator's own categorical acknowledgment that no evidence had been led to prove those claims. Likewise, the award towards interest on alleged blocked capital was rendered without any basis, computation, or reasoning.
40. The Award, therefore, is vitiated by *patent* illegality, perversity, non-application of mind, *and* absence of reasons, thereby violating the mandate of Section 31(3) of the Arbitration and Conciliation Act, 1996. The cumulative findings also demonstrate that the Award is contrary to the fundamental policy of Indian law, as the Arbitrator substituted legal proof with conjecture and personal assumptions, contrary to the standards laid down in **Associate Builders** (*Supra*), **Ssangyong Engineering** (*Supra*), **Dyna Technologies** (*Supra*), and **Gayatri Balasamy** (*Supra*).

- 41.** This Court is thus left with no alternative but to exercise its jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996. The present Arbitration Petition is allowed. The impugned arbitral Award dated 28.01.2020 passed by the learned Sole Arbitrator, Mr. Justice Prabhat Kumar Dey (Retd.), in the arbitral proceedings between M/s. Joy Maa Sanoshi Saw Mill and Hindustan Cables Ltd is hereby set aside in its entirety.
- 42.** Parties shall be at liberty to have their disputes adjudicated afresh by initiating a new reference in accordance with law, if they so choose.
- 43.** All the pending applications stand disposed of.

(GAURANG KANTH, J.)

Sakil Amed P.A.

