

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**COMMERCIAL APPEAL No.1 of 2025**

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TATA AIG GENERAL INSURANCE COMPANY LIMITED, a company within the meaning of the Companies Act. 2013 having its Registered Office at 15<sup>th</sup> Floor, Tower A, Peninsula Business Park, GK Marg, Lower Parel, Mumbai-400013, through its Authorized Representative and having its Branch Offices at AMS Park Building, 4<sup>th</sup> Floor, Near Boring Road Crossing, Patna-800001, and 2<sup>nd</sup> Floor, KPS Complex, Shankar Nagar, Muzaffarpur 842002.

... .. Appellant

Versus

M/S TIRHUT FOOD PRODUCTS, a firm within the meaning of the Indian Partnership Act. 1932, Having Office at Village- Bajitpur, PO Sarfuddinpur, District - Muzaffarpur – 843118, Represented by its Partner Smt. Sunita Chaudhary, W/o Mukesh Kumar, Presetly Residing at Mohalla- Chhoti Saraiyaganj, Jawahar Lal Road, PO- Head Post Office, Near Chamber of Commerce, PS-Town, Muzaffarpur-842001.

... .. Respondent

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**Appearance :**

|                    |   |                                   |
|--------------------|---|-----------------------------------|
| For the Appellant  | : | Mr. Hrishikesh, Advocate          |
| For the Respondent | : | Mr. Ajay Kumar, Advocate          |
|                    |   | Mr. Mahendra Kumar, Advocate      |
|                    |   | Mr. Mukesh Prasad Singh, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**and**  
**HONOURABLE MR. JUSTICE PRAVEEN KUMAR**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 03-02-2026**

Heard Mr. Hrishikesh, learned counsel for the appellant and Mr. Ajay Kumar, learned counsel for the Respondent.

2. This Commercial Appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘Act of 1996’) read with Section 13(1-A) of the Commercial Courts Act, 2015 (hereinafter referred to as the ‘Act of 2015’) for setting aside the judgment dated 23<sup>rd</sup>



day of July, 2024 passed by learned Additional District Judge-XIV Court, Patna in Miscellaneous (Arbitration) Case No. 173 of 2021 whereby and whereunder the learned Additional District Judge, XIV Court, Patna has refused to interfere with the arbitral award dated 25<sup>th</sup> August, 2021 passed by the learned Arbitral Tribunal.

**Brief Facts of the Case**

3. It is a matter of record that the respondent obtained an insurance policy from the appellant who is in the business of general insurance and provides diverse insurance covers to its customers across India. The insurance policy bearing no. 2260088270 and titled 'My Business My Choice- Package' from the appellant assured the respondent against loss and damages due to fire and special perils during the period 1<sup>st</sup> day of August, 2018 to 31<sup>st</sup> July, 2019.

4. It appears that the Respondent had its factory situated at Bajitpur, P.O.- Sarfuddinpur in the district of Muzaffarpur. The policy in question covered the said factory from the various kind of losses arising out of any accidental fire and special perils.

5. Under the general conditions of the policy, there is an arbitration clause being clause no. 11 whereunder the parties agreed *inter alia* for settlement and compromise of disputes in connection with the policy and it is not in dispute that in terms of



clause 11 of the Insurance Policy, in the present case as the dispute arose over the payment of the insurance claim, the parties chose to refer the matter to the learned Arbitral Tribunal.

6. It is the case of the respondent that at about 03:00 AM on 31<sup>st</sup> December, 2018, due to electric short circuit in the factory, a fire broke out which resulted into death and injuries to some of the respondent's workers. The fire also damaged the respondent's stock, plant, machinery and building at its factory. In terms of the policy conditions, the respondent reported the incident to the appellant and made a claim on account of loss under various heads including stock, building and shed, plant and machinery, furniture, fixtures and fittings and electrical wiring. The total amount claimed by the respondent came to Rs.3,40,70,091/-. Thereafter, in terms of Section 64UM of the Insurance Act, 1938, the appellant appointed a surveyor, namely, Proclaim Insurance Surveyors and Loss Assessors Private Limited (in short called the 'Surveyor'). The Surveyor was an approved surveyor of the Insurance Regulatory and Development Authority of India (IRDAI) in terms of the IRDAI (Insurance Surveyors and Loss Assessors) Regulation, 2015.

7. The Surveyor prepared its reports which were communicated to the respondent, the respondent replied to the



same with its comments and after numerous correspondences between the parties, the Surveyor submitted a report. It is the case of the appellant that the respondent sought payment of the sum admitted to be payable by the appellant. The Surveyor prepared its final survey report dated 16<sup>th</sup> December, 2019 and based on that, the appellant proposed to make payment of Rs.1,61,00,258/- in full and final satisfaction of the respondent's claim under the policy. It is the case of the appellant that the respondent's banker State Bank of India issued a letter dated 9<sup>th</sup> January, 2020 enclosing a discharge note issued under the agreed bank clause of the policy requesting for payment of the said proposed full and final settlement. The discharge note was signed by the respondent's partners. The appellant made payment of Rs.1,61,00,258/- to the respondent on 13<sup>th</sup> January, 2020 in full and final satisfaction of the claim made by the respondent under the policy. It is the case of the appellant that the respondent accepted such payment unconditionally and the policy obligations stood discharged by accord and satisfaction. According to the policy, no further obligation or liability remained as against the appellant under the said policy.

**8.** It, however, appears that after receipt of the said amount of Rs.1,61,00,258/-, the respondent invoked the arbitration



agreement in the policy by its letter dated 23<sup>rd</sup> January, 2020. The learned Tribunal was constituted by and between the parties as per the arbitration clause contained in the policy.

9. It is stated that in course of the arbitration proceeding, the parties exchanged their pleadings. The respondent herein filed a statement of claim praying for award of an amount of Rs.1,04,24,488/- (including delayed payment interest and further interest and litigation cost). The appellant filed a statement of defence disputing the claim of the respondent. The appellant put forth two primary contentions before the learned Arbitral Tribunal, (1) that the policy stood discharged by accord and satisfaction/full and final settlement, and (2) the assessment of loss as arrived at in the final survey report was true and correct and no ground for challenging the same has been made out by the respondent. The respondent, however, filed an amendment application to the statement of claim adding Annexure '25' which contained a breakup of the claim under the policy and thereby the respondent enhanced the claim to Rs.1,20,32,274/- by additionally accounting for (i) interest on the claimed amount, (ii) compensation for mental agony and harassment, and (iii) tentative legal cost. The appellant submits that this amendment was allowed without affording any opportunity of hearing to the appellant. The appellant, however,



filed a supplementary written statement bringing on record various documents including the discharge voucher and the valuation report prepared by the respondent's banker State Bank of India as well as the stock summary of the respondent's assets/stocks.

**10.** It is submitted that after completion of the pleadings of the parties, the learned Tribunal proceeded to fix the hearing of the matter vide order dated 28<sup>th</sup> February 2021 which is said to have been passed with the consent of the appellant even as no such consent was given by the appellant. The learned Tribunal decided to directly proceed to arguments in the arbitral reference without there being any order or opportunity granted to the appellant or the respondent to lead evidence and cross-examine the witness of the respondent. It is the case of the appellant that in its statement of defence and supplementary written statement, the appellant had categorically disputed the contentions of the claimant-respondent and the appellant had filed two applications dated 06<sup>th</sup> March, 2021 and 20<sup>th</sup> June, 2021 seeking a direction from the learned Tribunal for framing of issues and for allowing the appellant to adduce evidences in support of its case but both the applications of the appellant were turned down by the learned Tribunal. The learned Tribunal proceeded to pass the impugned award dated 25<sup>th</sup>



August, 2021 without allowing or requiring the parties to the reference to adduce evidence.

**11.** It is submitted that the award of the learned Tribunal was assailed by the appellant before the learned District Judge, Patna on the ground that the impugned award was passed without any evidence being led by either party and the arbitral procedure was never decided by the learned tribunal. The impugned award is in conflict with Sections 18, 19 and 24 of the Act of 1996 as well as the fundamental policy of Indian law.

**12.** Various other grounds were raised before the learned District Judge, Patna by way of objections and a prayer was made for setting aside of the impugned award. It is, however, submitted that the application for setting aside of the impugned award being Miscellaneous (Arbitration) Case No. 173 of 2021 came to be finally heard by learned Additional District Judge-XIV Court, Patna. The learned court vide its order dated 23.07.2024 was pleased to dismiss the application. It is submitted that the learned Additional District Judge-XIV, Patna having perused the ordersheets of the learned Tribunal came to a conclusion that the Insurance Company-appellant herein had been given due opportunity at each stage to present it's case. The learned court was of the view that there was no agreement between the parties as



to the mode and manner of arbitral procedure, thus, the learned Tribunal adjudicated the matter on the basis of the materials brought on the record through pleadings and documents after affording the opportunity to the applicant Insurance Company to present its case. The learned Additional District Judge-XIV, Patna held that there was no patent illegality or perversity in the impugned award.

**13.** The learned court placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Reliance Infrastructure Ltd. Vs. State of Goa** reported in **2023 SCC OnLine SC 604** wherein the Hon'ble Supreme Court reiterated its views expressed in the case of **Delhi Airport Metro Express Pvt. Ltd. Vs. Delhi Metro Rail Corporation Ltd.** reported in **(2022) 1 SCC 131**. The learned court also rejected the contention of the appellant that despite the acceptance of the final settlement by the claimant at pre-arbitration stage, the claimant opted for arbitration, therefore, the claim raised by the claimant was wrongly allowed by the learned Arbitral Tribunal.

**14.** In its ultimate analysis, the learned court held that there was neither any apparent illegality or perversity in the impugned order nor the same appears to be in conflict with any public policy of India, therefore, there is no reason present to



question the impugned award. After holding that none of the grounds as available under Section 34 of the Act of 1996 is present in this case, the learned court dismissed the miscellaneous case preferred by the present appellant.

**Submissions on behalf of the Appellant**

**15.** Mr. Hrishikesh, learned counsel for the appellant submits that the learned Additional District Judge-XIV, Patna while considering the application of the appellant under Section 34 of the Act of 1996 could not appreciate that the impugned award is liable to be set aside on the solitary ground that it was passed without following the principles of natural justice and there was no evidence on the record save and except the pleadings of the parties.

**16.** Attention of this Court has been drawn towards Section 19 of the Act of 1996. It is submitted that Section 19 provides for determination of rules of procedure. A reading of sub-section (3) of Section 19 would show that failing any agreement referred to in sub-section (2), the Arbitral Tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate. Under sub-section (4) of Section 19, it is stipulated that power of the Arbitral Tribunal under sub-section (3) includes



the power to determine the admissibility, relevance, materiality and weight of any evidence.

17. Learned counsel submits that in this case, the learned Tribunal was at the outset required to determine the rules of procedure in terms of Section 19 of the Act of 1996, but that was not done. The learned Arbitral Tribunal was required to follow the principles of natural justice and fair play in action by providing the parties an opportunity to adduce their respective evidences. In this case, neither the list of documents were exchanged between the parties for admissions or denial nor the author of those documents came to prove either the existence of the document or the contents thereof. The basic principles and procedures which were required to be followed at the end of the Tribunal before relying upon any document as an evidence on the record has not been followed.

18. Learned counsel submits that there are catena of judgments of the Hon'ble Supreme Court in which the scope and ambit of the powers of the Court under Section 34 and Section 37 of the Act of 1996 have come up for consideration. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **MMTC Ltd. Vs. Vedanta Ltd.** reported in **(2019) 4 SCC 163**, **Konkan Railway Corpn. Ltd. Vs. Chenab Bridge Project** reported in **(2023) 9 SCC 85** and a recent



judgment of the Hon'ble Supreme Court in the case of **Jan DE NUL Dredging India Pvt. Ltd. Vs. Tuticorin Port Trust** reported in **2026 INSC 34**. It is submitted that while all these judgments have succinctly laid down that the scope of interference with the award is very restricted and in an appeal under Section 37 of the Act of 1996, the Court is not supposed to undertake an independent assessment of the merits of the award, all these judgments have consistently laid down that where the learned Tribunal has passed an award in violation of principles of natural justice and the award suffers from patent illegality on the face of it, the award may be set aside. The Hon'ble Apex Court has also held in the case of **Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI)** reported in **(2019) 15 SCC 131** that where the Arbitrator gives no reason for an award, it would amount to patent illegality.

**19.** Learned counsel submits that the impugned order suffers from patent illegality and is liable to be set aside.

**Submissions on behalf of the Respondent**

**20.** On the other hand, Mr. Ajay Kumar, learned Advocate for the respondent would submit that the learned Arbitral Tribunal has rightly proceeded to pass the impugned award on the basis of the materials available on the record. It is submitted that



the arbitral proceeding was conducted during the Covid-19 period when all the parties were connecting to the proceeding with the learned Arbitral Tribunal through WhatsApp. It is submitted that on 06.09.2020, the claim petition along with annexures were filed on behalf of the respondent through online mode, however, the hard copy was filed on 12.10.2020 together with an amendment petition after serving copy of the same upon the respondent. That day, the case was fixed for filing reply on behalf of the Insurance Company and the Arbitrators' fee was fixed. On 29.11.2020, the Insurance Company filed its reply through email with a copy to the claimant. The claimant filed a petition through WhatsApp for time in order to file a rejoinder along with proposed issues which was allowed. The learned Arbitral Tribunal fixed the matter for 20.12.2020 at 04:00 PM.

**21.** It further appears that on behalf of the Insurance Company, an objection petition was filed on 29.11.2020 to the effect that the amendment petition filed by the claimant on 12.10.2020 during the physical hearing was allowed as per order dated 22.11.2020 behind the back of the respondent. The Insurance Company claimed that on 12.10.2020, there was no hearing either physical or virtual. This application of the Insurance Company was contested by the claimant. It was submitted on behalf of the



claimant that the amendment petition was considered and allowed on 12.10.2020 itself when both the parties had participated in the physical hearing of the case. It is stated that the objection filed on behalf of the Insurance Company on 29.11.2020 was rejected vide order dated 22.12.2020.

**22.** It is submitted on behalf of the claimant-respondent that on 24.01.2021, the respondent-insurance company was directed to file remaining annexures by next date and with the consent of learned counsel of both the parties, the matter was fixed for 28.02.2021 for final hearing. In the meantime, both the parties were directed to file their respective notes of argument. On that day, the learned Arbitrators fixed the date for filing of the written notes of arguments by the parties and final hearing. It is submitted that only at the fag end, a petition was filed on behalf of the insurance company wherein they repeated their earlier prayer for examination of witnesses. The request for examination of witnesses was made earlier also which was rejected by the learned Tribunal. Once again this request was rejected *vide* order dated 21.06.2021.

**23.** Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ramesh Kumar Jain vs. Bharat Aluminium Co. Ltd.** reported in **2025 SCC OnLine SC**



**2857.** It is submitted that in case of **Ramesh Kumar Jain** (supra), the Hon'ble Supreme Court has considered the newly introduced sub-section (2A) to Section 34 of the Act of 1996 in the Act of 2015. It is submitted that the proviso to the newly inserted clause clearly provides that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappréciation of evidence. The expression "patent illegality" in **Ssangyong Engg. & Construction Co. Ltd.** (supra) has been taken into consideration by the Hon'ble Court. It has been held that the terminology of "patent illegality" indicates more than one scenario such as the findings of the Arbitrator must shock the judicial conscience or the Arbitrator took into account matters he should not have or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts.

**24.** It is submitted that in the present case, no patent illegality may be found in the impugned award. The learned Tribunal has taken into consideration the materials on the record and has passed the impugned award. Attention of this Court has been drawn toward paragraphs '43' to '48' of the impugned award to submit that the learned Arbitral Tribunal has relied on the



uncontroverted Annexure '25' filed by the claimant, therefore no fault may be found with the award.

**Consideration**

**25.** Having heard learned counsel for the parties and on perusal of the records of the present appeal, we found that in the present case, the learned Tribunal has proceeded to pass the impugned award on the basis of the pleadings of the parties. The Tribunal has heavily relied upon the annexures to the statement of the claim. The Tribunal did not determine any rules of procedures in terms of Section 19 of the Act of 1996. The documents which were enclosed with the pleadings have been treated as an evidence without giving opportunity to either parties to either admit or deny the existence of the document or contents thereof. We extract Section 19 of the Act of 1996 hereunder for a ready reference:-

**“19. Determination of rules of procedure.-**

**-(1)** The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

**(2)** Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

**(3)** Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the



proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence. ”

**26.** On a bare reading of Section 19, it would appear that the strict rules of the Code of Civil Procedure or the Indian Evidence Act are not applicable to an arbitration proceeding and the Arbitral Tribunal shall not be bound by those provisions. The parties’ autonomy to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings is evident under sub-Section (2) of Section 19. In case of failure of the parties to reach to an agreement in terms of sub-Section (2) of Section 19, the Arbitral Tribunal may, subject to this part, conduct the proceedings in the manner it considers appropriate. Section 19 falls under Chapter V containing the heading “Conduct of Arbitral Proceedings”. Section 18 talks of equal treatment of parties and it specifically says that the parties shall be treated with equality and each party shall be given a full opportunity to present his case.

**27.** In this case, we have found from the various orders passed by the learned Arbitral Tribunal that during the pendency of the arbitration proceeding, the Insurance Company being



respondent before the Tribunal filed an application seeking to adduce evidences but the application was rejected. The Tribunal proceeded to pass the impugned award. The award is contained in 48 paragraphs. The learned Tribunal has recorded its finding from paragraph '30' to '42', a perusal of these paragraphs would show that the Tribunal has simply recorded the submissions of the parties. The Tribunal has recorded the documents which have been filed on behalf of the parties with their respective pleadings and these may be found in paragraph '43' and '44'. At this stage, we think it just and proper to reproduce paragraphs '45' to '48' which are, in fact, the final outcome of the discussions of the Arbitral Tribunal. Paragraph '45' to '48' are as under:-

“45. We minutely examined every papers/documents filed by Respdts and tried our best to gauge any relevancy for decision of this arbitration proceeding but failed; therefore, they are of no use. So far claim of the claimant is concerned, it has been detailed in Annexure 25. These claims have not been specifically challenged in Reply or suppl reply. Annexure 25, does not find any place for rebuttal. Thus, in other words claimant's claim is deemed to be admitted.

46. We also compared final survey Report dated 16.12.2019 with Annexure 25 and considered protest letters of the claimant



sent to the surveyor against wrong assessment of loss and damage and acceptance of final report under duress and compulsion. We also considered findings of surveyor under “Concurrence” heading. It clearly mentions that the report concluded without concurrence of the claimant.

47. In view of the aforesaid as well as facts and circumstances we are of the view that claimant is entitled to receive claim/damage as detailed in Annx-25 filed by the claimant from the respondents. Claim detailed in Annx-25 has also not been denied by the respondents either in their additional W.S or in their any petition filed subsequently to filing of Annx-25 by the claimant.

48. In the result the claim petition of the claimant is allowed and accordingly following AWARD is passed in favour of the claimant and against the respondents.

#### AWARD

- (i) The claimant is entitled to get claim/damages as per Annx-25 i.e.. Rs. 12032274/- (One core twenty lakh thirty two thou from the date of filing of claim petition, excluding item(w) sand two hundred seventy four only) with interest @10% P.A. Tentative legal cost.
- (ii) Both parties shall bear their respective share of Arbitrator's fee.



(ii) Cost of litigation to the tune of Rs. 100000/- (one lac) only is allowed.

The respondents are directed to pay the above claim amount within three months of date of AWARD failing which claimant is entitled to get interest @ 10% PA over total amount till final realization through due process of law.

Before parting with the order we would like to clarify that in view of order dated 23.03.2020 and dated 27.04.2021 passed by Hon'ble Supreme Court in suo moto writ petition No. 3 of 2020 the period of limitation prescribed in any law or laws shall be extended till further order, in all Judicial or quasi-Judicial proceeding in view of pandemic situation in Country.

In view of above decision of Hon'ble Supreme Court, the period for making award as prescribed in sec. 29A of Arbitration Act 1996 shall automatically be extended. Hence this award is quite within limitation.

In view of above award, this proceeding stands terminate/u/s 2 (i) of the Arbitration Act. 1996”

**28.** It is evident on a bare reading of the aforementioned paragraphs that the Tribunal rejected all the documents filed on behalf of the respondents after holding that those were not relevant for the decision in the arbitration proceeding and that they are of



no use. On the other hand, the Tribunal has taken Annexure '25' to the supplementary affidavit/amendment petition of the claimant as an admitted document for the reason that there was no rebuttal of Annexure '25' and this has been taken as admission of the claimant's claim. The statements recorded in paragraph '45' of the impugned award are in the nature of a patent illegality on the part of the Tribunal. Annexure '25' is nothing but a compilation in tabular form of the claims which are mentioned in the statements of claims by the claimant-respondent herein. It is a matter of record that Insurance Company has denied those claims in its statement of defence and put the claimant to the strictest proof. The claims having been denied and contested by the Insurance Company, a mere calculation of those claims in a tabular form in Annexure '25' cannot be taken as an admission of claim by any stretch of imagination. The fact remains that the Tribunal did not lay down any procedure and the parties were not allowed to adduce the evidence. The pleadings of the parties together with the annexures have been taken into consideration and the award has been passed.

**29.** We have further noticed that the claimant had raised claims on various heads, the learned Arbitral Tribunal has not given any reason for allowing each of the claims. After a brief



discussion as recorded hereinabove in paragraphs '45', '46' and '47', the learned Arbitral Tribunal went on to allow the entire claim in favour of the claimant and against the respondent.

**30.** Both the parties have relied upon the judgments of the Hon'ble Supreme Court as regards the scope and ambit of interference with an award in an appeal under Section 37 of the Act of 2015. We have carefully gone through the judgments. In the case of **MMTC Limited** (supra), the Hon'ble Supreme Court has observed in paragraph '14' 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.”



**31. In Konkan Railway Corpn Ltd.** (supra), the observations of a Three-Judges Bench of the Hon'ble Supreme Court may be profitably quoted hereunder for a ready reference:-

**18.** At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in *MMTC Ltd. v. Vedanta Ltd.*<sup>9</sup>, is akin to the jurisdiction of the court under Section 34 of the Act.<sup>10</sup> Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.

**19.** Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction.<sup>11</sup>

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9. (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293

10. Id, SCC p. 167, para 14:

“14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision.”

11. *UHL Power Co. Ltd. v. State of H.P.*, (2022) 4 SCC 116, para 15 : (2022) 2 SCC (Civ) 401. See also : *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1, paras 24, 25.



It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal.<sup>12</sup> In *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*<sup>13</sup>, this Court held : (*Dyna Technologies case*<sup>13</sup>, SCC p. 12, paras 24-25)

“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.

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12. *Ibid*; *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213; *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2019) 7 SCC 236, para 11.1 : (2019) 3 SCC (Civ) 552

13. (2019) 20 SCC 1



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.”

**32. In Ssangyong Engg. & Construction Co. Ltd.**

(supra), the Hon’ble Supreme Court has observed in paragraph ‘49’ to ‘52’ as under:-

***“The ground of challenge under Section 34(2)(a)(iii)***

**49.** Under Section 34(2)(a)(iii), one of the grounds of challenge of an arbitral award is that a party is unable to present its case. In order to understand the import of Section 34(2)(a)(iii), Section 18 of the 1996 Act should also be seen. Section 18 reads as follows:

***“18. Equal treatment of parties.***—The parties shall be treated with equality and each party shall be given a *full* opportunity to present his case.”

(emphasis supplied)

Section 24(3) also states as follows:

***“24. Hearings and written proceedings.***—(1)-(2) \* \* \*

(3) All statements, documents or other information supplied to, or applications made to the Arbitral Tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the Arbitral Tribunal may rely in making its decision shall be communicated to the parties.”

Section 26 of the 1996 Act is also important and states as follows:



**“26. *Expert appointed by Arbitral Tribunal.*—(1)**

Unless otherwise agreed by the parties, the Arbitral Tribunal may—

(a) appoint one or more experts to report to it on specific issues to be determined by the Arbitral Tribunal; and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the Arbitral Tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.”

**50.** Section 24(3) is a verbatim reproduction of Article 24(3) of the UNCITRAL Model Law on International Commercial Arbitration (the UNCITRAL Model Law). Similarly, Sections 26(1) and (2) are a verbatim reproduction of Article 26 of the UNCITRAL Model Law. Sub-section (3) of Section 26 has been added by the Indian Parliament in enacting the 1996 Act.

**51.** Sections 18, 24(3) and 26 are important pointers to what is contained in the ground of challenge mentioned in Section 34(2)(a)(iii). Under Section 18, each party is to be given a *full* opportunity to present its case. Under Section 24(3), all statements, documents, or other information supplied by one party to the Arbitral Tribunal shall be communicated to the other party, and any expert report or document on which the Arbitral Tribunal relies in making its decision shall be communicated to the parties. Section 26 is an important pointer to the fact that when an expert's report is relied upon by an Arbitral Tribunal, the said report, and all documents, goods, or other property in the possession of the expert, with which he was provided in order to prepare his report, must first be made available to any party who requests for these



things. Secondly, once the report is arrived at, if requested, parties have to be given an opportunity to put questions to him and to present their own expert witnesses in order to testify on the points at issue.

52. Under the rubric of a party being otherwise unable to present its case, the standard textbooks on the subject have stated that where materials are taken behind the back of the parties by the Tribunal, on which the parties have had no opportunity to comment, the ground under Section 34(2)(a)(iii) would be made out.”

33. All these judgment recently came for consideration before the Hon’ble Supreme Court in the case of **JAN DE NUL Dredging India Pvt. Ltd.** (supra). The observations of the Hon’ble Supreme Court in the earlier judgments have been reiterated. While it is evident on perusal of all these judgments that the jurisdiction of the Court in an appeal under Section 37 of the Act of 1996 is limited and extremely circumscribed jurisdiction but in case of violation of principles of natural justice, it is the consistent view that the award is liable to be interfered with.

34. At this stage, we reproduce Section 23 and 24 of the Act of 1996 hereunder to demonstrate that the Act itself provides for the various stages of the arbitration proceedings right from the stage of statement of claim and defence to hearing and written proceedings:-

“23. **Statements of claim and defence.**—(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in



respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

<sup>1</sup>[(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.]

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

<sup>2</sup>[(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.]

**24. Hearings and written proceedings.—**(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:

<sup>3</sup>[Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.]

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1. Ins. By Act 3 of 2016, s.11 (w.e.f. 23-10-2015).

2. Ins. By Act 33 of 2019, s.5 (w.e.f. 30-8-2019).

3. Ins. By Act 3 of 2016, s.12 (w.e.f. 23-10-2015).



(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties”

A bare reading of these provisions would show that statement of claim and defence are to be filed at the stage of Section 23 of the Act whereafter under Section 24, the arbitral tribunal is obliged to decide whether to hold oral hearings for the presentation of evidence or for oral argument or whether the proceedings shall be conducted on the basis of documents and other materials.

**35.** In the present case, the learned Tribunal has not followed the mandate of Section 19 read with Section 24 of the Act of 1996.

**36.** Having regard to the aforesaid discussions, finding that the learned Arbitral Tribunal in this case has not followed the principles of natural justice by allowing the parties to adduce their evidences and the impugned award has been passed after rejecting the prayer of the appellant to allow it to adduce the evidences, we are of the considered opinion that the impugned award suffers from patent illegality and it is liable to be interfered with.



37. We accordingly set aside the impugned judgment in  
Miscellaneous (Arbitration) Case No. 173 of 2021 and set aside  
the award dated 25.08.2021.

38. This appeal is allowed.

(Rajeev Ranjan Prasad, J)

(Praveen Kumar, J)

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