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

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Judgment pronounced on: 13.05.2025

+ **FAO (OS) (COMM) 99/2023**

UNION OF INDIA

..... Appellant

Through: Mr. Niraj Kumar and Mr. Chaitanya
Kumar, Advocates.

versus

M/S ROSHAN REAL ESTATE PVT. LTD.

..... Respondent

Through: Ms. Anusuya Salwan and Ms. Sonika
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. The present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "*the A&C Act*"), read with Section 13(1) of the Commercial Courts Act, 2015, assailing an order dated 22.02.2023 passed by the learned Single Judge in OMP (COMM) 337/2022, whereby the petition filled by the Appellant under Section 34 of the A&C Act, partly challenging the arbitral award dated 12.03.2022, was dismissed.

2. The arbitral award was rendered in the backdrop of an open tender



floated by the Appellant in the year 2012 for ‘Construction of Office Building for Archaeological Survey of India (ASI) at 24 Tilak Marg, New Delhi including electoral installation’ (hereinafter referred as ‘the project’). The Respondent/Claimant submitted its bid on 23.03.2012, subsequent to which, contract was awarded to the respondent *vide* letter no.3983 dated 27.09.2012 and Agreement No. 63/EE-A Division/2012-13, was executed between the parties.

3. In terms of the agreement between the parties, the construction work was scheduled to commence on 18.10.2012 and stipulated to be completed within a period of 18 months from the date of commencement (i.e., 17.04.2014). However, admittedly, the aforesaid work was completed on 31.03.2017, after a delay of 1079 days.

4. The disputes between the parties arose as regards the monetary entitlement of the Respondent/Claimant under the agreement. Since the dispute/s between the parties persisted, the Respondent/Claimant issued notice of invocation dated 19.11.2019 to the Appellant.

5. Pursuant thereto, in terms of the arbitration clause, *vide* letter dated 31.12.2019, a Sole Arbitrator was appointed by the Additional Director General (RD) of the Central Public Works Department (CPWD). The resultant arbitral proceedings culminated into an award dated 12.03.2022. The summary of the award rendered by the learned Sole Arbitrator is set out in paragraph 21.1 of the award as under:-

Claims No.	Claimed Amount (Rs.)	Awarded Amount (Rs.)	Interest awarded @10% P.A. from
1.	19,01,77,861/-	3,96,50,560/-	18.10.2018
2.	1,98,99,939/-	1,00,00,000/-	18.10.2018
3.	42,97,333/-	Nil	Nil



4.	6,00,000/-	Nil	Nil
5.	3,00,79,897/-	1,43,38,475/-	26.09.2019
6.	1,09,38,144/-	Nil	Nil
7.	36,57,318/- plus GST plus NGT TAX (not calculated)	12,30,309/- + GST Declaratory	18.10.2018
8.	Bank charges@3% p.a. 12,36,000/-	12,00,000/-	26.09.2019
9.	42,20,186/-	Nil	Nil
10.	12,00,000/-	8,48,006/-	Nil
11.	Interest @15% p.a.	Interest @10% p.a.	As per claim no. 11
12.	40,00,000/-	28,00,000/-	Nil
Total	27,03,06,678/- plus Interest	7,00,67,350/-	

6. There is no challenge in the present proceedings to the constitution of the Arbitral Tribunal. In fact, a large part of the award has been accepted by the petitioner. The grievance of the appellant is confined to the award in respect of two claims viz. Claim No. 1 (Part-I) Serial No.11 and Claim No.12.

Claim No. 1 (Part-I) Serial No.11, was towards ‘Pumping and bailing out water caused by springs, tidal or river seepage, broken water mains or drains and the like’. A sum of Rs. 2,80,80,000/- has been awarded thereunder as against the Claim amount of Rs.15,13,60,695/-.

Claim No.12 was towards “Cost of proceedings Rs. 10,00,000/- plus fee and other expenses to be paid to the arbitrator on actual basis”. A sum of Rs.28,00,000/- has been awarded in respect thereof.



7. In the aforesaid conspectus, the Appellant preferred its petition under Section 34 of the A&C Act. The said petition came to be dismissed *vide* impugned judgment dated 22.02.2023, whereby, the learned Single Judge held that the learned Sole Arbitrator had given “extensive findings and elaborate reasons”, and therefore, the challenge was outside the ambit and scope of Section 34 of the A&C Act. The relevant portion of the aforesaid judgment reads as under:-

“28. Upon perusal of the pleadings and upon hearing the counsel for the petitioner, it is found that the grounds that have been invoked and the contentions that have been raised on behalf of the petitioner are essentially and substantially on merits of the case, dispute between the parties and the Arbitral Award.

29. As discussed in the foregoing paragraphs, this Court shall not sit in appeal and re-adjudicate the disputes between the parties while exercising its jurisdiction under Section 34 of the Arbitration Act. Hence, the petitioner does not stand on this ground. Secondly, the petitioner has raised the grounds of contradiction to the public policy and fundamental policy, as well as of no evidence and the Award being unreasoned, however, has miserably failed to establish the same.”

8. In the aforesaid circumstances, the present appeal has been filed by the Appellant before this Court.

9. It is noted that the challenge in the petition appeal is also confined to the award in respect of the aforesaid two claims.

SUBMISSIONS ON BEHALF OF THE APPELLANT

10. Learned counsel on behalf of the Appellant submits that the learned Sole Arbitrator neither had the requisite expertise nor deliberated upon the issue/s arising in respect of Claim No. 1. (Part-I) serial no. 11. It is stated that the said claim was dealt with by the learned Sole Arbitrator primarily



relying upon conjectures and surmises.

11. It is also submitted that the learned Sole Arbitrator assessed the amount to be awarded as Rs.2,80,80,000/- on a presumption that atleast 10 pumps must have been installed by the Respondent/Claimant along with extra pumping for dewatering from the construction site for a period of 19.5 months, 24 hours per day manner. It is contended that the extent of dewatering alleged to be carried out by the Respondent/Claimant is untenable.

12. Further, it is submitted that the version of the Respondent/Claimant as regards the number of bore wells that were installed is *ex facie* untenable inasmuch as it is practically impossible to install the number of borewells as asserted by the Respondent/Claimant.

13. It has been further submitted that the reliance placed by the learned Sole Arbitrator on the 'Site Order Book' for the purpose of assessing Claim No. 1. (Part-I) serial no. 11 is misconceived. It is alleged that the 'Site Order Book' was manipulated and the same is evident from letter dated 11.03.2021 addressed by the Assistant Engineer (who was working in the project at the relevant time) to the learned Sole Arbitrator. The said letter was obtained during the pendency of the arbitral proceedings and was filed towards the end of the said proceedings. It is, however, submitted that the same has not been taken note of in the impugned award.

14. It is further submitted that the Arbitral Tribunal failed to take note of the relevant provisions of the contract in terms of which the payment claimed by the Respondent/Claimant towards dewatering was clearly inadmissible.



15. As regards, the award in respect of Claim No.12, it is submitted that the claim filed by the Respondent/Claimant before the learned Sole Arbitrator was for a sum of Rs. 10,00,000/- towards the fee of the learned Sole Arbitrator and other expenses emanating out of the said proceedings. However, the arbitrator went beyond what was claimed and awarded a sum of Rs. 28,00,000/- without disclosing any cogent rationale for arriving at the said amount. It is further submitted that even though the fee was payable in terms of the Office Memorandum dated 19.11.2019 issued by the CPWD [which governs the fee structure and other allowances of panel arbitrators], the learned Sole Arbitrator erroneously proceeded to charge fee on the basis of IVth Schedule of the A&C Act.

16. In the circumstances, the learned counsel on behalf of the Appellant has sought to assail the impugned award in respect of the aforesaid claims on the premise that the same are vitiated on account of patent illegality and hence, liable to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

17. Learned counsel for the Respondent/Claimant has submitted that the impugned award is well reasoned and is based on an elaborate consideration and appreciation of the factual and contractual conspectus. It is submitted that the “dewatering work” performed by the Respondent/Claimant is borne out from the records. It is submitted that a detailed analysis of rates was submitted by the Respondent/Claimant to the concerned Executive Engineer of the Appellant in regards to the extra work performed, however, the same was not considered during the course of execution of the contract. It is submitted that a detailed analysis of rates was also filed before the Arbitral



Tribunal and the same was duly considered by the Arbitral Tribunal. It is submitted that the quantum of work is evident from the material on record before the Arbitral Tribunal, and the challenge to the contents of the appellant's own site order book was made only at the fag end of arbitral proceedings

18. It is further submitted that the award in respect of Claim No.12 is also perfectly justified and based on the quantum of fee/ cost actually borne by the Respondent/Claimant and as such, the same brooks no interference in exercise of jurisdiction under Section 34 or 37 of the A&C Act.

19. Reliance is also placed on multiple authorities to emphasise that jurisdiction of this Court under Section 34 or 37 of the A&C Act is extremely limited and circumscribed and that it is unwarranted to interfere with the impugned award in the facts and circumstances of the present case.

REASONING AND CONCLUSION

20. The impugned award deals with Claim No. 1 (Part-I) Serial No.11 i.e., 'Pumping and bailing out water caused by springs, tidal or river seepage, broken water mains or drains and the like', in the following terms:-

"S. No.11: Pumping and bailing out water caused by springs, tidal or river seepage, broken water mains or drains and the like.

I have carefully gone through the pleadings of the parties. In the instant case the date of start of the work was 18.10.2012 and that of stipulated date of completion 17.04.2014 with time allowed of 18 months. Normally as per the sound engineering practice, the dewatering is done only till the structural work maximum up to 2nd floor level is completed which as per the miles stone provided in the contract should have been done within 10 months of the date of start, and the dewatering is stopped a bidding contractor will take in to account that he has to do dewatering say for a maximum period of 12 months, leaving 6 months for finishing, but in the instant case instruction through site order book were issued by



the respondents on 05.11.2013. It is pertinent to mention that as per the instructions, the claimants was instructed as under:-

The consultant has confirmed that the casting of slab can be done subject to the following precautionary measures.

1. Dewater and maintain the ground water table at least 1.0 meter below bottom of raft,
2. Dewatering shall be continued till completion of structural work and earth back filling work and any other permanent finish in the area.

You are (claimants) are requested to strictly follow the above precautionary measure in order to have structural stability of the building.

The claimants noted the instruction on 05.11.2013 for compliance and compliance was recorded by the claimant's representative 07.11.2013 by mentioning that 15 Nos of pumps are working with 24 hours with 15 Nos of stand by pump with all necessary back up as also seen by you and the payment was also claimed.

To the above the respondents recorded that necessary action taken by the contractor.

Another note dated 20.12.2013 in the site order book states that," Please recall the instruction given on S.O.B. on 05.11.2013, it was instructed not to discontinue dewatering of the area unless entire structure & finishing is completed. It is once again directed not to discontinue dewatering of the area.

3. From the above it is clear that the instructions were not to discontinue dewatering till finishing work is completed which means the period of dewatering will end only about six months before the actual completion. As per the miles stone period of dewatering will be about 45 months from the date of start as per the table of miles stone. The drawings were issued and respondents Consultant imposed precautionary condition and neither the drawings nor such instruction were part of the tender documents and due to the failures of the respondents in issuing the drawings the work prolonged by about 33 months and the claimants would have been entitled for extra payment of pumping after 12 months from date of start as per my observation, i.e. for about 33 (45- 12) months but the claimants himself has claimed for the period from 18.04.2014 to 30.11.2015, (19.5 months) i.e. after the stipulated date of completion which was 17.04.2014 and I feel that the



approach of the claimants is very fair under the circumstances. It is also to be noted that no bidder takes in to account the abnormal delay only due to the fact that the respondents failed to handed over site or issue drawings, decisions etc. due to which the structural work could not be completed within time and the claimants had to keep running the pumps for about 45 months instead of roughly 12 months, hence the condition referred by the respondents is of no help since the claimants have excluded the stipulated period and since the losses are nonrecoverable which needs to be compensated on account of running the pumps for extra period for which the respondents are responsible.

4. The respondents vide their submission dated 12.04.2021, has filed a letter dated 11.03.2021 said to be observation of the then AE in charge has no meaning because the respondents have not led any evidence, the letter is dated 11.03.2021 from Mr. Malik, now Executive Engineer is meaningless and cannot be relied upon and such letter should have been filed along with the statement of defence and then with the Sur Rejoinder which was filed vide letter dated 15.02.2021, i.e. after the claimants completed their oral arguments on 01.02.2021 having not done so, the stage at which the letter was filed, it cannot be ruled out that the such letter is an obtained letter/document after thought. Since the copy of the letter is endorsed to the claimants the claimants have already clarified in rejoinder that any letter neither addressed to claimants nor copy endorsed to them should be treated as not admitted. Therefore, the letter is of no legal consequence.

5. In view of my finding above the claim against the item is justified. The claimants have filed the A/R of the item on page 311 of volume-II and the detail measurement also with the A/R on page 310 of Volume II. The claimants have considered 15 Nos of pumps as under: $(15 \times 24 \times 60 \times 180 \times 592) / 1000 = 2301696$ kl/pm

Whereas: -15 is number of pumps, 24 are hours per day, 60-minute per hour, 180 the discharge of pump in liters per minute and 592 number of days.

6. Although the respondents have denied the claim but have not offered any comments on quantification and rate. But of my own, I feel that there cannot be a constant discharge because the discharge also depends on other factor and one being height of discharge. The Claimant is claiming a total amount of Rs.15,13,60,695/- which is too high.

7. It is noticed that pumping has to be done for about 45 months instead of 12 months i.e., for about 33 months extra whereas the Claimant has



claimed for extra pumping of about 19.5 months only which is reasonable.

8. As the work has been delayed due to the Respondent including clients etc., as decided in para 8.2.6.11 & 8.3.3 the Claimant is to be compensated for extra cost of pumping. Which is part of nonrecoverable losses.

9. The Claimant has claimed 15 nos. of pumps installed and 15 nos. pumps stand by whereas the Respondents has doubted that so many nos. of pumps were installed as per the Respondent submission dated 21.04.2021, though the Respondent version is not reliable. However, I assessed at least 10 nos. of pump must have been installed with some stand by pumps.

10. In view of above I asses that 10 nos. of pump were installed and extra pumping was done for 19 .5 months. The running cost of each pump including all expenses is about Rs.200 per hrs. Thus, the cost for running of pumps per months is Rs. $10 \times 200 \times 24 \times 30 = \text{Rs.}14,40,000/-$ per month. Thus, the cost for running of pumps for 19.5 months is $\text{Rs.}14,40,000 \times 19 .5 = \text{Rs.}2,80,80,000/-$ Therefore, the Claimant is entitled for Rs.2,80,80,000/- against this Claim.

Keeping in view of above, I award Rs. 2,80,80,000/- in favour of the Claimant against this claim.”

21. From perusal of the aforesaid, it can be seen that the arbitral award takes into account the following aspects while assessing the aforesaid claim:-

- i. As per usual practise, dewatering is contemplated only till completion of structural work upto second floor level, which in terms of the contractual milestones, should have been confined to a period of 10-12 months from the date of start of the work;
- ii. However, in terms of instructions issued through the ‘Site Order Book’ on 05.11.2013 the Respondent/Claimant was instructed to continue with dewatering so as to maintain the ground water table at least 1.0 meter below bottom of the raft,



and to continue with dewatering till completion of the entire structural work, earth back filling work and other finishing work;

- iii. Consequently, the dewatering work had to be done through the entire duration of the contract (including prolongation period of 33 months);
- iv. The award renders elaborate findings (not challenged by the appellant) that the appellant was “entirely responsible” for the prolongation of the contract;
- v. Given that the contractual period was significantly elongated, Respondent/Claimant could have claimed additional dewatering charges for a period of 33 months. However, the Respondent/Claimant confined its claim for dewatering charges only for a period of 19.5 months (for 18.04.2014 to 30.11.2015). The learned Sole Arbitrator found this to be “fair”.
- vi. The award notes that the claim of Rs. 15,13,60,695/- raised by the Respondent/Claimant under this claim, was on the premise that the Respondent/Claimant installed 15 dewatering pumps working 24 hours per day. The learned Sole Arbitrator found that the claim was unreasonably excessive and accordingly, moderated the claim and assessed the Respondent/Claimant entitlement on the basis that ‘atleast 10 number of pumps were installed for 19.5 months and the running cost of each pump including all expenses is approximately Rs. 200 per hour’. Resultantly, the amount of Rs. 2,80,80,000/- was worked out.



22. The primary contention of the learned counsel for the Appellant is that the learned Sole Arbitrator failed to take note of the letter dated 11.03.2021 furnished by the concerned official (who was working in capacity of an Assistant Engineer at the time of execution of the contract) whereby a doubt has been cast on the veracity of the remarks of the respondent on the 'Site Order Book', and as regards the assertion of the Respondent/Claimant as regards the number of bore wells installed. It is significant that the letter does not controvert or dispute the instruction/s recorded in the site order book to the effect that dewatering measures were instructed to ensure (i) that the water table is maintained at least 1 meter below the bottom of the raft; (ii) dewatering shall be continued till "completion of structural work and earth back filling and any other permanent finish in the area".

23. The said letter was obtained from the then Assistant Engineer during the course of arbitral proceedings and sought to be placed on record. It is further pointed out in these proceedings that subsequent to the said letter being obtained, a police complaint was also filed by the Appellant alleging forgery in the 'Site Order Book'.

24. With regard to the aforesaid aspect, the learned Sole Arbitrator notes in the impugned award the contents of 'Site Order Book' were not impeached by the appellant in its statement of defence, and not even in its sur-rejoinder. It was noted that the letter was belatedly submitted, after oral arguments had been completed by the respondent/ claimant. The learned Sole Arbitrator found that the same was of no legal consequence.

25. The aforesaid view taken by the learned Sole Arbitrator cannot be



said to be untenable. It is noticed that in the Statement of Defence filed by the appellant in the arbitral proceedings (*'the SoD'*), all that was submitted with regard to this Claim, was as under:

"The claim made under para 5 is also false and not tenable because it is covered under different conditions of the contract, that nothing shall be paid extra for pumping out of water"

26. It can be seen that the SoD does not specifically deny the extent of deployment of pumps as asserted in the Statement of Claim (hereinafter referred as *'the SoC'*) based on instructions of the Appellant. The relevant averments in the SoC read as under:-

"The other major item is item No. EI 21/3 at S. No.11 read as: Pumping out water....."

In the BOQ there was no such item but the water level of the sub-soil was very high requiring continuous running of pumps for dewatering for 24X7; 15 Nos. of pumps, each with a discharge of 180 LPM and equal number of standby pumps were deployed. The deployment of pumps is an admitted fact and the respondents were informed through monthly report as well as through letters. Refer C-5, C-10, C-23, C-43, C-44, C-45, C-49 and others. The instructions were not to stop dewatering till completion of structure work and to maintain the ground water table at least one meter below from the bottom of the raft. Hence extra item and claim."

27. It has been noticed that while assessing the claim, the learned Sole Arbitrator has taken care to assess the entitlement of Respondent/Claimant based on a realistic level of deployment. Accordingly, the sum awarded is only a fraction of what was claimed by the Respondent/Claimant.

28. As regards the contract conditions relied upon by the appellant to urge that the work of dewatering was included in the item rates and no extra amount was payable for the same, the impugned award notices that the dewatering work stretched for an additional period of 33 months (over and above the period envisaged under the contract). The respondent/ claimant



confined its claim only to a certain period after the scheduled completion date. The award lays the blame for prolongation of the contract, squarely upon the appellant. It is in this peculiar background, that the claim was found to be admissible.

29. In the above context, it cannot be said the view taken in the impugned award is not even a possible view, so as to warrant interference in proceedings under Section 34 and/or 37 of the A&C Act, 1996. On the contrary, the approach of the arbitrator appears to be judicious; the learned arbitrator has also moderated the claim, taking into account the attendant facts and circumstance.

30. In the circumstances, there is no justification to interfere with the findings in the impugned award in respect of the aforesaid claims, having regard to the scope of jurisdiction under Section 34 and/or 37 of the A&C Act. The legal position in this regard is well settled and reiterated time and again by the Supreme Court.

31. In ***Punjab State Supplies Corporation Ltd and Anr. vs Sanman Rice Mills and Ors.***, 2024 SCC OnLine SC 2632 the Supreme Court has once again reiterated that 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. The relevant portions of the said judgment are as under:

“LEGAL POSITION:



9. The object of the Act is to provide for a speedy and inexpensive alternative mode of settlement of dispute with the minimum of intervention of the courts. Section 5 of the Act is implicit in this regard and prohibits interference by the judicial authority with the arbitration proceedings except where so provided in Part-I of the Act. The judicial interference, if any, is provided inter-alia only by means of Sections 34 and 37 of the Act respectively.

10. Section 34 of the Act provides for getting an arbitral award set aside by moving an application in accordance with sub-Section (2) and sub-Section (3) of Section 34 of the Act which inter-alia provide for the grounds on which an arbitral award is liable to be set aside. One of the main grounds for interference or setting aside an award is where the arbitral award is in conflict with the public policy of India i.e. if the award is induced or affected by fraud or corruption or is in contravention with the fundamental policy of Indian law or it is in conflict with most basic notions of morality and justice. A plain reading of Section 34 reveals that the scope of interference by the court with the arbitral award under Section 34 is very limited and the court is not supposed to travel beyond the aforesaid scope to find out if the award is good or bad.

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, 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.

19. In *Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani*, a Division Bench of this Court followed and reiterated the principle laid down in the case of *MMTC Limited (supra)* and *UHL Power Company Limited v. State of Himachal Pradesh*. It quoted and highlighted paragraph 16 of the latter judgment which extensively relies upon *MMTC Limited (supra)*. It reads as under:

“16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In *MMTC Ltd. v. Vedanta Ltd.* [*MMTC Ltd. v.*



Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

“11. As far as Section 34 is concerned, the position is well settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., [1948] 1 K.B. 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

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 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.”

32. Similarly, a three-judge Bench of the Supreme Court in ***UHL Power Co. Ltd. v. State of H.P.***, (2022) 4 SCC 116 have discussed the limited scope of interference under Sections 34 and 37 of the A&C Act and observed as under:-

“15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed....”

33. The Supreme Court in ***Haryana Tourism Ltd. v. Kandhari Beverages Ltd.***, (2022) 3 SCC 237, again reiterated the limited scope of interference under Sections 34 and 37 of the A&C Act and held as under:-

“8. So far as the impugned judgment and order passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of



the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to : (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable.”

34. As regards the Award in respect of Claim No.12, it is noticed that the statement of claim filed on behalf of the Respondent/Claimant, avers as under:-

“Claim No.12:- The contractor claim cost of proceeding Rs, 10,00,000/- plus the fee and other expenses to be paid to the arbitrator on actual basis.

Since the claimants have been unnecessary dragged in to litigation, and had to pay legal expenses, therefore it is prayed that a sum of Rs. Ten lacs as cost of proceeding plus the fee and other expenses to be paid to the Ld. Arbitrator may please be awarded in favour of the claimants.

The Ld. Arbitrator is further requested to please award service tax/GST as per rule on the whole amount awarded since it is compulsory to pay GST.”

35. The impugned award in respect of the aforesaid claim, is in the following terms:-

“20. Claim No.12: - The contractor claim cost of proceeding Rs.10,00,000/- plus the fee and other expenses to be paid to the arbitrator on actual basis.

And

Counter claim No.1



20.1. Claimant's submission:

Since the claimants have been unnecessary dragged in to litigation, and had to pay legal expenses, therefore it is prayed that a sum of Rs. Ten lacs as cost of proceeding plus the fee and other expanses to be paid to the Ld. Arbitrator may please be awarded in favour of the claimants.

The Ld. Arbitrator is further requested to please award service tax/GST as per rule on the whole amount awarded since it is compulsory to pay GST.

20.2 Respondent's submission:

That the claimant has unnecessarily dragged to the respondent in litigation on the basis of the false and fabricated claim hence the claim is denied & deserve to be rejected.

It is specifically mentioned here that the Ld. Arbitrator can adjudicate the issues in terms of the contract/ agreement, as the Hon'ble High Court Of Allahabad has held in the matter between the Executive Engineer, Lucknow Central Div. and District Judge and others, dated 29 may 2020. Judgement of Hon'ble High Court has been upheld by Apex Court.

Counter Claim no.1:

The Claimant has unnecessarily and with malafide intension has dragged to the Respondent in litigation therefore the Ld. Arbitrator humbly prayed to award Rs.3.00 lakhs the cost of litigation in addition on the payment to be made to the Ld. Arbitrator in favour of the Respondent and against the Claimant.

Any other relief, the Ld. Arbitrator may deem fit, be awarded in favour of the Respondent and against the Claimant.

20.3. Rejoinder submission by the Claimant:

The claimants reiterate their submission made in the SOC and the contents of SOD are denied. The Ld. Arbitrator may please be awarded in favour of the claimants.

The Ld. Arbitrator is further requested to please award GST as per rule on the whole amount awarded since it is compulsory to pay GST.

20.4. Analysis & Finding of the Tribunal:



20.4.1. After overall analyses of the record placed before this tribunal, it is found that the Claimants had to undergo arbitration for their claims which have been found payable to them. Although Claimant claims are found slightly exaggerated, some of them also found justified on merits. Accordingly, the claim of cost is also not unjustified. Therefore, they are entitled to be compensated for the cost of arbitration.

20.4.2. The claimant has claimed Rs.10.00 Lakhs cost of proceeding plus Arbitrator fee and other expenses on actual basis during SOC which is not also quantified at the time of written submission. However, taking into consideration the claimant's share towards fee and other expenses, stamp duty payable on the awarded amount and also the expenses incurred in engagement of Counsel and other miscellaneous expenses, and the claimants having able to establish most of his claim this tribunal is of the opinion that the amount of claim towards cost is not unreasonable when it is compared with the amount of award. Hence Rs.28,00,000 lakhs will be reasonable.

20.4.3. The Respondent has also given counter Claim of Rs. 3,00,000/- lakhs towards cost of arbitration. After going through the above award, it is clear that most of the claim has gone in the favour of Claimant, hence the Claimant cannot be blamed for the arbitration. Thus, the counter claim of the Respondent is rejected.

20.4.4. In view of above I award Rs. 28,00,000/- lakhs in favour of Claimant under this claim & Nil amount is awarded in favour of the Respondent against counter claim.

36. Substantial arguments have been addressed on the aspect of whether the learned Sole Arbitrator was entitled to charge fee based on the IVth Schedule of A&C Act or in terms of the Office Memorandum dated 19.11.2019 issued by the CPWD. It appears to have been assumed that the award of Rs. 28,00,000/- under Claim No.12 has been worked out taking into account the fees charged by the Arbitrator as per the IVth Schedule. However, a perusal of the award reveals that the same discloses no basis at all for arriving at a figure of Rs. 28,00,000/-.



37. The amount claimed by the Respondent/Claimant was “Rs. 10,00,000/- plus the fees and other expenses to be paid to the arbitrator on actual basis.” Neither does the award indicate as to what is the fees and expenses paid to the Sole Arbitrator on actual basis, nor is there anything in the award to indicate as to how the Sole Arbitrator has apportioned the fees and expenses between the parties.

38. There is also no reasoning discernible in the award as to how the claim of the Respondent/Claimant for Rs. 10,00,000/- as “cost of proceedings” has been dealt with by the learned Sole Arbitrator.

39. The Supreme Court in **Delhi Metro Rail Corporation Limited v. Delhi Airport Metro Express Private Limited**¹, (2024) 6 SCC 357, relying upon **Associate Builders vs. DDA**, (2015) 3 SCC 49, has affirmed that “patent illegality may also arise where the award is in breach of the

¹ “34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by “patent illegality” appearing on the face of the award.

35. In Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:

(i) based on no evidence;

(ii) based on irrelevant material; or

(iii) ignores vital evidence.

36. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned.



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provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned”.

40. As such, the award in respect of Claim No.12 is unsustainable.

41. Accordingly, the present appeal is partly allowed, to the extent of setting aside the impugned arbitral award in respect of Claim No. 12. The award in respect of Claim No.1. (Part-I) serial no. 11 is not liable to be interfered with.

42. The appeal is disposed of in the above terms.

SACHIN DATTA, J

VIBHU BAKHRU, J

MAY 13, 2025/uk, sl