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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Judgment delivered on: 22.04.2025**

+ **FAO (COMM) 44/2022 & CM APPL. 13157/2022 (Stay)**

**CENTRAL ELECTRONICS LIMITED** .....Appellant

Through: Mr. Jasmeet Singh, Mr.  
Mahinder Singh Hura, Mr. Saif  
Ali, Mr. Pushpendra S.  
Bhadoriya, Mr. Vijay Sharma,  
Mr. Pranav Menon and Mr.  
Saurav, Advs.

versus

**M/S ELCOMPONICS TECHNOLOGIES  
P. LTD.**

.....Respondent

Through: Mr Rajiv Shankar Dvivedi, Mr  
Sushant Sarkar, Mr Rishabh  
Jain, Ms Sugandha Bhardwaj,  
Mr Bhushan, Advs.

**CORAM:  
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD  
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

**JUDGEMENT(Oral)**

**HARISH VAIDYANATHAN SHANKAR (J.)**

1. The present appeal under Section 37(1)(c) of the **Arbitration and Conciliation Act<sup>1</sup>, 1996** read with Sections 10 of the Delhi High Court Act, 1966 and 13 of the Commercial Courts Act, 2015 is preferred against the **Impugned Order<sup>2</sup> dated 08.12.2021** in OMP (COMM) No. 128/2019, titled '*Central Electronics Limited vs. M/S*

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<sup>1</sup> A & C Act

<sup>2</sup> Impugned order



*Elcomponics Technologies India Pvt. Ltd.*’ passed by the Ld. **District Judge (Commercial Court-01), South East, Saket Courts, New Delhi<sup>3</sup>**, rejecting a petition under Section 34 of the A & C Act challenging the **arbitral award<sup>4</sup> dated 14.07.2018**.

2. Shorn of unnecessary details, the brief facts of the case are as follows:

| Date       | Event                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | The Appellant herein was awarded a primary contract for around Rs.12.78 Crores by the Greater Noida Industrial Development Authority ("GNOIDA") for setting up 1 MWp Solar Power Project.                                                                                                                                                                                                                                                                                                                      |
| 02.11.2013 | The Appellant <i>vide</i> tender dated 02.11.2013 invited sealed bids for the supply, installation and commissioning of the above project.                                                                                                                                                                                                                                                                                                                                                                     |
| 08.11.2013 | The Respondent herein submitted its bid for the quoted tender price.                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 11.12.2013 | The Respondent, after negotiations, revised the tender Price to 11.5 Crores.                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 27.02.2015 | The Project was commissioned successfully.                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 14.07.2018 | Arbitral Award was passed by the Ld. Arbitrator.                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 08.12.2021 | Impugned Order was passed under section 34 of the A & C Act, 1996.                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 16.03.2022 | <ul style="list-style-type: none"><li>An appeal under section 37 of the A &amp; C Act was filed.</li><li>Notice was issued only in respect of the award of the first claim of refund of the amount deducted towards VAT/ST.</li><li>In respect of award in respect of interest on delayed payments, CEL was directed to deposit the amount (₹6,61,650/- with interest) in Court within 4 weeks, which was to be invested in an FDR.</li><li>The award in respect of the only first claim was stayed.</li></ul> |

3. The tabular statement of the claims made by the Claimant-Respondent herein and the relevant portion of the award are as follows:

| S. | Statement of Claim                                           | Operative Directions                                                                                                                       |
|----|--------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | For Rs. 61,17,458/- towards deductions made by the Appellant | I have therefore no hesitation in holding that the deduction and retention of the aforesaid amount of Rs. 61,17,457.00/- by the respondent |

<sup>3</sup> District Judge

<sup>4</sup> Award



|    |                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | from the final payment of Rs.11.50 Crores made to the Respondent.                                                                                                    | was neither authorized under law nor permissible and similarly there was no obligation or duty cast upon the Respondent to have remitted this amount to the government therefore held liable to refund this amount to the claimant.                                                                                                                                                                                                                                                                                                                                             |
| 2. | For Rs.26,24,641/- towards interest on Rs. 61,17,458/- (deduction amount) at the rate of 18% per annum till 15.07.2017 i.e., filing of the SoC.                      | As far as the first Claim for the amount of Rs. 61, 17, 458.00/- is concerned, I direct that it shall carry interest at the rate of 12 % pa. from 27-02-2015, when the project was completed and commissioned and therefore the Claimant became entitled to receive all the amounts due to it. This also therefore is the date on which the cause of action accrued to the Claimant to claim this amount from the Respondent. This interest liability shall remain fastened upon the Respondent from the aforesaid date till today, i.e. the date of the passing of this Award. |
| 3. | For Rs.13,23,300/- towards interest accrued on account of late and incomplete payments, calculated at the rate of 18% per annum till 15.07.2017 i.e., filing of SoC. | The Claimant has claimed interest on the aforesaid head @ 18% p.a. which, in the facts and circumstances of this case is very much on the higher side, looking to the delays, which occurred in making belated payments. I reduce the rate of interest from 18% p.a. (as claimed) to 9% p.a. and accordingly award an amount of Rs. 6,61,650/- under the aforesaid head.                                                                                                                                                                                                        |
| 4. | For Costs towards arbitration proceedings                                                                                                                            | The Claimant is also awarded the costs of this case which I assess at Rs.3 lac, keeping in view the fee paid to the Arbitrator by the Claimant as well as the element of counsel fees and other expenses supposed to have been incurred by the Claimant.                                                                                                                                                                                                                                                                                                                        |

4. It is the grant of the claims as tabulated hereinabove that led to the filing of the petition under Section 34 of the A & C Act, which came to be upheld by the Ld. District Judge, after examining the findings of the Ld. Arbitrator. While so affirming, the Ld. District Judge also referred to various judgments outlining the scope of interference permissible by the Courts under Section 34 of the A & C Act.

5. Notice having been limited to Claim No. 1, the parties have

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advanced arguments in respect of Claim No. 1 and no others and the present challenge is limited to our examination in respect of Claim No. 1 alone.

6. As is evident, Claim No. 1 is essentially in respect of a sum of Rs. 61,17,458/- which was retained by the Appellant herein while making the payments as agreed, upon the successful completion of the contract.

7. The Appellant's arguments circled around the sole contention that the said deduction and retention, in respect of the **Value Added Tax**<sup>5</sup> payments, was made as the Appellant was apprehensive that the said amount would not be paid by the Respondent and also that no proof of any such payments had been provided by the Respondent, as a result of which, the Appellant, in an attempt to safeguard itself from any penalty that may arise, made over the said payment to the concerned Authorities.

8. The Ld. Arbitrator has held that there was no obligation on the part of the Appellant to have paid the Value Added Tax under the **Uttar Pradesh Value Added Tax Act**<sup>6</sup>, 2008; and resultantly, the deduction and retention of the said VAT amount by the Appellant is not sustainable. The Ld. Arbitrator was also of the opinion that in case, the Appellant has deposited any such amount, then the proper course of action for it would be to apply to the relevant Authorities for refunding the same, and any such payment to the Authorities would not absolve the Appellant from its lawful duty of making the payment as agreed upon to the Respondent.

9. The Ld. Arbitrator, thus, after having examined the agreement

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<sup>5</sup> VAT Act

<sup>6</sup> UP-VAT Act



and the relevant provisions of the UP-VAT Act came to the conclusion that the Appellant could not have deducted or retained any part of the contractually agreed upon amount, that is, the sum of Rs. 11,50,00,000/-, especially since it was the undisputed case of the parties that the **contract<sup>7</sup> dated 11.12.2013** was successfully executed and completed. These findings have been upheld by the Ld. District Judge by the impugned order.

10. While examining the challenge under Section 37 of the A & C Act, we are reminded by various judgments of the Hon'ble Supreme Court as to the extremely narrow compass under which we operate.

11. In a recent judgment, *Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills<sup>8</sup>*, the Hon'ble Supreme Court summarized the settled position as follows:

“11. Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.

12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

13. In paragraph 11 of *Bharat Coking Coal Ltd. v. L.K. Ahuja*, it has been observed as under:

“11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings,

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<sup>7</sup> Contract

<sup>8</sup> 2024 SCC OnLine SC 2632



the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside.”

**14.** It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

**15.** In *Dyna Technology Private Limited v. Crompton Greaves Limited*, the court observed as under:

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

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



unpardonable under Section 34 of the Arbitration Act.”

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of *MMTC Limited v. Vedanta Limited*, it has been held as under:

“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 provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

18. Recently a three-Judge Bench in *Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking* referring to *MMTC Limited* (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.

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### **CONCLUSION:**

**20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong**

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upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.”

12. The Ld. Arbitrator, upon a conspectus of the relevant clauses and the undisputed admission of the parties on the successful execution and completion of the contract, examined the aspect of the retention of the sum as detailed in Claim No. 1.

13. While we are of the opinion that the scope of the Ld. Arbitrator may have been slightly exceeded in so far as the Ld. Arbitrator went on to make a determination on who was liable to make the payment of VAT, we also believe that perhaps the same came to be necessitated by the Appellant's repeated and strident justification for the retention of the amount on the basis that the Appellant would be foisted with the liability, in the event non-payment of the amount payable as VAT by the Respondent. This aspect also appears to have been noted by the Ld. District Judge while affirming the award passed by the Ld. Arbitrator. The disposition to repeat this point was noticed by this Hon'ble Court as well.

14. The Appellant also sought to make an argument for the first

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time before the Ld. District Judge that the amount of Rs. 51,80,947/- would be payable only as a reimbursement of the VAT. This aspect was examined and rejected by the Ld. District Judge holding that the Appellant raised such contentions only in its additional written arguments and thereby, does not require consideration.

15. We are in agreement with the views of the Ld. Arbitrator and the Ld. District Judge while rejecting the averments of the Appellant.

16. The contract between the parties does not provide for any such deduction or retention in respect of payment of VAT. This is also fortified by the fact that upon a pointed question in this regard being posed to the Ld. counsel for the Appellant, he would reply in the affirmative to the fact that there is no such clause that permits for any deduction or retention of any amount in respect of VAT.

17. One of the strenuous contentions, which is also sought to be put forth by the Appellant is that the contract had been entered upon, based on the assertion by the Respondent as to the amount of VAT that would be payable, implying thereby that there was a false assertion made by the Respondent herein in respect of the tax liability. The said argument is surprising, given the fact that the Appellant is a government company and is expected to have access to experts or at the very least, tax experts to ascertain whether any such claim is correct or not.

18. The fact that the Respondent having been able to successfully reduce the VAT liability with the concerned Authorities is not something that may be held against him. In any event, this point was not raised by the Appellant either before the Arbitral Tribunal or the Ld. District Judge. Additionally, the quantification of the tax amount and the difference, if any thereof, is not part of the scope of the

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jurisdiction exercisable by us, being a pure question of fact.

19. This now brings us to an argument that the contract was a turnkey contract, not a works contract. The Ld. Arbitrator has clearly dealt with the same and held that it is a works contract. This argument was canvassed essentially for the purpose of trying to justify the payment by the Appellant to the VAT Authorities and thereby to contend that the deduction and retention of the amount so paid, was rightly done by it.

20. We are of the opinion that the said argument raised is only a means to try and further justify what was clearly an erroneous act on the part of the Appellant.

21. We, therefore, reiterate that such erroneous payment of the VAT by the Appellant cannot justify the deduction or retention of any amount to the Respondent, especially in view of the admitted position that the contract stands successfully executed and completed.

22. In view of the aforementioned, the appeal along with any pending application(s), if any, stands rejected.

23. No order as to costs.

**SUBRAMONIUM PRASAD, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**APRIL 22, 2025/v/sm/er**

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