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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO-706-2006 (O&M)
Date of Decision: 05.08.2025**

Haryana State Industrial Development Corporation Ltd. and another
..... Appellants

Versus

M/s Bhardwaj Builders and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.S. Saini, Advocate
for the appellants.

Mr. D.K. Singal, Advocate
for respondent No.1.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a first appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for setting aside the order/judgment passed by learned Additional District Judge, Panchkula vide which the objections under Section 34 of the Act has been dismissed.

2. Mr. P.S. Saini, learned counsel for the appellants while giving the brief facts of the present case submitted that an agreement was executed between the appellants and respondent No.1-Contractor pertaining to the construction of 19 sheds which were subsequently increased to 24 sheds and for anti-termite treatment. He further submitted that the controversy involved in the present case was pertaining to the dispute regarding the rates of anti-termite treatment and the dispute is not pertaining to the construction

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of sheds. He also submitted that in terms of the contract for the purpose of providing anti-termite treatment, the salt which is to be used was *Aldrin* and the same is also reflected in Clause 6.15 of the Contract and thereafter, the execution of the work was started by respondent No.1 and was completed as well. Respondent No.1 after undergoing the anti-termite treatment of the aforesaid sheds submitted 19 bills at different intervals which were duly passed by the concerned officers of the appellant-Corporation but at the time when the final bill was submitted then it was detected that there had been a violation of the term of the contract whereby only *Aldrin* salt was to be used as anti-termite treatment and in this way, the final bill was stopped and a dispute arose between the parties. In terms of the Arbitration Clause in the agreement/contract, the matter was referred to the Sole Arbitrator and an award was passed by him to the tune of ₹10,13,811/- along with interest @ 18% per annum vide award dated 17.02.2003 which has been annexed with the present appeal.

3. Learned counsel for the appellants further submitted that both the parties have adduced their respective evidences before the learned Arbitrator and a dispute was raised by the appellants that respondent No.1 had not used the aforesaid salt of *Aldrin* but had used some substitute of the salt, namely, *Chlorpyriphos* and the same was not up to the standards and at the same time, it was also relatively cheap as compared to the salt of *Aldrin* and respondent No.1-Contractor deliberately used the other salt which was a cheap salt and raised 19 bills although by mentioning the same salt of *Chlorpyriphos* but as per the agreement/contract, the salt which was required to be used was *Aldrin*. He submitted that at the time of submission of 19 bills, exorbitant bills were submitted on the higher rate, which were although



duly passed by the officers of the appellant-Corporation but at the same time a departmental enquiry was initiated against the aforesaid officers and different punishment orders in the disciplinary proceedings were passed against some of the officers pertaining to stoppage of their increments, which have been attached as Annexures A-1 to A-3. He also submitted that rather a Committee was constituted and an enquiry was also conducted at the higher levels by the Managing Director of the appellant-Corporation which has also been attached as Annexure A-4 on which there is no date mentioned but as per the Committee, respondent No.1-Contractor had given inflated bills because the price of anti-termite treatment salt was lower in the market. He further submitted that in this way since respondent No.1 did not use the salt of *Aldrin* which was so stipulated in the agreement/contract and had used a substituted salt and there was an infringement of the clause in the contract itself. Therefore, the award which has been passed by the learned Arbitrator ought to have been set aside by the learned Additional District Judge under Section 34 of the Act but these aspects were not properly considered by the learned Additional District Judge and the objections were dismissed and therefore, the appellants have now filed the present appeal on the aforesaid grounds. He also submitted that the counter claim filed by the appellants was also dismissed.

4. On the other hand, Mr. D.K. Singal, learned counsel appearing on behalf of respondent No.1-Contractor submitted that it is a case where although in the terms of the contract under Clause 6.15, it has been so stipulated that the aforesaid salt of *Aldrin* was to be used as anti-termite treatment in the aforesaid 24 sheds but it has rather come on record in the award passed by the Arbitrator himself wherein the entire aspect has been



dealt with in detail and properly appreciated. While referring to the award, he has submitted that it is undisputed that the aforesaid salt of *Aldrin* was banned by Government of India in the year 1992 and the present contract came into existence in the year 1994 and at that point of time for the purpose of the execution of the contract the aforesaid salt was neither available nor could have been made available and it was rather illegal to have used the aforesaid salt which even the appellants are not disputing that the aforesaid salt of *Aldrin* was banned by the Government of India. In this way, since the contract had already come into existence at the time of execution of the contract, a substitute salt of *Chlorpyrifos* was therefore used as an anti-termite treatment and on the basis of the aforesaid usage of the *Chlorpyrifos*, 19 bills were raised by respondent No.1-Contractor before the appellant-Corporation at different intervals by so incorporating in the bills that respondent No.1 has used the aforesaid salt of *Chlorpyrifos* and nowhere it was mentioned that it has used the salt of *Aldrin* and in this way there was no deception on the part of respondent No.1-Contractor. He further submitted that not only this, all the aforesaid 19 bills were rather prepared by the appellants themselves and in this regard he referred to the record as well which is produced before the Court today and further submitted that by mentioning of the aforesaid salt the officers of the appellant-Corporation has rather incorporated the same in their Measurement Book (MB) as well at different points of time and the entire exercise was undertaken by the officers of the appellant-Corporation themselves by entering the aforesaid name of the salt of *Chlorpyrifos* in the Measurement Book (MB) as well as by preparing the 19 bills at different rates. He also submitted that all the aforesaid 19 bills were duly accepted by



the officer of the appellant-Corporation and it was only when the final bill was submitted that they raised a dispute and the matter was referred to the Arbitrator and in this way no perversity can be found in the award which was passed.

5. Learned counsel for respondent No.1 further submitted that the appellants are only disputing the rates which have been raised in the bills which were submitted by alleging the same to be inflated rates whereas the same were cleared by the appellants themselves till the end and a perusal of the award would also show that the learned Arbitrator has also specifically discussed this issue and also came to the conclusion that even he also has a knowledge of the same that there is not much difference of the rates between the salt of *Aldrin* and the salt of *Chlorpyrifos* and therefore, the Arbitrator was of the view that the appellants could not have refused the payment of bills to respondent No.1 only because of the aforesaid reason.

6. Learned counsel for respondent No.1 also submitted that so far as the initiation of disciplinary proceedings against the officers of the appellant is concerned, the same itself cannot become a ground for setting aside of the award which was passed on its own merits even if some punishment of stoppage of increments to the officers of the appellant-Corporation was inflicted later on. He further submitted that the Committee so constituted on the orders of the Managing Director which was so referred to by the learned counsel for the appellants is concerned, the same would also have no significance because the Committee gave a report although it is undated but according to his knowledge, the Committee has given the report after the arbitration award was passed.

7. Learned counsel for respondent No.1 has referred to a judgment



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of Hon'ble Supreme Court passed in "*M/s C and C Constructions Limited Vs. IRCON International Limited*" 2025(4) SCC 234 and submitted that while considering an appeal under Section 37 of the Act, the Appellate Court only has to see as to whether the learned Court exercised its power under Section 34 of the Act has considered the same in accordance with the parameters of Section 34 or not. He submitted that none of the parameters as contained under Section 34 of the Act for setting aside the award has been fulfilled in the present case and therefore, the learned Additional District Judge, while exercising the powers under Section 34 of the Act has dismissed the objections in accordance with the provision under Section 34 of the Act wherein even the scope is very limited. He further submitted that even while exercising the powers under Section 37 of the Act, this Court would also go by the same principle as that of Section 34 of the Act and consequently, the scope of the present appeal is also very limited and therefore, on this score also the present appeal is liable to be dismissed. He also referred to the other judgments of Hon'ble Supreme Court in this regard on the aforesaid proposition of law passed in *Civil Appeal No.2058 of 2012* titled as "*Som Datt Builders-NCC-NEC (JV) Vs. National Highways Authority of India and others*" decided on 27.01.2025, "*Punjab State Civil Supplies Corporation Limited and another Vs. M/s Sanman Rice Mills and others*", 2024 SCC Online SC 2632, "*National Highways Authority of India Vs. M/s Hindustan Construction Company Ltd.*", 2024(6) SCC 809, "*Reliance Infrastructure Limited Vs. State of Goa*", 2024(1) SCC 479, *Special Leave to Appeal (C) No.13117 of 2019* titled as "*State of Jharkhand and others Vs. M/s HSS Integrated SDN and another*" decided on 18.10.2019, *Civil Appeal No.10531 of 2014 (arising out of SLP [Civil])*



No.14767 of 2012) titled as “Associate Builders Vs. Delhi Development Authority” decided on 25.11.2014, “P.R. Shah, Shares and Stock Broker (P) Ltd. Vs. M/s. B.H.H. Securities (P) Ltd. and others”, 2012(1) SCC 594 and “M/s Larsen Air Conditioning and Refrigeration Company Vs. Union of India and others”, 2023(15) SCC 472.

8. I have heard the learned counsel for the parties and have also perused the trial Court record.

9. An agreement was executed between the appellants and the respondents for construction of 24 sheds and also for anti-termite treatment. The scope and subject matter of the arbitration award and the dispute herein is not pertaining to construction of sheds but was only limited to the extent of anti-termite treatment. It was argued by learned counsel for the appellant that as per the term of the contract, respondent No.1-Contractor was to use the salt of *Aldrin* for anti-termite treatment but he actually used some other salt, namely, *Chlorpyriphos* which was not in terms of the contract and the learned Arbitrator has erroneously passed an award in favour of respondent No.1-Contractor despite the fact that it has not used the aforesaid salt of *Aldrin*.

10. On perusal of the terms of the contract and the award, it becomes clear that although in the terms of contract under Clause 6.15, the salt which was to be used for anti-termite treatment was *Aldrin* but at the same time it has also come on record that the aforesaid *Aldrin* salt was banned by the Government of India in the year 1992 whereas the present contract came into existence in the year 1994 and at that point of time neither the aforesaid salt was available in the market nor the same could have been made available because it was illegal to use the aforesaid salt. The



learned Arbitrator dealt with this issue in detail and rather observed that being on technical side he was also aware of the fact that there was not much difference between the aforesaid two salts pertaining to the price. Not only this, the Contractor had submitted 19 bills to the appellant-Corporation for payment by mentioning the aforesaid substitute salt of *Chlorpyrifos* and all the bills were passed by the appellant-Corporation and payment was also made to the Contractor. Due entries were also made in the Measurement Book (MB) at different points of time and this entire exercise was undertaken by the officers of the appellant-Corporation themselves and rather they themselves entered the name of the aforesaid salt '*Chlorpyrifos*' in the Measurement Book (MB) and therefore, accepted the use of the aforesaid salt in letter and spirit. However, when the final bills were submitted by respondent No.1-Contractor, then objection was raised in this regard and thereafter, the present dispute cropped up and the matter was referred to the learned Arbitrator. Although some disciplinary action was taken against the officers of the appellant-Corporation but that itself cannot become a ground for setting aside the award.

11. Learned Additional District Judge while considering the objections under Section 34 of the Act also considered this issue and considering the fact that the scope of interference under Section 34 of the Act is very limited and the case of the appellant did not fall under any of the grounds mentioned in Section 34 of the Act, therefore, the objections were rejected.

12. So far as the interference under Section 37 of the Act i.e. in the appeal is concerned, the law is very well settled. In a recent judgment passed by Hon'ble Supreme Court in "*M/s C and C Constructions Limited Vs.*



IRCON International Limited, 2025(4) SCC 234, it was held that the scope of interference in an appeal under Section 37 of the Act is well settled and reference was made to the earlier judgments passed by Hon'ble Supreme Court in "**Larsen Air Conditioning and Refrigeration Company Vs. Union of India and others**", (2023) 15 SCC 472 and also in "**Konkan Railway Corporation Limited Vs. Chenab Bridge Project Undertaking**", (2023) 9 SCC 85 and the relevant portion of the aforesaid judgment is reproduced as under:-

*"34. As far as scope of interference in an appeal under Section 37 of the Arbitration Act is concerned, the law is well settled. In **Larsen Air Conditioning and Refrigeration Company v. Union of India**, (2023) 15 SCC 472 in para 15, this court held thus:*

"15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the Tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground" [ref : Associate Builders, SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."

(emphasis in original and supplied)

**35. In *Konkan Railway Corpn. Ltd. v. Chenab Bridge******Project*** in para 18, this court held thus: (SCC P.93)

“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. 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.”

13. It is therefore well settled that illegality must go to the root of the matter and cannot be of a trivial nature and that the Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. In the present case, the learned Arbitrator has construed the term of the contract in a reasonable manner because of the reason that the aforesaid salt of *Aldrin* which was to be used in the terms of the contract was not available in the market because it was banned by the Government of India prior to the execution of the contract and therefore, the aforesaid ground taken by the learned counsel for the appellant that the *Aldrin* salt was not used and it amounted to the violation of the term of the contract is unacceptable and unfounded.

14. Reliance made by the learned counsel for the respondents in various other judgments of Hon'ble Supreme Court is also well founded.

15. In view of the aforesaid facts and circumstances, this Court does not find any ground to interfere in the impugned order dated 21.11.2005 passed by learned Additional District Judge, Panchkula.

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Consequently, finding no merit in the present appeal, the same is hereby dismissed.

05.08.2025

(JASGURPREET SINGH PURI)
JUDGE

Bhumika

1. Whether speaking/reasoned:

Yes/No
2. Whether reportable:

Yes/No