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

Judgment Reserved on: 19.08.2025
Judgment Pronounced on: 13.11.2025

+ **FAO(OS) 169/2017 and CM APPL. 20733/2017****MAHANAGAR TELEPHONE NIGAM LIMITED**

.....Appellant

Through: Mr. Arun Bharadwaj, Senior Advocate with Mr. Vikalp Mudgal and Mr. Arun Sanwal, Advocates.

versus

M/S MOTOROLA INC

.....Respondent

Through: Mr. P. C. Sen, Senior Advocate with Mr. Nishant Joshi, Mr. Kunal Singh and Ms. Rashi Goswami, Advocates.

+ **FAO(OS) 171/2017 and CM APPL. 20744/2017****MAHANAGAR TELEPHONE NIGAM LIMITED**

.....Appellant

Through: Mr. Arun Bharadwaj, Senior Advocate with Mr. Vikalp Mudgal and Mr. Arun Sanwal, Advocates.

versus

M/S MOTOROLA & INC

.....Respondent

Through: Mr. P.C. Sen, Senior Advocate with Mr. Nishant Joshi, Mr. Kunal Singh and Ms. Rashi Goswami, Advocates.



CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeals, filed under Section 37 of the **Arbitration and Conciliation Act, 1996**¹, challenge the **common judgment dated 31.03.2017**² passed by the learned Single Judge of this Court.
2. By the Impugned Judgment, the learned Single Judge dismissed OMP No. 11/2014 and upheld the **Arbitral Award dated 26.08.2013**³, and further dismissed OMP No. 380/2015 while upholding the **Additional Arbitral Award dated 21.01.2015**⁴.
3. Both these arbitral awards arose from claims made by the Respondents in relation to three Purchase Orders, *namely*, **Purchase Order No. 1 dated 07.03.2000**⁵, **Purchase Order No. 2 dated 28.11.2000**⁶ and **Purchase Order No. 3 dated 09.08.2002**⁷.

BRIEF FACTS:

4. Shorn of unnecessary details, the relevant and necessary facts for the present appeals are summarized as follows:

(a) The Appellant, **Mahanagar Telephone Nigam Limited**⁸, issued a Tender on 16.03.1999, inviting offers from reputed manufacturers and suppliers of WLL, CDMA IS 95A

¹ The Act

² Impugned Judgement

³ Arbitral Award

⁴ Additional Arbitral Award

⁵ PO1

⁶ PO2

⁷ PO3

⁸ MTNL



Technology with V-5.2 interface, having at least two years' standing and adequate financial strength. The tender was on a turnkey basis for survey, design, supply, installation, testing, commissioning, and handing over of the system.

- (b) The Respondent, M/s Motorola Inc., emerged as the successful bidder. Pursuant thereto, the Appellant issued a **Letter of Intent**⁹ on 11.01.2000 in favour of the Respondent. Upon submission of a performance bank guarantee, PO1 was issued.
- (c) Thereafter, additional services were availed by the Appellant, and PO2 was issued on 28.11.2000.
- (d) In July 2002, another LOI was issued, and consequently, PO3 was placed on 09.08.2002.
- (e) Over the years, several communications and meetings took place between the parties with the object of resolving issues that arose in the execution of the project.
- (f) However, disputes emerged between the parties. The Appellant, *inter alia*, alleged that:
 - (i) The Acceptance Test (AT) coverage report for 50,000 lines failed to meet the prescribed tender standards;
 - (ii) Deficiencies were found in RF network coverage and in the provision of tools, testers, and spares, though these deficiencies were subsequently addressed; and
 - (iii) Only a conditional Taking Over Certificate (TOC) was issued, subject to achieving more than 56.1% in-building coverage.

⁹ LOI



- (g) In view of the disputes, the Respondent invoked arbitration *vide* Notice dated 29.09.2008, seeking release of outstanding payments along with interest.
- (h) Upon adjudication of the claims on merits, the learned Arbitrator rendered an Award dated 26.08.2013 in favour of the Respondent (claimant therein), directing payment of USD 8,768,505 and Rs. 22,29,17,746/-. The learned Arbitrator further awarded interest at 15% per annum on the aforesaid sums from 01.10.2008 until realization, along with costs of arbitral proceedings. This award was challenged by MTNL in OMP No. 11/2014, which has now culminated into FAO(OS) 169/2017.
- (i) Subsequently, by an Additional Award dated 21.01.2015, the learned Arbitrator directed the release of the Bank Guarantees submitted by M/s Motorola Inc. This award was assailed in OMP No. 380/2015, which has now resulted in FAO(OS) 171/2017.
- (j) The Appellant, aggrieved by both the Awards dated 26.08.2013 and 21.01.2015, filed objections under Section 34 of the Act. By a common Judgment dated 31.03.2017, the learned Single Judge dismissed OMP No. 11/2014, thereby upholding the Award dated 26.08.2013, and also rejected OMP No. 380/2015, affirming the Additional Award dated 21.01.2015. The learned Single Judge held that no patent illegality had been demonstrated to warrant interference, and consequently imposed costs of Rs. 20,000/- on the Appellant.



(k) Aggrieved by the dismissal of its objections, the Appellant has now preferred the present appeals, seeking the setting aside of the Arbitral Awards as well as the Impugned Judgment.

CONTENTIONS OF THE APPELLANT:

5. The learned Senior Counsel for the Appellant would assail the Impugned Judgment primarily on the following grounds:

- (i) His first contention would be that PO2 did not contain any arbitration clause, and therefore it could neither have been the subject matter of arbitral proceedings nor formed part of the consideration in the Impugned Judgment. It would be urged that only PO1 and PO3 contained an arbitration clause, and consequently, since the Arbitral Award as well as the Impugned Judgment proceeded on a non-arbitrable Purchase Order, both stand vitiated.
- (ii) It would further be contended that the Arbitral Award and the Impugned Judgment were rendered in favour of Motorola Inc., which was not a signatory and was a U.S.-based entity, and since there was no privity of contract with it, Motorola Inc. could not have been the beneficiary of either the Arbitral Award or the Impugned Judgment.
- (iii) The Arbitral Award, according to him, is also erroneous because it was passed in U.S. Dollars rather than in Indian Rupees, and since the U.S. Dollar has appreciated manifold since the date of the Arbitral Award, the liability should have been confined to the Rupee value as on that date, but the learned Arbitrator failed to do so and thereby committed an error necessitating interference and further granting 15%



interest on both foreign currency and Rupee components of the awarded amount is perverse.

- (iv) He would further argue that although both parties led extensive oral and documentary evidence, the learned Arbitrator wrongly confined the findings to documents alone and disregarded oral testimony, and in support of this argument, he would rely on the award itself wherein the learned Arbitrator observed that oral evidence did not advance the case of either party and that the matter could be decided entirely on documents. The relevant portion of the Arbitral Award reads as follows:

“I have examined the record being pleadings, the evidences - both oral and documentary and have heard the arguments. With respect to the oral evidence, it does not advance the case of either of the parties. After examining the oral evidence in detail it appears, by and large, it was rather unnecessary to read It. Case can be said to be based entirely on documents.”

- (v) He would also submit that the arbitral proceedings were barred by limitation, but the award contains no discussion, reasoning, or finding on this vital objection.

6. In support of his first and second contentions, learned Senior Counsel would rely upon the purchase orders themselves and would submit that a bare perusal shows the arbitration clause was incorporated only in PO1 and PO3, whereas it was conspicuously absent in PO2.

7. He would further urge that PO1 and PO3 were contracts with Motorola Inc., a U.S.-based company acting through its Indian office, Motorola India, whereas PO2 was entered solely with Motorola India; therefore, each purchase order constituted an independent and self-contained contract, but the learned Arbitrator wrongly concluded that



PO2 was supplemental to PO1.

8. It would also be argued by the learned Senior Counsel that no presumption of arbitrability could have arisen in relation to PO2, and the finding treating PO2 as supplemental to PO1 is wholly unsustainable and contrary to the record.

9. Reliance would also be placed, by the learned Senior Counsel, upon the Letter of the **International Centre for Alternative Dispute Resolution**¹⁰ dated 24.12.2008, and it would be argued that the appointment of the learned Arbitrator was expressly confined to disputes under PO1 and PO3, and not to PO2. Learned Senior Counsel would further emphasize that even the Arbitral Award, in its very heading, delineates its scope as restricted to PO1 and PO3.

10. On the issue of evidence, it would be submitted by the learned Senior Counsel for the Appellant that the learned Arbitrator's refusal to rely on oral evidence was erroneous, for there were vital factual aspects deposed by several witnesses and particularly by Mr. Narendra Kumar Rawat (Claimant Witness-2), but these were ignored.

11. Finally, the learned Senior Counsel for the Appellant would contend that although the learned Single Judge has duly recorded its submissions, the Impugned Judgment has neither engaged with nor adjudicated upon them on their merits, and instead it merely recites general principles and precedents on the scope of Section 34 of the Act without applying them to the facts of the present case. It would further be submitted that neither the award nor the Impugned Judgment demonstrates why the contentions of the Appellant fall outside the permissible ambit of interference under Section 34.

¹⁰ ICADR



CONTENTIONS OF THE RESPONDENT:

12. ***Per contra***, learned Senior Counsel for the Respondent would contend that the present appeal is nothing more than a last-ditch attempt by the Appellant to assail the Arbitral Awards. He would submit that both the Arbitral Awards and the Impugned Judgment are well-reasoned, resting on a proper appreciation of evidence and law, and therefore, warrant no interference by this Court, and he would accordingly urge that they deserve to be upheld in their entirety.

13. It would further be submitted by the learned Senior Counsel for the Respondent that no patent illegality has been demonstrated and that the submissions advanced by the Appellant are essentially premised upon a re-appreciation of evidence, which is impermissible in law and beyond the limited scope of interference conferred upon this Court under Section 37 of the Act.

14. Learned Senior Counsel for the Respondent would further contend that all purchase orders in question emanated from a single Tender, and therefore, the Appellant's attempt to segregate them and raise distinct challenges is misconceived and untenable.

15. With specific reference to PO2, he would urge that the same was not an independent contract but rather in the nature of an incremental work order, and it was necessitated because PO1 did not cover the costs of additional works, which, in fact, were specifically requested by the Appellant itself.

16. Learned Senior Counsel for the Respondent would also contend that the Arbitral Award has adequately addressed the issue of limitation, and this finding does not warrant interference since, even as per the Appellant's own submissions, disputes and issues remained unresolved until 2006, thereby demonstrating that the claims were



within limitation and could not be said to be barred.

17. Lastly, learned Senior Counsel for the Respondent would rely upon various passages from both the Arbitral Award and the Impugned Judgment to argue that all the issues raised in the present appeal have already been considered and rejected by the earlier forums, and given the extremely limited jurisdiction under Section 37, the present matter cannot be pursued as if it were a regular appeal against the Arbitral Award or the Impugned Judgment.

ANALYSIS:

18. We have heard the learned counsel for the parties at considerable length and have also undertaken a thorough and comprehensive examination of the entire appeal record, including the Impugned Judgment rendered by the learned Single Judge as well as the Arbitral Awards passed by the learned Arbitrator.

19. While evaluating the grounds urged in the present appeal under Section 37 of the Act, it is imperative to bear in mind the well-settled jurisprudence that the scope of judicial interference with arbitral proceedings is narrowly confined and strictly circumscribed. The Court does not sit as an appellate authority to re-appreciate evidence or reassess factual determinations but exercises only a limited supervisory jurisdiction. The Hon'ble Supreme Court, in *Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills*¹¹, has succinctly summarized this legal 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

¹¹ 2024 SCC OnLine SC 2632.



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.



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.”**

(emphasis supplied)

20. From the foregoing discussion, it is evident that the jurisdiction of the appellate court under Section 37 of the Act is narrowly circumscribed and must be exercised with the utmost restraint. The appellate court, while exercising this jurisdiction, is not expected to sit as a court of appeal over arbitral awards in a broad sense but may interfere only in exceptional situations.



21. Such interference is justified when the court adjudicating a petition under Section 34 has either failed to exercise the jurisdiction vested in it by law or has transgressed those limits by venturing beyond its authority. In these circumstances, intervention by the appellate court becomes not only permissible but also imperative, as it bears the responsibility of preserving the sanctity and integrity of arbitral proceedings by correcting jurisdictional lapses committed under Section 34.

22. It is in light of the above principles that the Impugned Judgment must be examined. The question before us is whether the learned Single Judge duly considered the contentions advanced by the Appellant. To determine this, it is necessary to carefully scrutinize the Impugned Judgment, wherein, after setting out the background of the dispute and the Arbitral Awards, the learned Single Judge proceeded to record the submissions of both parties and dealt with them in the following manner:

“Submissions on behalf of MTNL

19. Mr. L.N. Anchal, learned counsel appearing for MTNL, made the following submissions:

- (i) Oral evidence led by the parties was not taken into account.
- (ii) PO-2 dated 28th November, 2000 does not contain an arbitration clause and yet a claim in that regard was decided.
- (iii) There was an express undertaking by Motorola to comply with all the conditions of the tenders including CLIP, IP and RF.
- (iv) PO-1 and PO-3 were placed on a turnkey basis. Since Motorola failed to fulfil its commitment, it was not entitled to any relief. Relying on the decision in ***M. Lachia Setty & Sons Ltd. v. The Coffee Board, Bangalore AIR 1981 SC 162***, it was urged that it was mandatory for Motorola to show that it had mitigated the losses sustained.
- (v) Interest was in the nature of compensation for money deprived. It could not have been a source of profit. The rate of



interest allowed was excessive. Qualcomm's report was inconclusive and the Arbitrator could not have simply termed the TOC as deemed to have been issued. MTNL was entitled to recover LD at 5% of the total PO-3. The decisions relied upon in the impugned Award regarding applicability of Sections 41 and 42 of SOGA were on a different set of facts. In the present case, the supply was of a highly sophisticated scientific system which had to be supplied by Motorola by on a turnkey basis. Section 21 of the SOGA applied. Reference was made to the decisions in **Mohan Lal Mani Lal v. Dirubhai Bavajibhai AIR 1962 Gujarat 56** and **Province of Madras v. CA Galia Kotwala & Co. (1945) 2 MLJ 418**.

(vi) The application dated 25th September, 2013 filed by Motorola for the additional claim i.e., release of the BGs was barred by limitation. It is pointed out that it is only on 15th March, 2014 that an application was filed for bringing on record the facts pertaining to the BGs. This application ought not to have been entertained. Motorola had in fact waived its right to seek return of the BGs. Non-inclusion of a specific issue on that aspect by the learned Arbitrator in the list of issues framed was a conscious decision.

Submissions on behalf of Motorola

20. Mr. Ciccu Mukhopadhaya, learned Senior counsel for Motorola submitted as under:

(i) Section 34 is a supervisory and not an appellate jurisdiction. Reliance is placed on the decisions in **J.G Engineers (P) Ltd. v. Union of India & Ors., (2011) 5 SCC 758** and **Associate Builders v. Delhi Development Authority (2015) 3 SCC 49**.

(ii) Time was never the essence of the contract as was evident from the materials placed before the learned Arbitrator. The finding to that effect by the learned Arbitrator was a plausible view to take.

(iii) The learned Arbitrator had given reasons for not dealing with the oral evidence as he was of the view that the oral evidence more or less reflected the respective position of the parties as emanating from the documentary evidence and affidavits.

(iv) The factual finding of the learned Arbitrator, which has been unable to be dislodged by MTNL, was that it was MTNL that was in breach of the contract and, therefore, Motorola had to be compensated for such breach. Sections 40 and 42 of the SOGA applied. MTNL continued using the equipment. It did not terminate the contract or levy LD. Motorola was not responsible for the reduction in MTNL's subscriber base, thus the blame could not be laid at the doorstep of the system.

(v) On the aspect of the additional Award, although a specific



issue may not have been framed, Issue No. (vii) pertaining to 'relief' covered it. It is plain that inadvertently this aspect was missed by the learned Arbitrator when the Award dated 26th August, 2013 was passed. This was rectified by the learned Arbitrator by passing the additional Award dated 20th January, 2015. It was observed that “the release of the Bank Guarantees is only a consequential relief claimed based on the primary relief for payment of the outstanding amount on the ground that the Claimant had performed its obligations under the Contract.”

(vi) The interest awarded was not excessive and did not call for interference.

Scope of the powers under Section 34 of the Act

21. Before commencing the examination of the above submissions, it is necessary to recapitulate the legal position regarding the scope of the Court's powers of judicial review of an arbitral Award under Section 34 of the Act.

22. In *Associate Builders v. Delhi Development Authority* (*supra*), the Supreme Court summarised what constituted the fundamental policy of Indian law. In that process, it extracted certain passages from the earlier decision in *ONGC Ltd. v. Western Geco International Ltd., 2014 (9) SCC 263*. In para 40 of that judgment, it was observed as under:

“40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest.”

23. A reference was also made in *Associate Builders v. Delhi Development Authority* (*supra*) to the decisions in *Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10* and *P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd., (2012) 1 SCC 594*, where it was reiterated that the Court does not sit in appeal over the Award of an Arbitral Tribunal by reassessing or re-appreciating the evidence. It was reiterated that the Award could be challenged only on the grounds mentioned under Section 34(2) of the Act. *Inter alia* it was observed that “an Arbitral



Tribunal must decide in accordance with the terms of the contract, but if any arbitrator construes a term of the contract in an unreasonable manner, it will not mean that the Award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.” It was further reiterated that “once it is found that the arbitrator's approach is not arbitrary or capricious, then he is the last word on facts.” The Supreme Court also reiterated that “an award can be said to be against justice only when it shocks the conscience of the Court.” The Court observed that it is settled law that where a finding is based on no evidence, and the AT takes into account something irrelevant to the decision which it arrives at, or ignores vital evidence in arriving at its decision, such decision would be termed as perverse.

24. In *Associate Builders v. Delhi Development Authority* (supra), the Supreme Court has emphasised that on questions of fact, the view of the learned Arbitrator would be final. The following observations in the said decision are relevant:

“It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrator's approach is not arbitrary or capricious, then he is the last word on facts.”

25. In *NHAI v. ITD Cementation India Limited* (2015) 14 SCC 21 observed as under:

“25. It is thus well settled that construction of the terms of a contract is primarily for an arbitrator to decide. He is entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the contract. The court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair minded or reasonable person could do.”

Non-consideration of oral evidence

26. In light of the above legal position, the Court commences its examination of the issues posed by MTNL. It is noticed that the findings rendered by the learned Arbitrator on the various issues have been factual and based on the evidence placed on record by



way of affidavits.

27. The Court would like to deal with the issue raised by MTNL that the learned Arbitrator ought to have referred to the oral evidence. In this regard, the following observations of the learned Arbitrator are relevant:

“I have examined the record being pleadings, the evidences- both oral and documentary and have heard the arguments. With respect to the oral evidence it does not advance the case of either of the parties. After examining the oral evidence in detail it appears, by the large, it was rather unnecessary to read it. Case can be said to be based entirely on documents.”

28. Under Section 19 of the Act, the proceedings before an Arbitrator are expected to be flexible. It is not expected to be straitjacketed by the CPC. It is for that reason that Section 19(1) of the Act specifically states that an Arbitral Tribunal will not be bound by the provisions of the CPC or the Indian Evidence Act. It is entirely up to the Arbitral Tribunal to decide whether or not it would entertain oral evidence and to what extent. In the present case, the learned Arbitrator has found that the oral evidence, by and large, was consistent with what has been said by both parties on affidavit. It is for this reason he held that the oral evidence did not advance the case of either of the parties. It was, therefore, unnecessary to examine the oral evidence.

29. The Court is unable to discern any legal error having been committed by the learned Arbitrator in deciding not to go by the oral evidence of the parties. The Award is a detailed one which discussed threadbare documents relied upon by both parties and the affidavit filed by them. In the circumstances, the Court finds no merit in the contention that the impugned Award should be set aside only because the learned Arbitrator did not refer to the oral evidence.

Uncontroverted factual findings

30. MTNL has no answer to the finding of the learned Arbitrator that it did not take steps to terminate any of the three POs much less levied LD for any detail execution of the work. It has also not been able to show how the factual finding of the learned Arbitrator that the test results examined by Qualcomm showed that the system met the RF coverage criteria and that this was accepted by MTNL.

31. The other important finding of the learned Arbitrator which has been unable to be shown by MTNL to be perverse or contrary to the record is that despite many of MTNL’s subscribers migrating to GSM due to changed category, it did not stop using the equipment supplied by Motorola. A reference has been made by the



learned Arbitrator to the interim Award dated 17th January, 2007 which stated that 60 out of the 81BTCs of Motorola were being used for GSM or Huawei CDMA network. This made it plain that MTNL had accepted the goods supplied by Motorola. It did not reject the goods thereby acknowledging the liability to pay. Again, the following findings have not been controverted by MTNL – “Contract provides for the mode of rejection i.e. by terminating the contract and buying the alternate goods at the risk and cost of the supplier i.e. the Claimant. That has not been so and no notice of breach with opportunity to cure such breach was ever given by MTNL. Rather, as noted above, goods have been put to commercial use by MTNL and used right from 2001 and revenue earned from the network.”

Sections 40 and 42 SOGA

32. One of the issues before the learned Arbitrator was whether MTNL should be permitted to rely on Section 21 of the SOGA which requires goods to be put in a “deliverable state” and till it is so done “the property does not pass to the buyer.” The learned Arbitrator noted that the said contention raised during the course of arguments “was never pleaded or argued earlier.” It appears to have been taken only in response to the reliance placed by Motorola on Sections 40 and 42 of the SOGA viz. an act inconsistent with the seller’s ownership of the goods amounts to acceptance by the buyer. The learned Arbitrator after discussing the case law came to the definite conclusion that Sections 40 and 42 of SOGA clearly applied to the facts and circumstances of the present case. The finding in this regard is as under:

“Putting the system to commercial use and to earn revenue is inconsistent with any plea of non-performance of the system in terms of the contract. MTNL used the system all these years, earning revenue and also increase in the subscriber base. Now when the subscriber base fell all types of defensive pleas have been raised. Merely because the subscriber base fell the blame cannot be laid at the door step of the system that was supplied. System worked from 2001-2007 and during this period there have been migration to other systems.”

33. Here again, the Court is unable to discern any legal infirmity in the analysis of the evidence by the learned Arbitrator or the setting out of the legal position.

Non-issue of TOC

34. It was noted by the learned Arbitrator that MTNL did issue the provisional TOC and “nothing remained for it not to issue final TOC.” It was rightly observed that Motorola could not have been deprived of the balance price of the goods delivered



by it only because MTNL failed to issue the final TOC. It is in those circumstances that the learned Arbitrator held that “considering the whole aspect of the matter TOC is deemed to have been issued.”

Additional Award is valid

35. On the issue of the return of BGs, the additional Award makes it clear that within one month of the date of the receipt of the Award dated 26th August, 2013, Motorola preferred an application before the learned Arbitrator for an additional Award in relation to the BGs. Indeed, the return of the BGs to Motorola, with it having succeeded in demonstrating before the learned Arbitrator that it was not in breach of the contract, was only consequential. There was no need to frame a specific issue on that aspect. Issue No. 7 which dealt with ‘Relief’ was sufficient to cover it. This is what has been observed by the learned Arbitrator.

36. The Court finds that this legal position has been correctly analysed by the learned Arbitrator in the additional Award in the following passage:

“... release of the Bank Guarantees is consequential to the Claimant succeeding in the principal claim, i.e. for release of its outstanding payment on the ground it had performed its obligations under the Contract. Having found in favour of the Claimant in the Award, the Claimant is consequently entitled to an award for the release of the Bank Guarantees which were issued for the faithful performance of its contractual obligations.”

37. None of the grounds raised by MTNL as regards additional Award is legally tenable. To recapitulate in ***Associate Builders v. Delhi Development Authority*** (*supra*), the Supreme Court held in para 33 as under:

“33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts ...”

38. Except the broad sweeping general grounds, MTNL has not really made out any ground of patent illegality warranting interference by the Court. As rightly pointed out by Motorola, the learned Arbitrator misconducting the proceedings is not one of the grounds of challenge available under Section 34 of the Act. This



has been explained by the Bombay High Court in *Indian Commercial Co. Ltd. v. Amrish Kilachand* (2003) 1 ArbLR 10 (Bom) in the following words:

“16 It is clear from Section 34 that the legal misconduct is not one of the grounds provided by that section for setting aside an award. Having regard to the policy of law of making an award immune from challenge on that ground, it would not be open for the Court while executing a decree or considering an objection to its execution to entertain a challenge to the decree on grounds not provided for in the Act, barring something in the nature of fraud or nullity which goes to the foundation of the award or decree.

39. The learned Arbitrator also rightly observed that the application filed by Motorola on 15th March, 2014 was only to bring certain facts pertaining to the BGs on record. The prayer for passing the additional Award was made earlier.

Conclusion

40. For the aforementioned reasons, the Court finds no grounds having been made out by MTNL for even interference with the Award dated 26th August, 2013 and the Additional Award dated 20th January, 2015.

41. Both petitions are, accordingly, dismissed with costs of Rs. 20,000 in each petition. The costs will be paid by MTNL to Motorola within four weeks from today.”

23. In paragraph 19 of the Impugned Judgment, the learned Single Judge briefly recorded the contentions advanced by the Appellant herein in assailing the Arbitral Awards. Among the others, such arguments, which have been vehemently averred before us also, are as follows:

- (i) That PO2, being devoid of any arbitration clause, constituted an independent and self-contained contract distinct from PO1 and PO3, and therefore could not legitimately be brought within the sweep of the arbitral proceedings;
- (ii) That the award of interest at the rate of 15% per annum on the sums awarded in U.S. Dollars as well as Indian Rupee was arbitrary, excessive, and manifestly unsustainable, being



contrary to prevailing banking rates and settled principles governing the grant of interest, and appeared to operate as a source of profit rather than compensation; and

- (iii) That the learned Arbitrator had erred in disregarding the oral evidence adduced, which, according to the Appellant, was of material relevance.

24. While it is evident that the learned Single Judge duly noted the submissions raised by the Appellant, a detailed examination of the Impugned Judgment reveals that, of the three principal contentions, which have been reagitated here before us, only the issue relating to the appreciation of oral evidence received any substantive consideration. Regarding this aspect, paragraphs 26 to 29 of the Impugned Judgment confined the reasoning to upholding the Arbitrator's approach of treating the dispute as essentially document-driven, while discounting oral depositions on the ground that they did not materially advance the case of either party. Upon further scrutiny of the Impugned Judgment, it appears that certain issues have been examined and findings rendered thereon, even though no specific submissions of the Appellant on those issues have been recorded in the Impugned Judgment.

25. In contrast, the several grievances of the Appellant, specifically, the characterization of PO2 as an independent contract, and the legality of awarding interest at the rate of 15% per annum on both foreign currency and Rupee components, though expressly raised, were not addressed by the learned Single Judge through any specific analysis or reasoned adjudication at all.

26. The legal position is well settled that a Court, when called upon



to examine a challenge under Section 34 of the Act, does not act as an appellate forum. Its jurisdiction is narrowly circumscribed and does not extend to re-appreciating evidence or re-examining the merits of the dispute in the manner of a regular appeal. Time and again, the Hon'ble Supreme Court has emphasized this limited scope. Moreover, under Section 37, the appellate jurisdiction is even more constricted when examining an order refusing to set aside an Award. The law in this regard has been succinctly laid down in the judgement of the Hon'ble Supreme Court in ***Larsen Air Conditioning & Refrigeration Co. v. Union of India***¹², which reads as follows:

“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 [Associate Builders v. DDA, (2015) 3 SCC 49 (2015) 2 SCC (Civ) 204] , 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 added)

27. Nevertheless, once a party raises a valid challenge within the confines of Section 34, the Court is under a duty to apply its judicial mind and return cogent reasons while either upholding or rejecting such objections. The limited jurisdiction under Section 34 cannot be used as a shield to merely record objections and dismiss them cursorily without substantive engagement on the merits.

28. On this aspect, guidance is also found in the judgment of a Co-

¹² (2023) 15 SCC 472



ordinate Bench of this Court in *Ajay Singh v. KAL Airways Private Limited*¹³, where the contours of jurisdiction under Section 34 and the circumstances warranting remand were elaborated. The Court underscored that an Award would be vitiated by perversity if it failed to deal with contentions capable of undermining its foundation. The Court cautioned against summarily brushing aside material arguments and held that while Section 34 jurisdiction is narrow, it nonetheless obligates meaningful judicial scrutiny of alleged patent or manifest illegalities. The Court further observed that a decision under Section 34 must persuasively and convincingly engage with the objections raised; otherwise, the remedy itself would stand rendered illusory. The relevant portion of the said judgment is reproduced hereinbelow:

“97. An Award would be liable to be termed as a perversity if it were to fail to deal with contentions which may potentially impact its very foundation. If a party were to assert that a direction of the AT is contrary to the terms and conditions constituting the bargain between the parties, the same would be an aspect which would clearly merit a deeper scrutiny unless, of course, the Section 34 Court were to find the same to be ex facie fallacious or unsustainable. However, even if that were the conclusion which the court were to arrive at, it would be the judgment which must speak and reflect due consideration of such challenges.

98. We are constrained to observe that the arguments which were addressed in challenge to the award of refund have been summarily and abruptly brushed aside with the learned Single Judge merely observing that the “course of procedure” as adopted by the AT cannot be said to in contravention of the provisions of the Act or any other substantive law. As is ex facie evident, the applicability of Section 65 was neither examined nor evaluated. More fundamentally, the argument on that score was never answered.

99. We have extensively gone through the judgment impugned in the instant appeals. However, we have been unable to discern any reasoning that may have weighed upon the learned Single Judge to reject the contentions which were addressed on the anvil of Section 65 and the finding of the AT that KAL and KM had failed to abide by their contractual obligations. We take note of the undisputed

¹³ 2024:DHC:3990-DB



position which emerges from the record and which would evidence the appellants having vehemently urged that it was KAL and KM who had breached the terms of the SSPA and which aspect had also been duly noticed by the AT. However, the learned Single Judge has clearly failed to take the aforesaid aspects into consideration. The challenge to the award of refund has thus clearly gone unanswered.

100. While the scope and ambit of Section 34 and the limited scrutiny to which an Award must be subjected to cannot possibly be doubted, the same in our considered opinion does not absolve a court while examining a challenge to an Award to evaluate and consider arguments based on the assertion of a patent or manifest illegality. The arguments which were raised by the appellants on this score clearly merited due consideration, and even if the learned Single Judge were to be of the opinion that no interference with the Award was warranted, reasons should have clearly been assigned and which would have been indicative of the learned Single Judge having come to the conclusion that the arguments based on Section 65 coupled with the fact of the SSPA having not been found to have been invalidated or that the contractual terms had been reworked did not amount to a — patent illegality.

101. It becomes pertinent to state that while the challenge to an Award has been universally accepted to fall within a narrow confine, the power to correct and set right, cannot be reduced to a mere step in aid of rendering finality. While reticence and reservation would clearly guide, it would have to be coupled with due examination of the challenge that may be raised. A challenge, whenever raised, would have to necessarily be examined on principles of manifest and —patent illegality. It cannot possibly be guided by a principle of heedless affirmation or a blinded predilection to approve.

104. An Award is not liable to be upheld or affirmed based on a mere or unreasoned reluctance to intervene or a disinclination to interfere. Viewed in any other light, the remedy of correction would itself be rendered meaningless. Unless the decision on a challenge to an Award is found to have been persuasively and convincingly answered, the very purpose of the remedy would be lost. The decision on a Section 34 petition would have to, thus, answer to the aforesaid precepts and be found to be reflective of a meaningful consideration and evaluation of the Award itself. With respect, we find that the judgment impugned before us clearly fails to meet those tests.”

(emphasis added)

29. We also consider it apposite to advert to the dictum of the

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Hon'ble Supreme Court in *Kalanithi Maran v. Ajay Singh and Another*¹⁴, wherein a three-Judge Bench categorically held that although the jurisdiction under Section 34 of the Act is limited, the Court seized of a petition thereunder must nonetheless apply its judicial mind to the objections raised and provide discernible reasons in support of its conclusions. The Apex Court further clarified that where the grounds urged under Section 34 remain unexamined on merits, a remand under Section 37 is not merely permissible but, in fact, unavoidable to uphold the mandate of natural justice and the statutory scheme of the Act. The relevant extract is reproduced below:

“1. We are in agreement with the reasoning which led the Division Bench of the Delhi High Court to remand the proceedings back to the Single Judge for reconsidering the petition under Section 34 of the Arbitration and Conciliation Act, 1996.

2. Interference with an arbitral award under Section 34 must be confined to the grounds which are permissible under the statute. But equally, the Judge hearing an application under Section 34 must apply their mind to the grounds of challenge and then deduce as to whether a case for interference within the parameters of Section 34 has been made out. Reading the order of the Single Judge, we find no discernible reason which has weighed with the Single Judge. There has been no consideration of the arguments which were urged before the Single Judge.

3. In paragraphs 121 of the impugned judgment, the Division Bench has observed as follows:

“We, additionally and out of abundant caution, deem it appropriate to observe that the discussion appearing in the preceding parts of this judgment and concerning the validity of the award of refund and the grant of interest, appears in the context of examining the correctness of the judgment rendered by the learned Single Judge alone. None of those are liable to be viewed or accepted as being determinative of some of the submissions which were addressed on this appeal.”

4. In this view of the matter, the Division Bench did not err in remitting the proceedings back to the Single Judge.

5. In the facts and circumstances, we request the learned Chief Justice of the Delhi High Court to assign the hearing of the petition under Section 34 to a Judge other than the Judge who heard and

¹⁴ 2024 SCC OnLine SC 1876.



passed the impugned order.

6. Since the Division Bench of the High Court has remanded the proceedings back to the Single Judge for reconsidering the petition under Section 34 which order has been affirmed by this Court, it needs to be clarified that all the rights and contentions of the parties are kept open.

7. The Special Leave Petitions are accordingly disposed of.

8. Pending applications, if any, stand disposed of.”

(emphasis supplied)

30. Similarly, in ***National Project Construction Corporation Limited v. M/s S.S. Sharma and Company***¹⁵, a Co-ordinate Bench of this Court, while remanding the matter exercising power under Section 37, reiterated that a Court exercising jurisdiction under Section 34 is under a bounden duty to observe the principles of natural justice, foremost among which is the requirement to pass a reasoned and speaking order after duly considering the submissions on record. This obligation binds not only the Arbitral Tribunal but equally the Courts adjudicating objections under Section 34 and the appellate Court exercising jurisdiction under Section 37. The relevant portion of the said judgment is reproduced hereinbelow:

“9. While Section 19(1) of the Act provides procedural flexibility and clarifies that the provisions of the Civil Procedure Code, 1908 and Indian Evidence Act, 1872 do not apply *ipsissima verba* to arbitral proceedings, it in no manner whatsoever dispenses with the requirement of adhering to the principles of natural justice. These principles are not only relevant for conducting arbitral proceedings but also for the exercise of jurisdiction by Courts under Section 34 and the exercise of supervisory jurisdiction by the appellate Courts under Section 37. The requirement for passing a reasoned order and speaking order is one such fundamental principle which is central to the scheme of the Act.

10. It is a settled principle of law that judicial and quasi-judicial authorities must provide reasons in support of their conclusions. The Apex Court in **Woolcombers of India Ltd. v. Woolcombers Workers Union & Anr.**, (1974) 3 SCC 318, has held as under: -

“5. It may be observed that the first passage quoted by us states only the conclusions. It does not give the supporting

¹⁵ 2025:DHC:5244-DB



reasons. The second passage quoted by us states merely one of the reasons. The other relevant reasons are not disclosed. The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of judicial and quasi-judicial authorities to this Court by special leave.

11. Similarly, the Apex Court in ***Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218***, has reiterated that the remedy of appeal would not be effective unless there is a power of remand vested in the appellate authority. The relevant excerpts of the said Judgment read as under: -

“28. The provisions of the CPC have not been made applicable to the proceedings before the learned arbitrator and the Court under Sections 34 and 37 of the Arbitration Act. The legislature's intention is reflected in Section 19(1) of the Arbitration Act, which provides that an Arbitral Tribunal is not bound by the provision of the CPC. That is why the provisions of the CPC have not been made applicable to the proceedings under Sections 34 and 37(1)(c). We are not even suggesting that because the provisions of the CPC are not applicable, the appellate court dealing with an appeal under Section 37(1)(c) is powerless to pass an order of remand. The remedy of an appeal will not be effective unless there is a power of remand vesting in the appellate authority. In the Arbitration Act, there is no statutory embargo on the power of the appellate court under Section 37(1)(c) to pass an order of remand. However, looking at the scheme of the Arbitration Act, the appellate court can exercise the power of remand only when exceptional circumstances make an order of remand unavoidable.

29. There may be exceptional cases where remand in an appeal under Section 37 of the Arbitration Act may be



warranted. Some of the exceptional cases can be stated by way of illustration:

- i. *Summary disposal of a petition under Section 34 of the Arbitration Act is made without consideration of merits;*
- ii. *Without service of notice to the respondent in a petition under Section 34, interference is made with the award; and*
- iii. *Decision in proceedings under Section 34 is rendered when one or more contesting parties are dead, and their legal representatives have not been brought on record."*

(emphasis supplied)

12. A perusal of the impugned judgement indicates that there is considerable weight in the arguments raised by the Appellant. The impugned judgment dated 20.12.2022 is indeed unreasoned, non-speaking and does not deal with the merits of the issues raised by the Appellant. The Trial Court has noted about 28 odd contentions raised by the Appellant and broadly clubbed these grounds under three broad heads i.e. (i) to (x), (xi) to (xix) and (xx) to (xxviii). However, upon perusal of the impugned judgement it is abundantly clear that there has been no assessment of these grounds on merits nor has it been examined whether any of these grounds cross the threshold under Section 34(2) of the Act.

15. A perusal of the foregoing paras makes it abundantly clear that there has been a vague and incomplete application of Section 34 jurisdiction. There is nothing to show as to how the judgements that have been cited in the impugned judgement concur with the observations made in the impugned judgement. Perusal of the impugned judgement also reveals that besides it being cryptic to the extent that it does not find mention of a reply, if any, filed by the Respondent, the issues flagged for consideration have been left unanswered. With these gaps and consequently unanswered issues/objections, the impugned order is rendered vague and ambiguous. In view of the same, this Court finds it difficult to comprehend how the learned Trial Court upheld the impugned award and arrived at the conclusion that the objections raised by the Appellant were not sustainable.

16. The Trial Court has mechanically rejected the substantive challenge raised by the Appellant without going into the merits of the case and this in itself is sufficient to warrant that the present case be remanded back to the Trial Court for fresh consideration on merits.

(emphasis supplied)



31. In light of the authoritative pronouncements cited above and on close scrutiny of the record, this Court finds that the Impugned Judgment delivered by the learned Single Judge under Section 34 of the Act cannot be sustained insofar as it fails to address certain central objections. Although a number of submissions pressed by the Appellant were recorded in paragraph 19 of the Impugned Judgment, the reasoning set out by the learned Single Judge is confined to the appreciation of oral evidence and some other issues. Save for those narrow issues, the Judgment does not meaningfully engage with or decide the Appellant's substantive challenges.

32. More particularly, the Appellant specifically contended that PO2 was an independent, self-contained contract and that the Arbitral Tribunal's award of interest at 15% per annum on both the foreign-currency and Rupee components was illegal and unsustainable. These contentions, though squarely raised, remain unexamined and unsupported by any reasoned analysis in the Impugned Judgment. The failure to deal with the said objections is not merely a procedural shortcoming but a material error in the exercise of jurisdiction under Section 34 of the Act.

33. Upon a careful examination of the record, the submissions advanced by the Appellant appear to be substantial, well-founded, and deserving of detailed judicial scrutiny. In particular, the contention relating to PO2 assumes considerable significance. If the Appellant's plea regarding the non-arbitrability of PO2 is accepted on its face, the entire Arbitral Award may be rendered unsustainable in law, as the doctrine of severability would not be capable of application in the peculiar facts and circumstances of the present case.

34. Insofar as the issue of the arbitrability of the three Purchase



Orders is concerned, it is an undisputed fact that PO1 and PO3 were admittedly covered by the arbitration clause; however, it is contentious regarding PO2. This distinction has been consistently asserted by the Appellant throughout the arbitral proceedings, as well as before the learned Single Judge, forming the crux of its principal grievance.

35. The record further demonstrates that the Statement of Claim filed by the Respondent before the learned Arbitrator, and the subsequent pleadings, do not segregate or particularize the claims in relation to each individual Purchase Order. Similarly, the learned Arbitral Tribunal, in the Impugned Award, has not analyzed or adjudicated upon the issues separately for PO1, PO2 and PO3. The claims and findings have been dealt with in a composite and cumulative manner, without any demarcation. Therefore, in the event PO2 is held to be non-arbitrable, as urged by the Appellant, it would not be possible to sever or sustain any part of the Award independently, since the claims arising from all three Purchase Orders are inextricably intertwined.

36. Consequently, if PO2 is ultimately found to be non-arbitrable, the inextricable interlinkage of claims would render the entire Arbitral Award unsustainable in its entirety. The doctrine of severability would stand excluded in such a situation. In this view of the matter, the submissions advanced by the Appellant, particularly on the issue of arbitrability of PO2, cannot be treated as peripheral or inconsequential. They warrant thorough and judicious consideration by the Court in exercise of its powers under Section 34 of the Act, so as to ensure that the arbitral process and its outcome are consistent with law and natural justice.



CONCLUSION:

37. For the reasons stated above, we are persuaded to interfere with the Impugned Judgment. The learned Single Judge, while dismissing the Section 34 petitions, did not undertake a meaningful adjudication by providing any reasons, despite recording the specific objections, necessitating our interference.

38. Consequently, the Impugned Judgment is set aside. The petitions under Section 34 [***OMP No.11/2014 and OMP No.380/2015***] are restored to the file of the learned Single Judge for fresh consideration.

39. However, it is clarified that the examination undertaken hereinabove shall not be construed as findings on the merits of the case. It is further clarified that the parties shall not be permitted to expand the scope of their arguments beyond the matters forming part of the pleadings and the record before the learned Single Judge.

40. The learned Single Judge shall consider and decide the Petition afresh, in accordance with law, after affording both parties a fair and adequate opportunity of hearing.

41. Subject to the foregoing, the present Appeals stand allowed. List OMP No.11/2014 and OMP No.380/2015 before the learned Single Judge (*Roster Bench*) on 20.11.2025.

42. The present Appeals, along with pending application(s), if any, are disposed of in the above terms.

43. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
NOVEMBER 13, 2025/sm/kr

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