

**IN THE HIGH COURT AT CALCUTTA
(COMMERCIAL APPELLATE DIVISION)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

AO-COM 13 of 2025

With

AP-COM 485 of 2024

M/s NBCC India Limited

Vs.

M/s J.G. Engineers Pvt. Ltd.

And

AO-COM 14 of 2025

With

AP-COM 486 of 2024

M/s NBCC India Limited

Vs.

M/s J.G. Engineers Pvt. Ltd.

For the appellant	:	Mr. Arnab Chakraborty, Adv. Mr. Pragya Bhowmick, Adv. Ms. Rimi Mandal, Adv.
For the respondent	:	Mr. Surajit Nath Mitra, Sr. Adv. Mr. Suman Dutt, Sr. Adv. Mr. U.S. Menon, Adv. Ms. Sananda Mukhopadhyay, Adv. Mr. Aurin Chakraborty, Adv. Mr. Abhirup Chakraborty, Adv.
Hearing concluded on	:	06.04.2026
Judgment on	:	23.04.2026

Md. Shabbar Rashidi, J.:-

1. The present appeals under Section 37 of the Arbitration and Conciliation Act, 1996 is in assailment of the impugned judgment and order dated July 1, 2024 passed in AP-COM No. 485 of 2024 and AP-COM No. 486 of 2024. The two appeals have been heard analogously as they emanate out of the same impugned judgment and order.

2. By the impugned judgment and order, the learned Single Judge analogously disposed of two applications under Section 34 of the Act of 1996 being AP-COM No. 485 of 2024 filed at the behest of the present appellant and AP-COM No. 486 of 2024 filed by the respondent. AP-COM No. 486 of 2024 filed at the instance of respondent was allowed whereas AP-COM No. 485 of 2024 filed by the present appellant was dismissed. While deciding the two applications under Section 34 of the Act of 1996, the learned Single Judge held the following: -

“62. Considering the above, this Court find that the award passed by the Learned Sole Arbitrator wherein in issue no.1 in second part wherein the Learned Arbitrator has held that the contractor is primarily attributable beyond 25.03.1995 is perverse and the same is set aside.

63. The Learned Arbitrator while deciding the issue has come to the conclusion that the termination of the contract by the NBCC on 1996 was unlawful and as such the counter claim allowed by the Learned Arbitrator is not sustainable and accordingly all the counter claims allowed by the Learned Arbitrator in favour of the NBCC are set aside and quashed.

64. As regards the award passed by the Learned Arbitrator in favour of the contractor is not required to be interfered with.”

3. Learned advocate appearing for the appellant submitted that the learned Single Judge erred in dismissing AP-COM No. 485 of 2024 filed on behalf of the present appellant and allowing AP-COM No. 486 of 2024 filed on behalf of the respondent. The impugned judgment and order suffers from perversity, illegality and is contrary to established law on the subject. Although, the learned arbitrator had allowed the counter claim of the appellant in part but the same was upset by the learned Single Judge erroneously.

4. Learned advocate for the appellant also submitted that the learned Single Judge failed to apply the true perspective of the provisions of Section 34 (2A) of the Arbitration and Conciliation Act, 1996 and thereby, came to an erroneous conclusion. It was also argued that the learned Single Judge delved into re-appreciating the evidence and interfered with the findings of learned arbitrator on factual findings and in doing so, the learned Single Judge also went onto substitute his own findings in place of the findings of learned arbitrator which was based on evidence adduced by the parties. Such an exercise by learned Single Judge was not at all permissible in his jurisdiction under Section 34 of the Act of 1996. In support of such proposition, learned advocate for the appellant cited the authority in **(2025) 7 Supreme Court Cases 1 (Gayatri Balsamy V. ISG**

Novasoft Technologies Limited)* and *(2009) 10 Supreme Court Cases 63 (Steel Authority of India Limited V. Gupta Brothers Steel Tubes Limited).

5. Learned advocate for the appellant further submitted that the learned arbitrator having technical expertise on the subject was more apt and competent to deal with the technical intricacies involved in the dispute. The learned Single Judge confined himself to the delay in delivery of drawings and increases in the quantity of work and went on to overturn the findings of learned arbitrator. Such interference on the part of learned Single Judge was not called for and was impermissible.

6. Learned advocate for the appellant also challenged the impugned judgment and order on the ground that the learned Single Judge came to an erroneous finding that the delay in completion of project was due to stale supply of construction drawings on the part of the appellant. The learned Single Judge also failed to take into account that the respondent/claimant failed to complete or even start the works where building were already made available or where such drawings were not even required to start the work. It was also submitted that the learned Single Judge also erred in taking into account that the respondent contributed in committing serious delays in mobilization, establishing field test laboratory, conducting design

mix to undertake requisite testing work, bringing the weigh batchers, bricks and excavation etc.

7. The learned Single Judge also failed to appreciate that the respondent failed to procure materials in time, diverted mobilization funds which was received by the claimant/respondent from the appellant. That the claimant/ respondent also failed to mobilize men, equipment, resources and adequate capital required for the project was also not considered by the learned Single Judge. The learned Single Judge also did not take into consideration that the respondent did not even start the work in respect of the allied building for which no approval of drawing or other approvals were required. The respondent also did not undertake the works of sanitary, plumbing, septic tank, roof treatment in terminal buildings, Granite finishing, firefighting, Kota stone flooring and many other works till the termination of the contract. It is also submitted that the learned Single Judge did not even look into the evidence brought on record on behalf of the appellant and confined himself to the issue of delay in providing drawings. In fact, the learned Single Judge failed to take into consideration that the respondent did not start the works which were not dependent upon approval of drawings or where no drawings were even required.

8. Learned advocate for the appellant further submitted that the learned Single Judge acted beyond the jurisdiction conferred under

Section 34 of the Arbitration and Conciliation Act, 1996 and interfered with the award beyond the scope of Section 34. It was further contended that the learned Single Judge went on re-appreciating the evidence and came to a different finding other than that of learned arbitrator. Learned Trial Judge travelled beyond the scope of Section 34 of the Act of 1996 by modifying certain findings of learned arbitrator.

9. Learned advocate for the appellant further submitted that the learned Single Judge erred in interfering with the findings of learned arbitrator in respect of issue No.1 without appreciating the evidence on record and came to a wrong finding solely based on the issue of delay in providing the drawings and ignored the other materials available on record. Eventually, the learned Single Judge misconstrued the evidence and submissions made on behalf of parties and mixed up the work of terminal building and allied buildings. In fact, the learned Single Judge overlooked the submissions that the respondent did not start the work of allied buildings inspite of everything having been provided to the respondent well in time.

10. Learned advocate for the appellant submitted that the learned Single Judge came to an erroneous finding that since no liquidated damages were imposed by the appellant in extending the time for completion of project till March 25, 1995, it amounted to an admission that the reasons for non-completion of the project was not

attributable to the contractor/respondent. Such finding, according to learned advocate for the appellant, was perverse and contrary to the evidence on record. At the same time, learned advocate for the appellant further submitted that learned Single Judge erroneously held that the contract was set at large after December 16, 1995. It was submitted that the learned Single Judge erred in holding that the contract was set at large after December 16, 1995 whereas, the work of the contractor was suspended in terms of a joint inspection by the appellant and the principal client.

11. Learned advocate for the appellant also submitted that the factual finding of learned arbitrator in respect of delay beyond March 25, 1995 was based on appreciation of evidence and plausible one. The learned Single Judge was not justified in interfering with such finding and substituted his own finding. There were a number of contractual obligations remaining unfinished over and above the pendency of substantial portion of assigned work under the contract which were not considered by the learned Single Judge.

12. Learned advocate for the appellant further submitted that the learned Single Judge failed to appreciate that the counter claims allowed by learned arbitrator should not have been restricted to 10% of the work value in terms of clause 72 of GCC, towards liquidated damages in so far as the condoning of delay and acceptance of belated performance was dependent upon future good conduct and adherence

to promise by the defaulter. The state could not have been deprived of its legitimate claim taking recourse to clause 72 of GCC. Moreover, learned Single Judge modified the award so far as the claims and counter claims by the parties considered by the learned arbitrator were interfered with contrary to the evidence on record which was not at all permissible in a jurisdiction under Section 34 of the Act. For the aforesaid reasons, it was contended that the impugned judgment and order is liable to be set aside.

13. On the other hand, learned senior advocate for the respondent contended that the learned Single Judge rightly held that delay in completion of the project was primarily attributable to the appellant. It was contended that there was considerable delay on the part of the appellant in providing the approved drawing which delayed the execution of project by the respondent. Therefore, no delay could be attributed to the respondent.

14. Learned senior advocate for the respondent further submitted that the learned Single Judge was justified in modifying the award holding that since the delay was attributable to the appellant, there was no question of awarding damages against the respondent.

15. Learned senior advocate for the respondent also argued that the learned Single Judge rightly upheld the findings of learned arbitrator to the effect that another reason for delay was in abnormal excess in quantity of excavation and additional work of rock cutting

for which the contractor was not responsible. It was also submitted by learned senior advocate for the respondent that the learned Single Judge justifiably overturned the finding of learned arbitrator with regard to the delay post March 25, 1995 attributable to the contractor.

16. Learned senior advocate for the respondent also submitted that the learned Single Judge was quite justified in upholding the findings of learned arbitrator that after the last extension of time to complete the work till December 15, 1995 and upon issuance of show cause notice by the appellant, time was not the essence of the contract. Therefore, the termination of the contract by the appellant was not lawful. Learned senior advocate for the respondent stood by the impugned judgment and order.

17. The National Airports Authority of India appointed the appellant NBCC, as a Project Management Consultant and was entrusted with the work of Model Airport at Bhubaneswar, Odisha, besides other works, for getting the same constructed by engaging appropriate contractors.

18. Accordingly, the NBCC published a tender notice on December 25, 1993, inviting tenders for construction of Terminal Building as well as allied building works of the Bhubaneswar Airport. In response to such tender notice, the contractor/respondent, J. G. Engineers Private Limited participated in the tender process and submitted its offer. After negotiations with the

contractor/respondent and the appellant/NBCC, the offer of the contractor was accepted and the respondent was awarded with the contract for executing the work for a value of ₹5,71,13,541/-. Upon acceptance of the offer submitted by the respondent herein, an agreement was entered into between the NBCC and the contractor on March 13, 1993, specifying the conditions of contract.

19. According to the terms of the contract, the value of the contract was ₹5,71,13,541/- and the stipulated date of start of the work was fixed on March 1, 1993 whereas the agreed date of completion was fixed to October 31, 1994. However, since the work could not be completed within the stipulated date, NBCC granted extension of time without levying liquidated damages from time to time. Lastly the time to complete the project was extended till December 15, 1995.

20. On November 9, 1995, the appellant issued a Show Cause Notice calling upon the contractor/respondent to explain as to why the contract should not be terminated and why the balance work should not be executed at his risk and cost. On the same day the NBCC issued another letter addressed to the contractor extending the time for completion of work till December 15, 1995.

21. The contractor/respondent herein submitted his reply to the show cause notice, to the appellant/NBCC on November 25, 1995. On receipt of such reply to the show cause, the NBCC by a letter dated

20.03.1996 terminated the contract by forfeiting the performance guarantee and security deposit without prejudice to their right to realize all dues, losses and damages, under the clauses of contract, payable to the appellant.

22. Disputes and differences cropped up over the termination of contract, the contractor invoked the arbitration clause in the contract. Accordingly, the sole arbitrator was appointed who proceeded with the arbitral proceeding resulting in an award dated December 17, 2013 whereby, certain claims of the respondent/claimant was allowed and whereas, certain counter claim preferred on behalf of the present appellant (respondent therein) were also awarded.

23. Being aggrieved and dissatisfied with such award of the learned arbitrator, both the parties challenged the award by way of applications under Section 34 of the Arbitration and Conciliation Act, 1996, being AP-COM No. 485 of 2024 filed at the behest of the present appellant and AP-COM No. 486 of 2024 filed by the respondent herein. The two applications were taken up for analogous disposal by the learned Single Judge which resulted in the impugned judgment and order.

24. The learned Single Judge has noted in the impugned judgment and order that in consideration of the claim and counter claim preferred by the parties to the arbitral proceeding, the learned arbitrator proceeded to frame three issues for proper adjudication of

the disputes between the claimant/respondent/ contractor in one hand and the employer/appellant on the other. The learned Single Judge noted the issues and decision of learned arbitrator thereon namely,

“3. For the purpose of appropriate decision, the facts of the present case are required to be narrated, which are as follows:-

a)

b)

e) Before deciding the claims and the counterclaims of the respective parties, Learned Sole Arbitrator had framed three issues, which are as follows:

(i) Whether there was delay in execution and if so, who was responsible for the same?

(ii) Whether the termination of the contract by the respondent was lawful?

(iii) Whether parties are entitled to claims and counterclaims?”

f) At the time of deciding the issue no.(i), Learned Arbitrator has come to the finding that delay in execution of the work upto the stipulated date of completion and even up to 25.03.1995, the first extended date of completion, was primarily attributable to the NBCC. The arbitrator has also come to the finding that beyond 25.03.1995 is attributable primarily to the contractor though to some extent NBCC too was also responsible.

g) While considering the issue no. (ii), the arbitrator come to the finding that the termination of the contract by the NBCC on 20.03.1996 was unlawful.

h) As regard to the issue no. (iii), the arbitrator has taken up for consideration of claims and counter claims of the parties.

i) In the award, Learned Arbitrator has given a specific note specifying that “the counter claim nos.1, 7, 8, 10, 11, 12, 13, 15 &

17 are in the nature of damages and the total amount awarded against these counter claims viz Rs.123.06 lacs (i.e. 0 + 0 + 0 + 5.90 + 9.99 + 71.77 + 0 + 5.40 + 30.00, all figures in lacks of Rupees) has to be restricted to Rs.65.00 lacs which, as per the Contract Clause 72 (10% of 650 lacs as per Exhibit D-366), is an agreed preestimation of the maximum compensation/liquidated damages that can result from delay. As such, I am limiting the amount awarded against these counter claims to Rs.65.00 lacs only”.

25. While deciding on the issues, the learned Single Judge considered the submissions made on behalf of the parties as also the available evidence on record and decided the first issue affirming the first part whereas the second part of issue no. 1 was set aside. In the impugned judgment and order, the learned Single Judge noted that,

“39. In the finding, the Learned Arbitrator has held that beyond 25.03.1995 is attributable primarily to the contractor though to some extent the NBCC too were responsible but while coming to the conclusion, the Learned Arbitrator came to the conclusion that the delay beyond 25.03.1995 was attributable primarily to the contractor.

40. This Court finds that the NBCC provided 94 drawings as good for construction based on which the contractor submitted time/per chart for completion of the work within 31.03.1994.

41. It is admitted that most of the drawings marked as good for construction, particularly drawings in respect of foundation, column beam both for structure steel and RCC was required to commence the work were defective and the same underwent numerous changes/revisions till January 1994 and the stipulated date of completion was 31.10.1994. The said fact was also admitted by the parties in the Minutes of the Meeting on 24.12.1993. Thus, this Court finds that the first part of the finding of the Learned Arbitrator with respect to issue no. (i) does not require any interference.

42. As regards the second part wherein the Arbitrator has held that the delay beyond 25.03.1995 is attributable primarily to the contractor to some extent the NBCC too were responsible but, this Court do not find any reason as to why the Learned Arbitrator has come to the conclusion that beyond 25.03.1995 primarily the delay is attributable to the contractor. The Learned Arbitrator before coming to the findings has recorded the reason that sanitary, plumbing, septic tank, roof treatment in terminal building, granite finishing, firefighting, quota stone flooring, electrical items, door frame and shuttering, glaze tides, stone caddlings etc. no activity was started by the contractor till the termination of the contract.

43. The findings of the Learned Arbitrator with regard to above, this Court finds that the structure drawings were not completed and shop drawings were not provided and the approval with regard to the shop drawings was pending. Unless and until the structure construction is completed, no finishing work can be executed. With regard to sanitary and plumbing, septic tank, roof treatment in the terminal building etc. are the finishing work that is to be carried out only after finishing of all the structural work.

44. Considering the above, this Court finds that the second part of the finding with regard to the issue no.(i) wherein the Learned Arbitrator has come to the conclusion that the delay beyond 25.03.1995 is attributable primarily to the contractor is perverse and without application of mind. Accordingly, the second part of the issue no.1 is set aside and quashed.”

26. While setting aside the second part of issue no. 1, the learned Single Judge has noted that it did not find any reason as to why learned arbitrator came to the finding that delay beyond March 25, 1995 was attributable to the contractor. However, in the very next paragraph the learned Single Judge recorded that the learned arbitrator before coming to the findings has recorded the reason that sanitary, plumbing, septic tank, roof treatment in terminal building, granite finishing, firefighting, quota stone flooring, electrical items, door frame and shuttering, glaze tiles, stone caddlings etc. no activity was started by the contractor till the termination of the contract. The learned Single Judge set aside the second part of issue no.1, where the contractor was held liable for delay beyond March 25, 1995, in consideration of the fact that since, the necessary drawings etc. for the structural work as well as the shop drawings were not approved and provided by the appellant, the respondent was not in a position to complete the finishing works.

27. The learned arbitrator passed the award upon appreciation of evidence and came to a definite conclusion that delay beyond March

25, 1995 was reasonably attributable to the contractor. The learned arbitrator, in his award, took note of the evidence to the effect that essentially due to financial incapacity of the contractor coupled with certain other reasons, the contractor/respondent did not take effective steps to finish the job. Some of the job even did not require the approved drawings and could have been carried on. It would be apposite to set out the relevant portion of the findings of learned arbitrator vis-à-vis issue no. 1, which runs thus:-

“However, I find that delay beyond 25.03.95 is attributable primarily to the claimant though to some extent respondent too were responsible. Claimant, on their part, were lacking in financial resources despite the fact that mobilisation advance had been provided to them under the contract by the respondent. Respondent, went out of their way to provide financial support to the claimant by acceding to the request for direct payment to their suppliers of structural steel, cement, various construction materials like bricks, sand, stone aggregate, marble chips etc. and by paying labour wages on behalf of the claimant. Respondent even provided special advances to the claimant to enable them to tide over their cash flow problems. There is enough material on record of this case to show that claimant were facing acute shortage of cash flow which adversely affected the procurement of materials as per Pert chart and consequently the pace of execution of the work. Various targets fixed by the claimant from time to time for achieving progress and ensuring financial turnover could not be adhered to. Claimant had not even started work in respect of “Allied Buildings”, which were not connected to the main building and were no approval of shop drawings and other approvals were required. In respect of

sanitary & plumbing, septic tank, roof treatment in terminal building, granite finish, firefighting, Kota stone flooring, electrical items, door frame & shutters, glazed tiles, hand railing, stone cladding etc., no activity was started by the claimant till termination of the contract. Even procurement of materials was not done by the claimant though 75% secured advance could have been paid. Scaffolding and shuttering materials were not available as required. Having said that, let it be stated here that respondent too contributed to the delay to some extent by not approving some shop drawings required for construction. Till Sept. 1995, approval of some shop drawings was pending with respondent. Respondent (provisionally) extended the time for completion of the contract from time to time, first up to 25.03.95, then up to 30.06.95, then again up to 10.08.95, again up to 30.09.95 and yet again up to 15.12.95. In view of what has been discussed above, I hold that the delay beyond 25.03.95 was attributable primarily to the claimant (for reasons described above) and to some extent to the respondent. However, I wish to make it clear that keeping in view of the serious cash flow problems of the claimant (despite of respondent providing extra contractual financial support), the failure of the claimant to stick to promised targets of progress/turnover, the failure of the claimant to make headway on several fronts available to the claimant where no decision or approval of shop drawings were required/pending, the delay attributable to the respondent (by way of pending approval of some shop drawings) does not constitute a very material factor in the assessment of this issue No. (i).”

28. The learned Single Judge overturned such findings of learned arbitrator merely on the ground that certain drawings were not approved and provided by the appellants to the contractor in time

which delayed the completion of the project. However, the findings in respect of providing mobilization advances, beyond the terms of the contract by the appellant and that several works were not even started by the contractor/respondent where no approval was at all required were not considered. In the facts of the case it appears that learned Single Judge appears to have substituted his own views to negate the finding of learned arbitrator and came to hold that no finishing work could have been taken up unless and until the structural work was complete. Such conclusion was arrived at by the learned Single Judge on the basis of the selfsame evidence which was considered by the learned arbitrator.

29. It is trite law that when two views are possible and the learned arbitrator accepted one of them, the courts exercising jurisdiction under Section 34 of the Act of 1996, should be extremely slow in interfering with the findings of the arbitrator, substituting the other view, which in the appraisal of such court seemed more apt and acceptable.

30. As regards to issue no. (ii), the learned Single Judge refused to interfere with the findings of learned arbitrator where it was held that termination of the contract by the appellant was unlawful. The learned Single Judge held that,

“46. By a letter dated 09.11.1995, the NBCC has extended the time for completion of work till 15.12.1995. Simultaneously on the same day, the NBCC had issued show cause notice upon the

contractor as to why the contract should not be terminated and as to why the balance work should not be executed at risk and cost of the contractor. As per the extension of the NBCC, the contractor continued with the work and the contractor has also submitted the reply to the show cause notice. After the period of five months, the NBCC terminated the contract on 20.03.1996 on the ground that the contractor could complete the work within the extended period and the reply submitted by the contract was not satisfactory.

47. The Learned Arbitrator has considered both the letters and come to the conclusion that the last extension of time was granted by the NBCC to the contractor on 15.12.1995 and even though the contract subsisted beyond that date. The Learned Arbitrator also come to the conclusion that the time was not an essence of the contract and the same could not be terminated without fixing a reasonable time limit for completion of the contract. This Court has also considered the show cause notice, reply of the contractor, the letter wherein the NBCC has extended the time for completion of the work till 15.12.1995.

48. In the show cause notice, the NBCC has not fixed any time by which the contractor has to complete the work. Simply mentioning several correspondences and clauses of the agreement, issued the show cause notice. The contractor has submitted his detailed reply and even after the completion of the period of extension of time, the contractor was allowed to complete the work. On 16.02.1996, during inspection at site by the officers of the NBCC and the Regional Executive Director of NAA, the contractor was instructed to stop fabrication and erection of structural steel work and the suspension of work at structural steel activities were not lifted by the NBCC till 20.03.1996 and as such, this Court finds that the findings of the Learned Arbitrator wherein it was decided that the termination of the contract by the NBCC dated 20.03.1996 was not unlawful, does not require any interference.”

31. Learned advocate appearing for the appellant, however, challenged such finding of learned arbitrator which was subsequently upheld by the learned Single Judge through the impugned judgment and order. The deliberations made by the learned Single Judge in paragraph 47 and 48 of the impugned judgment and order, set out hereinbefore, exhibits that the learned arbitrator considered the evidence placed before him and upon such consideration, came to a finding which is apparently bolstered by reasons. We, exercising powers under Section 37 of Arbitration and Conciliation Act, 1996, do not find that the reasons assigned by the learned arbitrator can be termed as perverse, illegal or against the public policy. At no stretch of imagination, it can be said that on the basis of evidence relied upon by the learned arbitrator, no prudent person could have arrived at the conclusion arrived by learned arbitrator or the findings of the learned arbitrator was so shockingly perverse to shake the conscience of the court.

32. So far as issue No. (iii) is concerned, the respondent/claimant/contractor submitted his claim delineating 20 numbers of claim against the appellant. The appellant/NBCC also, through his statement of defense, advanced 20 numbers of counter claims against the respondent. The appellant challenged the claim of the contractor with respect to claim nos. 5, 6, 7(c), 14 and 15. The learned arbitrator

by considering the submissions and the documents allowed the aforesaid claims of the respondent. Rest of the claims of the respondent/contractor was disallowed by the learned arbitrator.

33. Similarly, counter-claim nos. 2, 3, 4, 5, 6, 9, 10, 11, 12, 15 and 17 preferred on behalf of the appellant were allowed. Resultantly, counter claim nos. 1, 7, 8, 13, 14, 16, 18, 19 and 20 stood negated by learned arbitrator.

34. The learned Single Judge did not interfere with the findings of learned arbitrator so far as it related to the claims of the respondent/contractor which were allowed by the learned arbitrator. However, in respect of the counter claims of the appellants which were allowed by the learned arbitrator, the learned Single Judge set aside the award to that extent. It was held by learned Single Judge that such counter claims were in the nature of damages and since, the learned arbitrator had come to a conclusion that termination of the contract was not lawful; the appellant was not entitled to any damages by way of counter claim.

35. With all due respect, we are unable to subscribe to such findings of learned Single Judge. We are not in a position to accept the findings arrived at by learned Single Judge in respect of counter claims allowed by the arbitrator to be in the nature of damages. We have noted that counter-claim nos. 2, 3, 4, 5, 6, 9, 10, 11, 12, 15 and 17 were allowed. A bare perusal of the award impugned before learned

Single Judge demonstrates that award Nos. 2, 3, 4, 5 and 6 were in respect of the advance provided by the appellant to the contractor and as such the appellant was very much entitled for recovery of money advanced by it.

36. Similarly, counter claim No. 9 was the amount lying due towards unpaid electricity charges to the Airport Authority of India (AAI) together with interest on such unpaid amount. The discussions made by learned arbitrator shows that electric connection was arranged by the appellant at the request of respondent. As per the contract, the respondent was obliged to arrange for the electric connection at the site. It was at the request of the respondent; AAI did not disconnect the electric connection for a considerable period. Counter claim no. 9 has been allowed considering the unpaid electricity charges payable by the respondent.

37. As regards Counter claim no. 10 which is in respect of 'Field Overhead Expenses' incurred by the present appellant, the learned arbitrator allowed the claim to the extent of ₹5,90,000/- as against the ₹16,72,000-/ claimed by the appellant. The learned arbitrator while deciding on such claim held that,

“It has already been aired by me in the very beginning of this award that claimant were primarily responsible for delayed beyond 25.03.95. In view of this, it is apparent that they must share the expenses incurred by the respondent on field O. H's beyond 25.03.95. However, since the award of balance works at

the risk and cost of the claimant has been held by me to be unjustified, the date up to which the said charges are to be considered cannot be the stipulated date of completion of the risk and cost contract. The date has to be 20. 03. 96, the date when the contract of the claimant was rescinded. This period works out to 11.80 months against 22 months considered by the respondent. Also, considering that the supervisory staff was supervising some other works (perhaps of minor nature) and considering that some responsibility for the delay beyond 25. 03. 95 also rests with the respondent, the permanent expenses, in my considered opinion, debitable to the claimant, should be ₹ 50,000/- against ₹ 76,000/- considered by the respondent. Over a period of 11.80 months, the expenses in question work out to ₹ 590,000/-. Accordingly, I award ₹ 590,000/- in favour of the respondent against this counterclaim.”

38. Counter claim no. 11 was in respect of ‘delay in the completion of the Terminal Building leading to delay in the execution of other packages of HVAC, substation, conveyor belt and DG set resulting in increased cost of account of payment of escalation et cetera to those agencies. Such counterclaim was allowed by learned arbitrator. Upon consideration of the claim and evidence placed before it, the learned arbitrator held that,

“This counterclaim is based on delay that has occurred in execution of the other packages connected with this work of terminal building and allied works. It has already been held by me from the very beginning of this award that claimant are primarily responsible for delayed execution of the contracted work from 26th March 95 onwards i.e. till 20th March 96 (the date of termination of the contract). This delay ultimately resulted in delay in execution of works of other agencies viz HV AC, Sub-

station, Conveyor Belt whose performance was dependent on the performance of the claimant. I agree with the contention of the respondent that as a result, they have to pick escalation to these agencies for the extension of time granted because of hindrances caused to them. I do not agree with the period of delay considered by the respondent in their calculations. The period of delay (and the consequent escalation paid for which claimant are responsible) has been considered by many to March 96 only and not thereafter. With this, the amount of relief to which respondent are entitled works out to ₹ 9.99 lakhs against ₹ 23.16 lakhs claimed. Accordingly, I award is 9.99 lakhs in favour of the respondent against this counterclaim.”

39. Counter claim no. 12 is in respect of interest on investment for known completion of the work in time by the claimant/respondent. While deciding this counterclaim, the learned arbitrator considered the details of the amount invested by the present appellant and the period for which this investment remained unproductive due to delay on the part of the claimant. Upon consideration of such evidence, the learned arbitrator had held as follows:-

“This counterclaim is based on delay that has occurred in execution of this contracted was and other packages connected with this work of terminal building and allied works. It has already been held by me in the very beginning of this award that claimant are primarily responsible for delayed execution of the contracted was from 26th March 95 onwards i.e. till 20th March 96 (the date of termination of the contract). This delay ultimately resulted in delay in execution of works of other agencies viz HV AC, substation, conveyor belt, DG set whose performance was dependent on the performance of the claimant. I agree with the

contention of the respondent that as a result, the amount invested by way of payment to the claimant and other agencies remained unproductive and unutilized. However, I do not agree with the period considered by the respondent in their calculations. The delay period has to fall within 26th of March 95 to 28 March 96 and not thereafter. On this basis, the amount of relief to which the respondents are entitled works out to ₹ 71.77 lakh against ₹ 142.31 lakhs claimed. As such, I award ₹ 71.77 lakhs in favour of the respondent against this counterclaim.”

40. Counter claim no. 15 pertains to interest for prolonged utilization of mobilization advance. While deciding on this counter claim, the learned arbitrator observed that,

“I agree with the contention of the claimant only to the extent that the mobilization advance was interest-free as for the condition of contract. The recovery of the mobilization advance was to be done depending upon the progress of the work. Claimant’s contention regarding jurisdiction of the arbitrator is not accepted. The work for delayed and for delay up to 25th March 95, claimant has not been found to be responsible. Thereafter, the delay in execution of the work is primarily attributable to the claimant as ruled by me in the very beginning of this award. So, the loss of interest resulting from delay in execution of the work by the claimant is for the period from 26th of March 95 to 20th March 96 only. Considering that prospective lakh has been remained with the claimant from 4/95 to 3/96 (i.e. 12 months), the loss of interest @18% P. A. Works out to ₹ 540,000/-. As such I award ₹ 540,000/- in favour of the respondent against this counter claim.”

41. Likewise, Counter claim no. 17 is towards loss of profit due to prolongation of work by the claimant claimed at ₹110 lakhs. Considering the evidence in respect of such counter claim of the appellant, the learned arbitrator held as follows: –

“It has already been held by me in the beginning of this award that claimant are primarily responsible for delayed in execution of the work beyond 25th March 95. As such, there is some merit in this counterclaim. Taking an average turnover of ₹ 3. 50 crore per year and the net profit as 10% of this value and 5% overheads, the basis cause that has to be considered for working out the laws of profit works out to ₹35,000,000/ 1. 15 i.e. ₹304.35 lakhs. 10% of this figure is the loss of likely profit per year that works out to ₹ 30.43 lakhs. Considering delay from 26th of March 95 to 28 March 96, the loss of profit works out to ₹ 30.00 lakhs. As such, I award ₹ 30.00 lakhs in favour of the respondent against this counter claim.”

42. A perusal of the impugned arbitral award goes to show that the learned arbitrator discussed each and every claim under separate headings at great length and passed his findings on such claim giving resounding reasons for arriving at such findings. Such reasons recorded by learned arbitrator are quite plausible and cannot be said to be perverse. We are not in a position to arrive at a conclusion that no prudent man could have arrived at the conclusion which the learned arbitrator arrived at, on the basis of evidence considered by him or that such findings are shockingly contrary to the evidence on record.

43. In **Gupta Brother Steel Tubes Limited** (supra), the Hon'ble Supreme Court laid down that,

"18. It is not necessary to multiply the references. Suffice it to say that the legal position that emerges from the decisions of this Court can be summarised thus:

(i) In a case where an arbitrator travels beyond the contract, the award would be without jurisdiction and would amount to legal misconduct and because of which the award would become amenable for being set aside by a court.

(ii) An error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction and such error is not amenable to correction by courts as such error is not an error on the face of the award.

(iii) If a specific question of law is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point of law does not make the award bad on its face.

(iv) An award contrary to substantive provision of law or against the terms of contract would be patently illegal.

(v) Where the parties have deliberately specified the amount of compensation in express terms, the party who has suffered by such breach can only claim the sum specified in the contract and not in excess thereof. In other words, no award of compensation in case of breach of contract, if named or specified in the contract, could be awarded in excess thereof.

(vi) If the conclusion of the arbitrator is based on a possible view of the matter, the court should not interfere with the award.

(vii) It is not permissible to a court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings.

28. The view of the arbitrator being possible view on construction of Clause 7.2, and having not been found absurd or perverse or unreasonable by any of the three courts, namely, Sub-Judge,

District Judge and the High Court, we are afraid, no case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution. Once the arbitrator has construed Clause 7.2 in a particular manner, and such construction is not absurd and appears to be plausible, it is not open to the courts to interfere with the award of the arbitrator.

29. The legal position is no more res integra that the arbitrator having been made the final arbiter of resolution of disputes between the parties, the award is not open to challenge on the ground that arbitrator has reached at a wrong conclusion. The courts do not interfere with the conclusion of the arbitrator even with regard to construction of a contract, if it is a possible view of the matter. The words “no award shall be set aside” in Section 30 mandate the courts not to set aside the award on the ground other than those specified in Section 30. In a case such as this, where the arbitrator has given elaborate reasons that compensation Clause 7.2 is not attracted for the breaches for which the compensation has been claimed by the respondent and such view of the arbitrator is a possible view, we are afraid in the circumstances, award is not amenable to correction by the court.”

[Emphasis supplied]

44. Similarly, in **Gayatri Balsamy** (supra), the Hon’ble Supreme Court laid down that a challenge under Section 34 of the Act of 1996 is not akin to an appeal under the provisions of Order 41 of the Civil Procedure Code. The Hon’ble Supreme Court noted that,

“43. Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the Court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the

power provided under Section 34. In other words, the power cannot contradict the essence or language of Section 34. The Court would not exercise appellate power, as envisaged by Order 41 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”).”

45. In the case at hand, the learned Single Judge, by the impugned judgment and order, allowed the challenge to the arbitral award under Section 34 of the Act of 1996 filed on behalf of the claimant/contractor/respondent whereas, that preferred on behalf of the employer/appellant was dismissed. Learned Single Judge was of the view that, learned arbitrator while deciding the issue had come to the conclusion that the since termination of the contract by the appellant/NBCC in 1996 was held to be unlawful, the counter claims allowed by the learned arbitrator were not sustainable. Accordingly, all the counter claims allowed by the learned arbitrator in favor of the NBCC were set aside and quashed. Such finding of learned Single Judge is patently against the evidence considered by learned arbitrator. Learned Single Judge has substituted the possible view of the learned arbitrator. View of the learned arbitrator as recorded in the award is not established to be perverse. Moreover, a reasoned order passed by learned arbitrator ought not to have been interfered within the powers conferred under Section 34 of the Arbitration and Conciliation Act, 1996.

46. It is trite law that when two views are possible and the learned arbitrator had accepted one of them, the courts exercising jurisdiction under Section 34 of the Act of 1996, should not substitute its own view. It is also well settled that the courts exercising jurisdiction under Section 34 or Section 37 of the Act of 1996 are not the courts in appeal contemplated under Order 41 of the Civil Procedure Code, 1908. If that be so, re-appreciation of evidence by the courts under Section 34 or Section of the Act is not permissible.

47. A court exercising powers under Section 34 of the Act of 1996 is denuded from interfering the arbitral award, if the learned arbitrator has arrived at a plausible finding on the basis of evidence produced before it. Similarly, in a jurisdiction under Section 37 of the Act of 1996, the appellate court must confine itself to a consideration whether, the learned court under Section 34 of the Act exercised or failed to exercise the powers conferred upon it under Section 34.

48. In the light of the discussions made hereinabove, we are of the view that the learned Single Judge failed rather, exceeded the powers conferred under Section 34 of the Act of 1996 and therefore, the impugned judgment and order passed under Section 34 of the Act of 1996, surely calls for interference.

49. Accordingly, the impugned judgment and order is hereby set aside. Consequently, the instant appeals under Section 37 of the Act of 1996 being **AO-COM No. 13 of 2025** and **AO-COM No. 14 of 2025**

are allowed. With the disposal of the main appeals, connected applications, if any, shall stand disposed of. However, there will be no order as to costs. The original award dated December 17, 2013 is restored.

50. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

51. I agree.

[DEBANGSU BASAK, J.]

Later on:-

52. On delivery of the judgment, learned senior advocate appearing for the respondent seeks stay of the impugned judgment and order.

53. Since we have already delivered the judgment setting aside the impugned order passed under Section 34 of the Act of 1996, prayer for stay is refused.

54. Learned advocate appearing for the appellant submits that they have secured an amount of ₹3,35,32,000/- lying with the learned

Registrar, Original Side. He seeks release of the same. In view of the disposal of the appeals, security furnished stands discharged. Learned Registrar, Original Side will take suitable steps for releasing the bank guarantee.

[DEBANGSU BASAK, J.]

[MD. SHABBAR RASHIDI, J.]