



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2025

Pronounced on : .12.2025

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
and

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

OSA (CAD) No.4 of 2025

Vishwa Infrastructures & Services Pvt Ltd.,
Represented by its Authorized Signatory,
No.175, Thirumalai Nagar, Ext 2, Kolathur,
Chennai – 600 099.

... Appellant(s)

Vs.

1. M/s. Chennai Metropolitan Water Supply & Sewage Board,
Rep. By Superintending Engineer (WT&T),
No.1, Pumping Station, Chintradripet, Chennai – 600 002.

2. ICICI Bank Ltd.,
Rep. By its Branch Manager,
Commercial Building Level – 1,
West Wing, 1-11-256, Wall Street Plaza,
Begumpet, Hyderabad – 300 016.

... Respondent(s)

Prayer: Appeal filed under Section 13(1A) of the Commercial Court Act, 2015 r/w Section 37 of the Arbitration and Conciliation Act, 1996 to set aside the common order passed in Arb.OP.No.631 of 2022 on the file of the Hon'ble of Madras dated 18.11.2024.

For Appellant(s)

: Mr.P.J.Rishikesh



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OSA (CAD) No.4 of



For R1

: Mr.Gautam S Raman

For R2

: Mr.V.Suresh

for M/s.Shivakumar & Mr.Suresh

J U D G M E N T

This is an appeal by the claimant/ contractor filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996') against the order dated 18.11.2024 passed by the learned Single Judge, setting aside the award dated 06.04.2022 passed by the learned Sole Arbitrator in an application under Section 34(2) of the Act, 1996.

2. For the sake of convenience, the parties are referred to as per their status before the learned Sole Arbitrator, i.e., the appellant herein as the claimant and the first respondent herein as the respondent. For better appreciation, it would be necessary to note certain relevant and undisputed facts of the case.

3. The first respondent herein invited bids for “Supplying, Laying, Jointing, Testing and Commencing of 2nd Row of 2000 mm Notional Diameter Mild Steel Spirally Welded Pipes from Chembarambakkam Water Treatment Plant upto Poonamallee Bye Pass Road Junction near Saveetha Dental



College via Poonamallee Bye Pass Road”. In response to the same, the claimant participated in the bidding process and emerged as the successful bidder. Accordingly, the work order dated 30.11.2012 was issued to the claimant for a total value of Rs.39,67,95,746/-. The total contract period was agreed to be 18 months from the start date. Accordingly, an agreement was entered into on 18.01.2013, and in terms of the same, the Letter of Acceptance, Notice to Proceed, Contract Data, General and Special Conditions of Contract, Drawings and Bill of Quantities etc., would form part of the agreement. Accordingly, the site was handed over on 21.03.2013 and in terms of the same, the work is expected to be completed within 18 months i.e., by 20.09.2014. Though the site was shown to have been handed over on 21.03.2013, admittedly the entire site was not handed over till the date of termination of contract. However, the said work could not be completed within the time, resulting in the claimant making a request for extension of time on seven occasions, and the same was also granted by the respondent till 30.04.2017. However, the further extension sought by the claimant was not acceded to by the respondent.

4. Before commencement of work, the claimant submitted a Performance Bank Guarantee for a sum of Rs.79,36,000/- valid till 31.01.2015, and during the course of execution, the validity of the said Bank



Guarantee was extended from time to time till 31.07.2019. During the course of execution of the work, the claimant had submitted Running Account Bills, Seven in number, and out of the same, six of them were processed and payments were made to the claimant after effecting necessary deductions towards retention money etc., While so, considering the inordinate delay in execution of the work and complaining about non-availability of work front for execution of the work and handing over of the work site in piece-meal, the claimant made a request for foreclosure of the work by addressing a letter dated 19.12.2017 and to release the claimant, while stating that the reasons for non-completion of the work are beyond the control of the Board as well as the contractor, and requested for payment of the dues. However, the said request was not acceded to by the respondent and consistently required the claimant to execute the work to the extent, the site was made available. However, the claimant, expressed its inability to execute the balance work, in the light of the abnormal delay. At this juncture, the claimant sought for referring the matter for adjudication to named Adjudicator in terms of Clauses 24 & 25 of the General Conditions of Contract. However, the same was not responded properly

5. Out of the total 6500 meters of pipeline work, the petitioner had



completed 4744 RMT, leaving a balance of 1756 RMT by July 2017. While so, the respondent invoked Clause 59 of the General Conditions of the Contract and issued a show-cause notice dated 14.09.2018, proposing to terminate the contract and while proposing to make the claimant liable for the additional cost involved due to re-tendering and for executing the unfinished works, besides proposing to blacklist the claimant for three years. The claimant responded to this notice and requested for foreclosure of the project on mutual basis by letter dated 22.09.2018. Simultaneously, the claimant anticipating invocation of the Performance Bank Guarantee filed O.A.No.1021 of 2018 under Section 9 of the Act, 1996 before this court, seeking an interim injunction restraining the respondent from invoking the Performance Bank Guarantee which was granted by a learned Single Judge of this court and a Former Judge of this court, namely Justice K.Govindarajan, was appointed as the Sole Arbitrator for resolving the disputes between the parties by an order dated 29.01.2019.

6. While the matter was pending before the learned Sole Arbitrator, the respondent, by letter dated 12.03.2019, terminated the contract under Clause 59 of the General Conditions of the Contract. It was thereafter, the claimant filed a claim statement before the learned Sole Arbitrator, contending that the reasons for delay in completion of the work is because of the defaults



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OSA (CAD) No.4 of



committed by the respondent on various counts and the claimant is no way responsible for the same and made the following claims:-

“A. To declare termination as bad and illegal and consequently award a sum of Rs.1,64,40,000/- towards loss of profit and a sum of Rs.1 crore towards damages.

B. To direct the 1st respondent to pay the sum due under various RA Bills along with interest to the tune of Rs.2,60,58,215.10/-.

C. To direct the 1st respondent to pay a sum of Rs.49,52,357.48 towards laying charges.

D. To direct 1st respondent to make payment to the tune of Rs.1,04,00,877/- towards Retention Monies.

E. To direct the 1st respondent to make payment towards commissioning charges to the tune of Rs.2,37,12,091.57/-

F. To direct the 1st respondent to make payment towards the imposition of LD to the tune of Rs.21,00,000/-

G. To reimburse the overhead expense incurred by the Claimant from May 2017 to May 2019 to the tune of Rs.15,13,160/-

H. Return the Performance Bank Guarantee worth Rs.79,35,000/-

I. Interest on the outstanding under various heads claimed above at the rate of 13.5%

J. the cost towards arbitration and other illegal expenses.”



7. In response to the same, the respondent have initially only resisted the claims made by the claimant, but subsequently, by way of additional counter, made a counter claim for refund of an amount of Rs.11,38,00,000/-. Out of the same, an amount of Rs.2,65,00,000/- was claimed towards recovery of mobilisation advance including interest, and an amount of Rs.8,73,00,000/- towards the additional cost that would be incurred by the respondent in case of execution of balance work by entrusting the same to a third-party agency.

8. The learned Sole Arbitrator, having considered the rival contentions raised by the claimant and the respondent, framed the following issues for consideration:-

- 1. Is the termination dated 18.03.2017 valid and sustainable?*
- 2. Who is responsible for the delay either the Claimant or the 1st Respondent?*
- 3. Whether the Claimant is entitled for the Claims made?*
- 4. Whether the Claimant is entitled for interest? If so, on what amount, for what period and at what rate?*
- 5. Any other relief including the Costs, the parties are entitled?*
- 9. The 1st Respondent filed Additional counter in which it has claimed Counter Claim and so in the Proceeding dated 20.07.2021, the following Additional Issue as No.6 was framed.*



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OSA (CAD) No.4 of



"Whether the 1st Respondent is entitled for the Counter Claims as claimed in the Additional Counter?"

9. On behalf of the claimant, C.W-1 was examined as witness and Exhibits C-1 to C-71 were marked. On behalf of the respondent, R.W-1 was examined and Exhibits R-1 to R-8 were marked. Both the parties were afforded opportunity to cross-examine the witnesses examined by the opposite party.

10. The learned Sole Arbitrator, after having examined the matter and on appreciation of the oral and documentary evidence placed before him passed Award dated 06.04.2022 on Issue No.2, came to the conclusion that the claimant was initially responsible for the delay in execution of the works and the respondent delayed execution of works by not stating the hindrance-free sites and not delivering approvals from the concerned authorities, resulting in preventing the claimant from completing the project even as per the revised schedules.

11. Insofar as the Issue No.1 i.e., on the validity of the termination letter dated 18.03.2017 issued by the respondent is concerned, the learned Sole Arbitrator concluded that the reasons assigned in the termination letter



for terminating the contract cannot be sustained.

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12. While answering Issue No.3, the learned Sole Arbitrator allowed claims B, D, E, F and G, besides ordering for release of the Performance Bank Guarantee, and also awarded interest on the amounts due and payable to the claimant.

13. Insofar as the counter claims made by the respondent are concerned, the learned Sole Arbitrator allowed the claim in respect of refund of balance mobilisation advance of Rs.1,98,39,500/-, however declined to grant interest on the said amount. Insofar as the claim of Rs.8,73,00,000/- towards risks and costs to complete the balance work is concerned, the same was rejected by the learned Sole Arbitrator.

14. Thus, in all, the learned Sole Arbitrator awarded a sum of Rs.4,70,77,891/- in favour of the claimant after adjusting an amount of Rs.1,93,39,500/- covered by the counter claim allowed by the Sole Arbitrator, and directed the same to be paid within 30 days, and failing which awarded the interest at the rate of 12% from the date of the award.

15. Aggrieved by the said award, the respondent filed an application



under Section 34(2) of the Act, 1996 vide Arbitration O.P.No.631 of 2022

before this court and the same was taken up for consideration by a learned

Single Judge of this court and the same was heard and having been reserved

for orders on 28.03.2024, was allowed by an order dated 18.11.2024 setting

aside the Award, dated 06.04.2022 while granting liberty to the parties to

workout their remedies in the manner known to law.

16. The learned Single Judge, having taken note of the nature of the claims and counter claims made by the respective parties and the legal position that govern an application under Section 34 of the Act, 1996 and the limited scope of interference provided under Section 34, proceeded to consider the application filed under Section 34. The learned Single Judge, came to the conclusion that the claimant himself made a request on a number of occasions commencing from letter dated 11.12.2017 till 29.09.2018, for mutual foreclosure of the contract and the same was accepted by the respondent by terminating the contract and therefore, it is not clear how the learned Sole Arbitrator could conclude the termination of contract by the respondent as illegal and further observed that the Arbitral Tribunal should have examined the situation from the perspective of Sections 32 & 39 of the Indian Contract Act, 1872. Thus, the learned Single Judge concluded that the



claimant himself expressed its unwillingness to perform its obligation under the contract and was looking for an exit, and therefore, the respondent are entitled to terminate the contract, and in such an event, the consequences under Section 64 of the Contract Act, 1872 would follow.

17. The learned Single Judge at Paragraphs 129 & 131, having concluded as above, held that the learned Sole Arbitrator overlooked the provisions of the Contract Act, 1872, while passing the award; the learned Single Judge further observed that, although the same may not amount to contravention of the fundamental policy of Indian Law warranting interference under Section 34 and an erroneous application of law is also not available to interfere under Section 34(2-A) of the Act, 1996, the award can be interfered if the said illegality goes to the root of the award. Thus, held that the conclusions of the Arbitral Tribunal on Issue No.1 holding the termination of the contract by the respondent as illegal, is contrary to Section 28(3) of the Act, 1996 which has resulted in patent illegality. The said Paragraph Nos.129 to 131 reads as under:-

129. As discussed in this Order, the Award though a readable Award, is unintelligible as it does not apply the elementary principle which govern the parties to a contract under the Indian Contract Act, 1876. Therefore, the Impugned Award granting relief to the 1st respondent



would be contrary to Section 28(3) of the Arbitration and Conciliation Act, 1996. That apart, as per Clause 21.1 of the Contract entered into between the Petitioner and the 1st Respondent, the Petitioner was to give possession of all parts of the site to the 1st Respondent and any delay in effecting the same was not to be considered a compensation event. Clause 21.1 of the Contract reads as under :-

21. Possession of the Site 21.1 The Employer will give possession of all parts of the Site to the Contractor. However, if possession of a part is not given by the date stated in the Contract Data it cannot be taken as a reason for delay in start of the relevant activities and it will not be considered a Compensation Event.

130. The 1st Respondent could not have asked for damages under Section 73 of the Indian Contract Act, 1872, which it did. The Arbitral Tribunal has correctly rejected it, though it has erroneously held that there was an illegal termination of the contract by the Petitioner. As mentioned above, the 1st Respondent at best would have been entitled to compensation under Section 64 of the Indian Contract Act, 1872.

131. Thus, the conclusions arrived by the Arbitral Tribunal under Issue No.1, holding termination of the contract by the Petitioner as illegal is contrary to Section 28(3) of the Arbitration and Conciliation Act, 1996, and has resulted in patent illegality as per the principle laid down in Sangayong case (supra) of the Hon'ble Supreme Court.

Thereafter, the learned Single Judge proceeded to examine the correctness of claims allowed by the learned Sole Arbitrator and recorded his findings on each of the claim.

18. Insofar as the Claim B is concerned, the learned Single Judge



recorded his findings in Paragraph No.133 of the impugned order, which reads as under:-

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133. Though the Arbitral Tribunal is the best judge with regard to quality and quantity of evidence before it, however, the 1st Respondent was awarded a sum of Rs.2,60,58,215/- [Rs.2,21,08,642 + interest at 13.5%] towards Claim B by awarding pendent lite interest at 9% per annum. The Arbitral Tribunal ought to have examined the Claim B in the light of Section 64 of the Indian Contract Act, 1872.

19. Insofar as Claim C is concerned, the same was negated by the learned Sole Arbitrator and therefore, the learned Single Judge, though made a reference to the same, the same may not be relevant as there was no contest against the rejection of the claim made under Claim C by the claimant.

20. In respect of Claim D, i.e., in respect of release of retention money withheld in respect of the work already done, the learned Single Judge came to the conclusion that the question of release of the same does not arise unless the work is completed fully.

21. Similarly, in respect of Claim E i.e., for release of the withheld amount towards commissioning charges in respect of the work already completed, the learned Single Judge also came to the conclusion that in the absence of completion of the entire work, the question of commissioning of

Page 13 of 45



installation would not arise, especially in the context of termination of the contract by the respondent, and therefore the question of release of the same also does not arise. The observations of the learned Single Judge in this connection are at Paragraphs 138 to 142, which read as under:-

138. In this case, it is evident that the 1st respondent had staked their claim towards 'Laying Charges' under Claim-C for a sum of Rs.49,52,357/- and towards 'Commissioning Charges' under Claim-E for a sum of Rs.2,37,12,019.57/-.

139. However, after rejecting Claim-C towards 'Laying Charges' to the tune of Rs.49,52,357/-, the Arbitral Tribunal has granted Claim-E towards 'Commissioning Charges' for a sum of Rs.2,37,12,091.57/- . It is not clear how Claim-E towards 'Commissioning Charges' for a sum of Rs.2,37,12,091.57/- could be awarded as the 'Commissioning charges' are only payable only after the successful Laying and Commissioning of the pipeline by the 1st Respondent under the Contract.

140. "Commissioning of the installation" would not arise in view of the termination of the contract by the petitioner CMWSSB on 18.03.2019 after Show Cause Notice dated 14.08.2019 was issued to the 1st respondent. Similarly, the question of awarding Rs.1,04,00,877/- towards Claim-D under 'Retention Monies' withheld for the work done would only arise if the entire work was completed. If the work was not completed, question of awarding 'Retention Monies' cannot be countenanced. Also, no reasoning was given for awarding the aforesaid amount by the Arbitral Tribunal in the Impugned Award dated 06.04.2022 other than simply accepting the submission of the 1st Respondent.

141. Since the project did not see completion in the hands of the 1st Respondent, these two amounts i.e.,



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towards Claim-D for Retention Monies for Rs.1,04,00,877/- and Claim-E towards Commissioning Charges for a sum of Rs.2,37,12,091.57/-, could not have been awarded independently or towards damages.

142. Therefore, after rejecting Claim-C towards 'Laying Charges' for a sum of Rs.49,52,357/- on the ground that there was no satisfactory completion of the Hydraulic Test, and the Arbitral Tribunal could not have awarded Claim D towards 'Retention Monies' and Claim-E towards 'Commissioning Charges'.

22. Insofar as Claim F i.e., for return of the liquidated damages recovered is concerned, the learned Single Judge observed in Paragraph No.99 of the impugned order stating that the claimant never protested or registered its protest with the respondent for the deduction made towards liquidated damages. However, the same was not specifically dealt with by the learned Single Judge while dealing with the sustainability of the claims allowed by the learned Sole Arbitrator.

23. Insofar as the Claims G & H are concerned, the learned Single Judge observed that the reasoning given in the award cannot be questioned. So also, in respect of the counter claim allowed by the learned Sole Arbitrator also was accepted by the learned Single Judge, however, a typographical error in allowing the claim only for Rs.1,93,39,500/-, instead Rs.1,98,39,500/-, was pointed out by the learned Single Judge. Thus, having concluded as above, the



learned Single Judge proceeded to allow the Arbitration Original Petition filed under Section 34(2) of the Act, 1996 while granting liberty to the parties to workout their remedies in the manner known to law.

24. We have heard Mr.P.J.Rishikesh, learned counsel for the appellant and Mr.Gautam S Raman, learned counsel for the respondent Board and also perused the entire material on record. The second respondent is only a formal party.

25. Before dwelling into the merits of the matter, it would be appropriate to make a note of the scope of interference under Section 34 and 37 of the of the Act, 1996. The present appeal before us is an appeal under Section 37. The scope of appeal under Section 37 also has fallen for consideration before the Hon'ble Apex Court in the various matters, latest of which being the case of ***"Bombay Slum Redevelopment Corporation Private Ltd., -vs- Samir Narain Bhojwani"*** reported in (2024) SCC OnLine SC 1656, ***"UHL Power Company Limited -vs- State of Himachal Pradesh"*** reported in (2022) 4 SCC 116 and ***"Larsen Air Conditioning and Refrigeration Company -vs- Union of India and others"*** reported in (2023) 15 SCC 472. In the decision rendered by the Hon'ble Apex Court prior to the case of ***Bombay Slum Redevelopment Corporation Private Limited's case***, it



was held that the scope of interference under Section 34 itself is narrow and when it comes to the scope of appeal under Section 37, the jurisdiction of the Appellate Court in examining an order setting aside or refusing to set aside the award is now more circumscribed. However, the Hon'ble Apex Court, having reconsidered the same issue and having taken note of the case of **"MMTC Limited -vs- Vedanta"** reported in (2019) 4 SCC 163, **"UHL Power Co.Ltd., -vs- State of H.P"** reported in (2022) 4 SCC 116 and **"Konkan Railway Corpn Ltd -vs- Chenab Bridge Project"** reported in (2023) 9 SCC 85, in the case of **Bombay Slum Redevelopment Corporation Private Limited**, held as under:-

"In the decision of this Court in the case of Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking, in paragraph 18, it was held thus:

"18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163: (2019) 2 SCC (Civ) 293], is akin to the jurisdiction of the court under Section 34 of the Act. [Id, SCC p. 167, para 14: "14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed 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



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provision.”] Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.”

(emphasis added)

16. The jurisdiction of the Appellate Court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of the Court dealing with a petition under Section 34. It is the duty of the Appellate Court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the Appellate Court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the Appellate Court can exercise the same power and jurisdiction that Section 34 Court possess with the same constraints.”

26. In the light of the above latest decision of the Hon’ble Apex Court, it is the duty of the Appellate Court to decide whether the Court under Section 34 has exercised its power properly or failed to exercise its power. This court, while exercising the said appellate power, can exercise the same power and jurisdiction that Section 34 court possess, subject to the same constraints. Thus, it is well settled that the scope of power under Section 37 is co-extensive and on par with the power of the court under Section 34 of the Act, 1996.



27. In the case of “*M/s.Gayatri Balaswamy -vs- ISG Novasoft Technologies Ltd.,*” reported in (2025) 7 SCC 1, the Constitution Bench of the Hon'ble Apex Court once again examined the scope of Sections 34 & 37 of the Act, 1996 as well as the power to modify the Award and by majority of 4:1 held as under:-

“II. Severability of awards

32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenz-kompetenz, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the “valid” part(s) of the award while setting aside the “invalid” ones. [The “validity” and “invalidity”, as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the 1996 Act.] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the “invalid” portion of an arbitral award from the “valid” portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.



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34. To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the “valid” and “invalid” portions are legally and practically inseparable. In simpler words, the “valid” and “invalid” portions must not be interdependent or intrinsically intertwined. If they are, the award cannot be set aside in part.

36. The Privy Council, in Ram Protap Chamria v. Durga Prosad Chamria [Ram Protap Chamria v. Durga Prosad Chamria, 1925 SCC OnLine PC 58 : AIR 1925 PC 293] addressed this issue with the following pertinent observations: (Dasuram Mirzamall [Dasuram Mirzamall v. Balchand Surana, 1957 SCC OnLine Gau 21] , SCC OnLine Gau para 18)

“18. ... if, however, the pronouncement of the arbitrators is such that matters beyond the scope of the suit are inextricably bound up with matters falling within the purview of the litigation, in that case, the court would be unable to give effect to the award because of the difficulty that it cannot determine to what extent the decision of the subject-matter of the litigation has been affected and coloured by the decision of the arbitrators in regard to matters beyond the ambit of the suit.”

Thus, the power of partial setting aside should be



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exercised only when the valid and invalid parts of the award can be clearly segregated—particularly in relation to liability and quantum and without any correlation between valid and invalid parts.

37. We would now proceed to examine, the permissibility and scope of the Court's modification powers, within the parameters of Section 34 of the 1996 Act. In doing so, we will distinguish the Court's power of modification from: (i) the Court's power of setting aside an award; (ii) the arbitrator's power under Section 33 to correct, reinterpret, and/or issue an additional award; and (iii) the power of the Court to remand the award to the arbitrator under Section 34(4).

III. Difference between setting aside and modification

38. This distinction lies at the heart of many arguments canvassed before us. The parties opposing the recognition of a power of modification of the courts have strenuously contended that modification and setting aside are distinct and sui generis powers. While modification involves altering specific parts of an award, setting aside does not alter the award but results in its annulment. Their primary concern is that recognising a power of modification may invite judicial interference with the merits of the dispute—something arguably inconsistent with the framework of the 1996 Act.

39. We agree with this argument, but only to a limited extent. It is true that modification and setting aside have different consequences: the former alters the award, while the latter annuls it. [The words used in the statute must be interpreted contextually, taking into account the purpose, scope, and background of the provision. Many words and expressions have both narrow and broad meanings and



thereby open to multiple interpretations. Legal interpretation should align with the object and purpose of the legislation. Therefore, we may not strictly apply a semantic differentiation while interpreting the words “modification” or “setting aside”. Instead, a holistic and purposive interpretation of these words will be consistent with the intent behind the provision and the 1996 Act. Linguistically and even jurisprudentially, a distinction can be drawn between the expressions — “modification”, “partial setting aside”, and “setting aside” of an arbitral award in its entirety. However, we must note that the practical effect of partially setting aside an award is the modification of the award.] However, we do not concur with the view that recognising any modification power will inevitably lead to an examination of the merits of the dispute. It will completely depend on the extent of the modification powers recognised by us. In the following part of our **Analysis**, we outline the contours of this limited power and explain why, in our view, recognising it will ultimately yield more just outcomes.

IV. A limited power of modification can be located in Section 34

40. A core principium of arbitration, an alternative dispute resolution (hereinafter referred to as “ADR”) mechanism, is to provide a quicker and cost-effective alternative to courtroom litigation. While this suggests minimal judicial interference, the role of domestic courts remains crucial, as they function in a supportive capacity to facilitate and expedite the resolution of disputes. Therefore, it follows that judicial intervention is legitimate and necessary when it furthers the ends of justice, including the resolution of disputes.

41. To deny courts the authority to modify an award—particularly when such a denial would impose significant hardships, escalate costs, and lead to unnecessary delays—would defeat the *raison d'être* of arbitration. This concern is particularly pronounced in India, where applications



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under Section 34 and appeals under Section 37 often take years to resolve.

42. Given this background, if we were to decide that courts can only set aside and not modify awards, then the parties would be compelled to undergo an extra round of arbitration, adding to the previous four stages: the initial arbitration, Section 34 (setting aside proceedings), Section 37 (appeal proceedings), and Article 136 (SLP proceedings). In effect, this interpretation would force the parties into a new arbitration process merely to affirm a decision that could easily be arrived at by the Court. This would render the arbitration process more cumbersome than even traditional litigation.

43. Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the Court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34. In other words, the power cannot contradict the essence or language of Section 34. The Court would not exercise appellate power, as envisaged by Order 41 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”).

44. We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided in toto. Read in this manner, the limited and restricted power of severing an award implies a power of the Court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.

45. We are thus of the opinion that the Section 34 Court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and



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practically, as stipulated in **Part II** of our **Analysis**.

46. *Mustill and Boyd have observed that an order varying an award is not equivalent to an appellate process. [Sir Michael J. Mustill & Stewart C. Boyd QC, Commercial Arbitration (2nd Edn., 2001) p. 617.] The authors suggest that a modification order would only be appropriate where the modification, including any adjustment of costs, follows inevitably from the tribunal's determination of a question of law. [Ibid.] This approach would be beneficial, as it would reduce costs and delays. The courts need not engage in any fact-finding exercise. By acknowledging the Court's power to modify awards, the judiciary is not rewriting the statute. We hold that the power of judicial review under Section 34, and the setting aside of an award, should be read as inherently including a limited power to modify the award within the confines of Section 34.*

V. Court can modify the award despite Sections 33 and 34(4)

47. *Section 33 of the 1996 Act (Annexure A) empowers an arbitrator, upon request, to correct and/or re-interpret the arbitral award, on limited grounds. This includes the correction of computational, clerical or typographical errors, as well as giving interpretation on a specific point or a part of the award, when mutually agreed upon by the parties. Section 33(3) enables the Tribunal to suo motu correct any errors within thirty days of delivering the award. Section 33(4) grants wider powers. It permits the Arbitral Tribunal, upon compliance with specified manner of request, to make an additional award on claims presented before the arbitral proceedings but omitted from the arbitral award.*

48. *Section 33(7) states that Section 31 (Annexure A) shall apply where correction, interpretation or any addition is made to the arbitral award. Section 31 deals with form and content requirements for arbitral awards. Consequently, an order passed by the Arbitral Tribunal*



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under Section 33 amounts to an arbitral award. Under Section 34(3), where a request is made under Section 33, the limitation period for filing an application to set aside the award commences from the date on which the Arbitral Tribunal disposes of the Section 33 request.

49. *Notwithstanding Section 33, we affirm that a Court reviewing an award under Section 34 possesses the authority to rectify computational, clerical, or typographical errors, as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation. There are certain powers inherent to the Court, even when not explicitly granted by the legislature. The scope of these inherent powers depends on the nature of the provision, whether it pertains to appellate, reference, or limited jurisdiction as in the case of Section 34. The powers are intrinsically connected as they are part and parcel of the jurisdiction exercised by the Court.*

50. *In Grindlays Bank Ltd. v. Workmen [Grindlays Bank Ltd. v. Workmen, 1980 Supp SCC 420 : 1981 SCC (L&S) 309] this Court has held that every tribunal or court is endowed with certain ancillary or incidental powers which are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In that case, the simple question was whether an ex parte award passed on merits, when sought to be set aside by an application showing sufficient cause, amounts to seeking a review on merits of the dispute. The Court held that a procedural review differs from a review on merits of the dispute. The former is a power inherent in every court or tribunal and inadvertent errors committed by another tribunal can be corrected by the court/tribunal. This would not amount to a review on merits.*

51. *The reasoning distinguishing between procedural and merits review is reproduced below: (Grindlays Bank case [Grindlays Bank Ltd. v. Workmen, 1980 Supp SCC*



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420 : 1981 SCC (L&S) 309] , SCC p. 425, para 13)

“13. ... The expression “review” is used in the two distinct senses, namely: (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.

52. Reference may also be made to the power of recall, which every court possesses, as recognised by this Court in Budhia Swain v. Gopinath Deb [Budhia Swain v. Gopinath Deb, (1999) 4 SCC 396] . The availability of this power enables the Court to address various situations efficiently, rather than remanding the matter to the Arbitral Tribunal under Section 34(4). Lastly, one may also refer to the power of granting interim relief if the circumstances so warrant.

53. The doctrine of implied power is to only effectuate and advance the object of the legislation i.e. the 1996 Act and to avoid the hardship. It would, therefore, be wrong to say that the view expressed by us falls foul of express provisions of the 1996 Act.

*54. Under Section 152 of the Code, [“152. **Amendment of judgments, decrees or orders.**— Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”] a court executing a decree has the power to*



correct clerical or arithmetic mistakes in judgments, orders, or decrees arising from any accidental slips or omissions. This Court in Century Textiles Industries Ltd. v. Deepak Jain [Century Textiles Industries Ltd. v. Deepak Jain, (2009) 5 SCC 634 : (2009) 2 SCC (Civ) 608] held that clerical or arithmetical errors may be corrected by the executing court, however, the court must take the decree according to its tenor and cannot go behind the decree.

55. In the same vein as these judgments, we hold that inadvertent errors, including typographical and clerical errors can be modified by the Court in an application under Section 34. However, such a power must not be conflated with the appellate jurisdiction of a higher court or the power to review a judgment of a lower court. The key distinction between Section 33 and Section 34 lies in the fact that, under Section 34, the Court must have no uncertainty or doubt when modifying an award. If the modification is debatable or a doubt arises regarding its appropriateness i.e. if the error is not apparent on the face of the record, the Court will be left unable to proceed, its hands bound by the uncertainty. In such instances, it would be more appropriate for the party to seek recourse under Section 33 before the Tribunal or under Section 34(4).

...

87. Accordingly, the questions of law referred to by Gayatri Balasamy [Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2024 SCC OnLine SC 1681] are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

*87.1. When the award is severable, by severing the “invalid” portion from the “valid” portion of the award, as held in **Part II** of our **Analysis**;*



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87.2. *By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in **Parts IV and V** of our **Analysis**;*

87.3. *Post-award interest may be modified in some circumstances as held in **Part IX** of our **Analysis**; and/or*

87.4. *Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in **Part XII** of our **Analysis**. ”*

Keeping in view the above legal position, we proceed to examining the matter.

28. Having consciously examined the matter in detail and having taken into consideration the legal parameters within which the power under Section 37 can be exercised as well as the parameters fixed for interference under Section 34 of the Act, 1996 and the decisions of the Hon'ble Apex Court on the subject, we find it difficult to acknowledge the reasoning and conclusions arrived at by the learned Single Judge. In our considered view, the learned Single Judge has thoroughly misdirected himself and travelled beyond the jurisdiction conferred under Section 34 of the Act, 1996. The reason for our conclusions are as under.

29. When the learned Sole Arbitrator, on appreciation of the oral and documentary evidence, especially (i) the undisputed fact that there was delay on the part of the claimant at the initial stage of execution of the work in



question (ii) delay on the part of the respondent at the later period, necessitating granting extension of time for completing the work on more than six occasions, and (iii) the fact that the land that is required for execution of the entire work is admittedly not made available even by the date of termination of the contract i.e., 12.03.2019, the learned Sole Arbitrator came to the conclusion that the termination of the contract by the respondent under Clause 59 of the General Conditions of the contract is illegal.

30. It is not in dispute that as on the date when the claimant requested for foreclosure of the contract for the first time on 11.12.2017, the entire site that is required for laying the pipeline in terms of the contract is not made available to the claimant besides not obtaining necessary permission from different authorities. It is only a part of the remaining land was made available to an extent of 817 RMT, still leaving a balance of about 400 RMT unavailable. Taking into consideration the factual aspects which are admitted by both the parties, the learned Sole Arbitrator came to the conclusion that the manner in which the contract was terminated was illegal. Having held as such also, the learned Sole Arbitrator has not thought it fit to award the claim made towards loss of profit on the value of the balance work and towards damages made by the claimant under Claim A, considering the fact that the claimant



himself made a request for foreclosure of the contract. When that be the situation, the approach of the learned Single Judge by invoking Sections 37 & 39 of the Indian Contract Act, 1872, which provide for performing the obligations and reciprocal obligations of the contract etc., on the ground that the learned Sole Arbitrator should have examined the situation from the perspective of Sections 37 & 39 of the Act, 1872, is wholly irrelevant in the light of the admitted fact situation of the case on hand.

31. By now, it is well settled that the findings recorded by the Arbitral Tribunal on factual aspects as well as on law are not amenable for interference under Section 34 of the Act, 1996, unless they are found to be perverse, based on no evidence, and the same goes to the root of the matter. In spite of our thorough attempt and persuasion to appreciate the approach of the learned Single Judge in invoking Sections 37 & 39 of the Indian Contract Act, 1872, we are unable to digest the approach of the learned Single Judge, rather we are convinced that the approach of the learned Single Judge is perverse, but not the conclusions arrived at by the learned Sole Arbitrator.

32. In this connection, it would be appropriate to take note of the observations made by the Sole Arbitrator while holding the termination of contract in question as illegal, which reads as under:-



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“14.5. As submitted by the Learned Counsel for the Claimant, none of the sub-clauses except Clause 59 (1 and 5) would be relevant to decide the issue in question. Clause 59(1), speaks about the obligation on the part of the Respondent to issue 7 days notice, before passing an order of Termination. Sub-clause (g) gives right to the Respondent to terminate the contract, if the Claimant failed to achieve 2 successive milestones. Even in 2015, the Claimant failed to achieve the same and the Respondant had not exercised the said right. So the Respondent cannot trace out their right to terminate under clause 59 of the Agreement.

14.6. Even Clause 60(1) cannot be relied on to sustain the termination. To establish the fundamental breach of contract', the Engineer has to issue a certificate for the value of the work done. As submitted by the Learned Counsel for the Claimant, no such certificate was issued. The Learned Counsel for the Respondent, has neither argued as to how those clauses will apply to trace out the right to terminate, nor pointed out any such a certificate. Even RW1, while answering Q84, deposed that he does not know, whether such certificate was issued or not. So it is clear that the Respondent can not trace out their right under these Clauses to terminate under the Agreement. No other Clauses were relied on by the Learned Counsel for the Respondent, to trace out the power of the Respondent to sustain the Order of Termination.

14.7. Moreover, the Claimant in Ex. C49, 50, 62, 63, 66 and 67, explained in detail about the hindrances due to which they were not able to proceed with and complete the work. It was also mentioned about the non-availability of hindrance-free sites to carry out the work. But the Respondent issued the show cause notice and order of



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termination without even considering those letters before deciding to terminate, which clearly establishes the non-application of mind by the Respondent, before issuing the notice and order of Termination.

14.8. The reasons for terminating the contract also cannot be sustained. The only reason given is, that the Claimant has not completed the contract even after the contract period was extended. As discussed under issue No. 2, the Respondent has not discharged its reciprocal obligation by handing over the hindrance-free sites to carry out the works by the Claimant and so the Respondent can not blame the Claimant alone, for the delay. So even on this ground, the order of Termination cannot be sustained.

14.9. This view of the Tribunal is supported by the Judgement of the Apex Court in SHRIPATI LAKHU MANE VERSUS THE MEMBER SECRETARY, MAHARASHTRA WATER SUPPLY AND SEWERAGE BOARD & ORS.in CIVIL APPEAL NO.556 of 2012; March 30, 2022. The Hon'ble Judges relying on Sec.67 of the Contract Act wherein it is observed as follows:

17. In fact, Section 67 of the Indian Contract Act, 1872 makes it clear that if any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal. Section 67 together with the illustration contained there under reads as follows:

"67. Effect of neglect of promisee to afford promisor reasonable facilities for performance. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any nonperformance.caused



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thereby."

Illustration

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, if it is caused by such neglect or refusal."

14.10. Even in Engineers Pvt Ltd Vs Union of India and another, reported in 2011 (5) SCC 758, the Hon'ble SC has held, that when the work is delayed, due to the omission/commission of the Employer, the termination of the Contract is illegal. It is also held that, in such cases neither levy of LD can be imposed, nor risk and cost can be claimed by the Employer.

14.11. In Sutlej Construction Ltd., Vs. Union Territory of Chandigarh, reported in 2018 (1) SCC 718, it is held that if the scope of the work is dependent on reciprocal performance by the employer of its obligation under the contract and when the Employer falls to perform the same, the contract cannot be terminated on the ground of non-performance by the contractor of its obligation.

14.12. In view of the conclusion arrived at under issue no. 1 and on the above reasonings, the order of Termination cannot be sustained and so it is set aside."

33. Then, coming to the consideration of the claims made by the learned Single Judge under Claim B, the claimant claimed a sum of Rs.2,21,08,642.42/- towards the amount due under R.A Bill No.7 dated 21.12.2017, together with interest at the rate of 13.5% from 01.02.2018 to 30.05.2019 i.e., for a sum of Rs.39,49,572.68/-, totalling to a sum of Rs.2,60,58,215.10/-. The learned Single Judge having agreed that the Arbitral



Tribunal is the best Judge with regard to quality and quantity of evidence before it, however observed that the Arbitral Tribunal ought to have examined Claim B in the light of Section 64 of the Indian Contract Act, 1872. The said observation of the learned Single Judge, by making a reference to Section 64, is in the light of the conclusion arrived at by the learned Single Judge on the findings of the learned Sole Arbitrator holding the termination of contract as illegal.

34. We have already examined the said aspect and arrived at a conclusion that the learned Single Judge is not right in interfering with the conclusions of the learned Sole Arbitrator on the validity of the termination of contract. Therefore, the said observation of the learned Single Judge while dealing with Claim B does not require any fresh consideration. However, on examining the claim made by the claimant under Claim B and the award of the learned Sole Arbitrator, it is observed that the total claim made by the claimant under Claim B is for Rs.2,60,58,215/-, which includes an amount of Rs.39,49,572.68/- towards the interest for the period from 01.02.2018 to 30.05.2019 at the rate of 13.5%.

35. However, the learned Sole Arbitrator, having accepted the claim under Claim B, was inclined to award interest at 9% as against 13.5% claimed



by the claimant and calculated the said interest on the total claim amount of Rs.2,60,58,215/- instead of Rs.2,21,08,642/-, and thereby awarded a sum of Rs.2,86,91,263/-. This is obviously an error in calculating the interest and totalling the sum. The learned Single Judge has chosen to interfere with the award of amount under Claim-B on the ground of award of interest capitalising the same and then awarding compound interest. The relevant paragraphs at Paragraphs 136 and 137 of the impugned order are extracted hereunder:-

“136. While both simple and compound interest can be awarded by the Arbitral Tribunal, interest i.e., pre-claim interest, pendente lite interest and post award interest, cannot be awarded by capitalizing the principle amount and then compound it to further interest at usurious rates contrary to the terms of the Contract. That apart the Arbitral Tribunal has failed to note that a sum of Rs.2,60,58,215/- was not towards principle simpliciter. It was towards Principle + interest on the Principal Claim of Rs.2,21,08,642/- between 01.02.2018 and 30.05.2019.

137. Therefore, the Award of the Arbitral Tribunal awarding the amount towards unpaid Running Account Bill No.7 for a sum of Rs.2,60,58,215/- instead of Rs.2,21,08,642/- in the Impugned Award dated 06.04.2022 is to be held to be patently illegal in view of the decision of the Hon'ble Supreme Court decision in UHL Power Co. Ltd. (supra).”

36. The learned Single Judge, having observed above, declared the award of amount under Claim-B as patently illegal. In our view, the learned



Single Judge is not right. The entire award of claim cannot be held to be illegal on that ground. We are of the considered view that such an error apparent and severable is required to be severed while saving the sustainable part of the award under claim B. Hence, the amount for which the claimant would be entitled under claim B would be Rs.2,21,08,642/- with interest at the rate of 9% from 01.02.2018 to 30.05.2019. The interest for the said 20 months period @9% works out to Rs.33,16,296.30/- and thereby the total amount for which the claimant is entitled to under claim B works out to Rs.2,54,24,938.30/-. Though the learned Single Judge find fault with the award of amount under claim B left the matter by holding that the award of amount under claim B is patently illegal.

37. This severability of the unsustainable part of the award can be done by the court under Section 34 as well as under Section 37, and therefore we duly exercised the said power in the light of the law laid down by the Constitution Bench of the Hon'ble Apex Court in the case of “*M/s. Gayatri Balaswamy -vs- ISG Novasoft Technologies Ltd.,*”

38. Then coming to the amounts awarded in favour of the claimant under Claim D & E by the learned Sole Arbitrator, the learned Single Judge came to the conclusion that the amounts awarded under the said claims

Page 36 of 45



towards payment of retention money and release of the amounts towards the commissioning charges does not arise, as the retention money can be released only after successful completion of the entire work and the commissioning charges can be paid only after commissioning of the entire pipeline work., but the same was awarded by the learned Sole Arbitrator without complying the said requirements and thus the learned Single Judge found fault with the same.

39. As seen from the claim statement and the additional counter filed thereto, the amounts that are claimed under Claim D & E are the amounts withheld by the respondent from out of the Running Account bills submitted by the claimant in respect of the work that was already executed by the claimants and certified by the respondent. The details of the amounts withheld towards retention money and commissioning charges were also furnished RA Bill-wise in the shape of annexure. No doubt, the retention money claimed under Claim D was retained by the respondent to ensure successful completion of the work by the claimant and also to take care of the defects, if any arise, in the work executed by the claimant during the defect liability period.



40. So also, as seen from the material on record, the amounts that are claimed under Claim E towards commissioning charges is in fact not the commissioning charges, but the amounts withheld by the respondent being 10% of the value of the work executed by the petitioner, for releasing the same after commissioning of the entire project. The completion of the entire project could not take place because of the delays on the part of the claimant at the initial stage and on the part of the respondent at later stage.

41. As already noted above, the extension of time for completion of the project was not granted by the respondent beyond 30.04.2017. But the respondent keep on insisted the claimant to proceed with the work in respect of the limited work front that was made available for execution, which is admittedly not in respect of the entire balance work. Further, the entire work front is not available admittedly by the date of termination of the contract by the respondent. Thus, it cannot be said that the claimant is only responsible for non-completion of the work. As the total work front is not available for execution, the claimant sought for closure of the work on mutual basis. If that is the fact situation, the question of completion of the entire work and commissioning the project does not arise. If the claimant is denied the said claims and the respondent is allowed to retain the same, that would amount to

Page 38 of 45



unjust enrichment.

OSA (CAD) No.4 of



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42. Admittedly, even as on the date of passing of the award by the learned Sole Arbitrator, the balance work was not entrusted to any agency nor was the same was completed. Therefore, the learned Sole Arbitrator, taking into consideration those facts, came to the conclusion that the claimant is entitled for payment of the amounts withheld by the respondent towards retention money and the amounts withheld for releasing after commissioning of the project. The learned Sole Arbitrator, taking note of all these situations and on examining the evidence placed before him, allowed both the claims. Considering the fact that there is no possibility of commissioning of the project or completion of the project by the claimant under the contract in question, directed for release of the amounts which were withheld from the RA bills which were already certified by the respondent.

43. Further, the learned Sole Arbitrator also has taken note of the fact that there is no dispute on the quantum of the amounts claimed by the claimant under Claims D & E. The approach of the learned Single Judge for dis-entitling the claimant for claims made under Claims D & E on the ground that learned Sole Arbitrator, having declined the amount claimed under Claim



C towards laying charges, ought not to have granted the Claims under D & E, is totally an erroneous approach. No doubt, the learned Sole Arbitrator denied the claim made under Clause C. But, for the reasons best known, the claimant has not chosen to contest the same and therefore the conclusion of the Sole Arbitrator on Claim C has become final. That does not mean that the same can be put against the claimant when the claimant was granted the claims made under Claim D and E. The conclusion arrived at by the learned Sole Arbitrator on Claim D & E cannot be said to be erroneous basing upon the conclusion arrived at by the learned Sole Arbitrator on Claim C.

44. In order to satisfy on the correctness of the conclusions arrived at by the learned Sole Arbitrator on Claim D & E, this court also examined the contract data provided under the agreement in terms of Clause 22.3 of the contract data, which provides for payment of 10% of the amount of the quoted rate was intended to be released on satisfactory commissioning of the pipeline. Therefore, the conclusion of the learned Sole Arbitrator that the amounts covered by Claims D & E are only the amounts that were withheld from out of the amounts payable to the claimant only. The learned Single Judge ought not have interfered with the same.

45. Then, coming to the claim for payment of the amounts deducted

Page 40 of 45



towards liquidated damages to the tune of Rs.21,00,000/- is concerned, it is the specific case of the claimant that the said amount was deducted from the

Running Account bills towards liquidated damages on ad hoc basis by the respondent. The learned Sole Arbitrator, on examining the oral and documentary evidence, especially Exhibits C11, C13, C15, C18 & C22, came to the conclusion that the respondent have levied only ad hoc penalty and not liquidated damages to the tune of Rs.21,00,000/-. However, the same was termed as liquidated damages in the additional counter filed by the respondent. The learned Sole Arbitrator also taken note of the fact that there is no clause under the agreement to levy ad hoc penalty and the ad hoc penalty that was recovered is contrary to Clause 49 of the agreement and thus came to the conclusion that the action of the respondent in retaining an amount of Rs.21,00,000/- towards ad hoc penalty is not in accordance with agreement and allowed the same in favour of the claimant. The relevant paragraph from the Award reads as under:-

“20.1. Under this claim, the Claimant has claimed return of Rs. 21,00,000/-, retained as Liquidated Damages, for various bills.

20.2. The retention of the said amount towards Liquidated Damages has been specifically admitted in paragraph 19 of the Additional Counter Statement filed by the Respondent. So, now we have to decide, whether such a levy towards Liquidated



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Damages, is sustainable. On a perusal of Ex. C11, 13, 15, 18 and 22, it is clear that the Respondent levied only adhoc penalty and not Liquidated Damages. Only in the Counter Statement, the Respondent referred to the same, as Liquidated Damages. It is not in dispute that there is no clause under the Agreement to levy any adhoc penalty or adhoc liquidated damages.

20.3. Clause 49 of the Agreement has given the right to the Respondent, to levy Liquidated Damages, at the rate as stated in the Contract Data, for each day, if the Completion Date is later than the Intended Completion Date. In this case, without following the said procedure contemplated, the Respondent has levied only on adhoc basis, for which no procedure is stipulated in the contract”

46. The reasoning of the learned Single Judge for deferring with the view of the learned Sole Arbitrator in allowing the claim F in respect of liquidated damages is nothing but re-appreciation of the evidence, which is otherwise not permissible while exercising the jurisdiction under Section 34 of the Act, 1996.

47. Insofar as claims G and H are concerned, the learned Single Judge accepted the view of the learned Sole Arbitrator. So also in respect of the conclusions on the counter claims, the view of the learned Sole Arbitrator was upheld except in respect of an arithmetical error in mentioning



Rs.1,93,39,500/- instead of Rs.1,98,39,500/- against counter claim No.1. This arithmetical error is admitted by both the parties and same is also apparent from the Award. The same can also be rectified in the light of the law laid down by the Hon'ble Apex Court in the case of *M/s. Gayatri Balaswamy* cited supra.

48. In the light of the above, we are of the considered view that the order of the learned Single Judge cannot be sustained, as the same travelled beyond the scope and jurisdiction conferred on the court under Section 34 of the Act, 1996, and accordingly, the same is set aside and the appeal is accordingly allowed, restoring the Award dated 06.04.2022 passed by the learned Sole Arbitrator with slight modification specified hereunder. In the light of our observation at Paragraph Nos.36 and 47 supra, the claimant is entitled only for a sum of Rs.2,54,24,938.30/- under Claim-B and an amount of Rs.1,98,39,500/- is to be awarded under counter claim instead of Rs.1,93,39,500/-. No costs. Connected miscellaneous petitions, if any, shall stand closed.

(Dr.G.J.,J.) (M.S.K.,J.)
skr .12.2025



Index : Yes

OSA (CAD) No.4 of



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Superintending Engineer (WT&T),
Chennai Metropolitan Water Supply & Sewage Board,
No.1, Pumping Station, Chintradripet, Chennai – 600 002.



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OSA (CAD) No.4 of

Dr.G.JAYACHANDRAN, J.
and
MUMMINENI SUDHEER KUMAR, J.
skr

Pre-Delivery Order made in
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