SYED ROSHAN ZAMIR ALI

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CGHC010198342017 2026:CGHC:46107-DB

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Order reserved on 13.10.2026

Order delivered on 30/10/2026

Order uploaded on 30/10/2026

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBA No. 91 of 2017

1. M/s Teja Electricals Through Proprietor Rajesh Tejwani S/o Shri Jairam Tejwani, 53 Years, 5, Jaidev Complex, Byramji Town, Nagpur M.H., Maharashtra

... Appellant

versus

1. The Chief Administrative Officer (Const) South East Central Railway, Bilaspur, Chhattisgarh
2. The Chief Electrical Engineer Const, South East Central Railway, Bilaspur, District : Bilaspur, Chhattisgarh

... Respondents

For Appellant	:	Mr. Prafulla N Bharat, Sr. Advocate assisted by Mr. Harshal Chouhan, Advocate
For Respondent	:	Mr. R.K. Mishra, Deputy Solicitor General

DB: Hon'ble Mr. Justice Parth Prateem Sahu,J

& Hon'ble Ms. Justice Sushma Sawant, J

CAV Order

Per Parth Prateem Sahu, J

1. This arbitration appeal is filed by appellant against the order dated 31.10.2017 passed in MJC No.31/2016 by which

learned Commercial Court, (District Level) Naya Raipur dismissed the appellant's application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') filed against the award dated 12.5.2015 has been dismissed.

2. Facts of the case, in brief, are that a notice inviting tenders was published by respondent on 03.06.2005 inviting bids from eligible contractors for the work of electrification of private siding of M/s Ind Agro Synergy Limited at Koterlia. Appellant submitted its offer, which was accepted and accordingly an agreement was executed between the parties on 5.10.2025, according to which, the work has to be completed within a period of six months from the date of issue of Letter of Acceptance. Appellant completed the contract work on 14.5.2006. Completion certificate in favour of appellant was issued on 25.12.007 by respondent acknowledging that the work covered under the agreement was successfully and satisfactorily completed by appellant. Upon submission of final bill of Rs.1,49,33,340/- for payment, respondent No.2 vide letter dated 6.6.2008 called upon the appellant to submit manufacturers test certificate of galvanized mast which was supplied by the appellant and the same was submitted on 29.9.2008 along with galvanizing test reports of mast of the manufacturer M/s Unique Structure & Tower Ltd. Raipur dated

14.10.2005 and 10.11.2005. However, respondents not only withheld the payment of final bill submitted by appellant on the ground that certificates submitted by appellant were not witnessed by the inspecting authority, therefore, the same cannot be considered and steel structure supplied was procured by appellant from unapproved source, but also banned for the same. As the payment of final bill was not released despite repeated communications and representations, the appellant filed an application under Section 11 (6) of the Act of 1996 for appointment of Arbitrator and accordingly, sole Arbitrator was appointed by the High Court with the consent of the parties. On 17.10.2011 a statement of claim was filed by appellant claiming amount of Rs.1,00,11,599/- along with all other expenses incurred til recovery of amount together with interest @ 18% p.a. Respondent filed statement of defence denying claim of the appellant. Learned Sole Arbitrator vide award dated 12.5.2015 dismissed the claim of appellant on the ground that the contract was not completed as per conditions of the contract and therefore appellant is not entitled for the amount claimed in statement of claim. Aggrieved by the arbitral award, appellant invoked the jurisdiction of the Commercial Court under Section 34 of the Act of 1996 and the learned

Commercial Court vide order impugned dismissed the application and affirmed the arbitral award.

3. Learned Senior Counsel for the appellant argued that supply of material and execution of work satisfactorily is not in dispute. However, according to respondent authorities, the company which had issued galvanized test certificates/reports has only carried out galvanization of masts and not manufactured it, which indicates that galvanized masts supplied were not manufactured by RDSO/CORE approved sources and as such, the genuineness of the material supplied and used in execution of work by appellant is under question. He submitted that after submission of test reports by appellant, respondent authorities vide letter dated 27.10.2008 forwarded the same for verification to M/s Unique Structure & Tower Ltd. Raipur, the company which had issued it, and the said company vide its letter dated 3.11.2008 verified that galvanizing test reports for the samples submitted by appellant were issued by it. Invoice-cum-challan of M/s Shri Bajrang Alloys Ltd. showing purchase of black steel which was used in execution of contract work, was also produced. The Central Organization for Railway Electrification (CORE), a specialized organization under the Ministry of Railways, Government of India, responsible for carrying out railway electrification works across Indian Railways, vide

letter dated 03.12.2014 clarified that as per office record, M/s Unique Structure & Tower Ltd. Raipur and M/s Shri Bajrang Alloys Ltd. are CORE approved Part-1 source of fabricated and galvanized steel structures for OHE and TSS. Furthermore, the Rail India Technical and Economic Service Limited (RITES), a Government of India enterprise under the Ministry of Railways, had duly conducted inspection of the materials/work executed and, upon being satisfied with the compliance of the prescribed technical specifications and quality standards, had issued the requisite inspection certificate. Thus, verification of the galvanizing test reports by the concerned manufacturer, clarification issued by CORE regarding approved status of the relevant sources from whom material was procured by appellant, and the inspection certificate issued by RITES cumulatively substantiate the appellant's case regarding purchase of supplied material from the approved sources. In these circumstances, withholding of final bill amount of appellant for the reason that appellant failed to produce documentary evidence showing purchase of galvanized masts from approved sources is not justified, particularly when 85% of the bill amount at the stage of on-account payment had been released on the basis of similar certificates/reports without any objection.

4. He further submitted that even the demand by respondents to submit documentary proof (manufacture test/reports) for supply of galvanized masts so as to release final bills is contrary to the terms and conditions of contract because there was no requirement in the contract agreement. As per terms and conditions of contract, manufacturer test certificate regarding quality of goods was to be submitted at the time of 'on-account payment', which was duly submitted by the appellant, the same was never objected by respondents and based thereon, on-account payment to the extent of 85% was released in favour of appellant. Balance payment of 15%, which is subject matter of dispute, was only subject to compliance of conditions contemplated in Clause-6 (C) of the terms and conditions of contract.

5. During arbitral proceeding, appellant vide its letter dated 10.10.2014 submitted the aforementioned documents including invoices cum challans of the company which manufactured the galvanized masts in order to show that material supplied was procured from the approved source. However, learned Arbitrator did not consider the aforementioned material documents in the award and dismissed the claim of appellant erroneously. When the material evidence going to the root of the matter is not considered in the award, the impugned award cannot be

allowed to stand, and has to be set aside being against the fundamental policy of India.

6. He further submits that learned Arbitrator has drawn inference from the special condition of contract i.e. Item No.3, which was totally unreasonable as the vital conditions for consideration were of Letter of Acceptance dated 4.8.2005 and Clause -IV of Chapter II of agreement dated 05.10.2005, which were not taken into consideration at all. As such, the findings recorded in the impugned award are based on an erroneous interpretation and non-consideration of material contractual stipulations, resulting in conclusions contrary to the express terms of the agreement. The impugned award, therefore, suffers from a manifest error in appreciation and interpretation of contractual provisions and is unsustainable in law and liable to be set aside.

7. In view of the above, finding of the learned Arbitrator, which is affirmed by the learned Commercial Court, that galvanized mast supplied by appellant were not manufactured by RDSO/ CORE approved sources and as such the contract was not completed as per contract specifications, are not sustainable being contrary to the documentary evidence available on record as well as the terms and conditions of the contract. Hence, the impugned order passed by learned Commercial Court affirming the award of learned Arbitrator is liable to be

interfered with in exercise of appellate jurisdiction by this Court.

8. Per contra, learned Deputy Solicitor General for the Respondents argued that the appellant is seeking to reopen the findings recorded by the learned Arbitrator on the basis of contractual obligations governing the execution of the work and admissibility of appellant's claim for final payment, which is not permissible. He submitted that Item no.3 of the Special Conditions of contract expressly cast obligation upon the appellant to supply the materials procured from approved sources of RDSO/CORE; inspection of supplied materials by RITES or a competent supervisor as appointed by respondent, submission of inspection certificate along with supplier's original challan. In case at hand, when it was found that the material was supplied by appellant without manufacturer's test certificate, the same was demanded from appellant. Appellant submitted the manufacturer test certificate issued by the company, which had not manufactured the material supplied, and further it was not witnessed by inspecting authority (Railway Representative / RITES), the same was not accepted by respondents and consequently the payment of final bill was withheld. He submits that mere confirmation of test certificate by the entity, which although an approved source of RDSO/CORE but did

not manufacture the material, cannot be treated as sufficient compliance of the requirement of procurement of materials from the sources approved by RDSO/CORE. Appellant cannot avoid consequences of non-compliance of the mandatory requirements of contract by merely contending that completion certificate had been issued. Question of entitlement to the disputed final payment was required to be determined with reference to entire contract including special conditions governing materials supplied. Item No.3 of special conditions expressly prohibits payment unless the material is procured from approved RDSO/CORE sources.

9. He further submitted that release of ‘on-account payments’ at an earlier point of time does not establish that all contractual requirements stood conclusively satisfied for the purpose of final payment. On-account payment and final payment are distinct stages governed by the terms of agreement. Release of an interim payment cannot, in absence of any contractual provision or other legally sustainable basis, be treated as a waiver of the respondent’s right to insist upon compliance with the conditions applicable to final bill. Appellant having undertaking the work subject to conditions enumerated in the agreement, was bound to establish compliance therewith before seeking release of the amount claimed under final bill.

10. He contended that the scope of interference under Section 37 of the Act of 1996 is extremely limited, and cannot extend beyond the contours of Section 34 of the Act of 1996. It is contended that the learned Arbitrator had interpreted relevant clauses of the agreement and recorded a definite finding thereon in passing the award. Findings of the Arbitrator were further affirmed by the Commercial Court while exercising the jurisdiction under Section 34 of the Act of 1996. Scope of interference in the present appeal becomes even narrower as it is well settled that in arbitration, higher the court, lesser is the propensity to interfere. It is further argued that proceedings under Section 37 of the Act of 1996 are much more summary in nature and not like an ordinary civil appeal, and therefore it do not permit re appreciation of facts, evidence or reinterpretation of contractual terms. The award cannot be interfered unless it is contrary to the substantive provision of law; any provision of the Act of 1996 or the terms of the agreement. In case at hand, appellant failed to satisfy any of the grounds for setting aside an award under Section 34 of the Act of 1996. Appellant urges re-appreciation of evidence and merits that were already considered in arbitration proceeding by the learned Arbitrator and by doing so appellant attempts to seek a retrial of the dispute, which is not permissible. As such, the present appeal does not meet

the requisites of a challenge under Section 34 of the Act of 1996. In absence of any ground warranting interference within the limited scope of Section 37 of the Act of 1996, the findings recorded by the learned Commercial Court affirming the award passed by the learned Arbitrator do not call for any interference by this Court.

11. We have heard learned counsel for the parties and perused the record.

12. Section 34 (1) of the Act of 1996 provides that arbitral award may be set aside by the Court on application for setting aside the same being made on any grounds specified in sub-section (2) and within the time prescribed. Sub-section 2 (a) thereof further provides that party making such application shall furnish proof to the Court in support of such application. The Court is entitled to set aside the award only, if grounds mentioned in sub-section (2) of section 34 read with grounds stated in Section 13 and Section 16 of the Act of 1996 are proved to its satisfaction by the party making application for setting aside the award and too if satisfy the Court that the allegations are true. The onus to prove that the grounds as per sub-sections (2) of Sections 34 of the Act exists and that award is liable to be set aside, lies on the party making application.

13. Respondent- South East Central Railway invited bids for the work of electrification of private siding of M/s Ind Agro Synergy Ltd. at Kotarlia. The appellant, a proprietary concern engaged in the business related to electrical lines etc., emerged as the successful bidder and was issued a Letter of Acceptance dated 04.08.2005. Pursuant to this, on 05.10.2005, a contract agreement, containing general conditions of contract and special conditions of contract etc., was entered into between the parties. As per Clause-IV of Chapter 2 of General Conditions of Contract, at the time of release of on-account payment to the extent of 85%, all invoices must be accompanied by supplier's challan, inspection certificate granted by the Dy. CEE (C) / BSP or authorized representative, manufacturer test certificate etc. According to Clause-V, balance 15% was to be made through final bill only after satisfactory completion of the entire contractual work, satisfactory operation and handing over of the assets to the Railway duly tested and commissioned.

14. The special conditions provide, inter alia, that all materials to be supplied by the contractor have to be duly inspected by RITES or a competent supervisor as appointed by Dy. CEE (Con) / BSP. No payment shall be made unless the inspection certificate has been submitted along with supplier's original

challan. The materials have to be procured only from approved sources of RDSO/CORE as applicable.

15. It is not in dispute that appellant submitted test certificates based on which the respondent Railway released ‘on-account’ payment to the extent of 85% in favour of appellant without any objection. It is also not in dispute that the work was completed to the entire satisfaction of the respondent Railway on 14.5.2006 and the work completion certificate was also issued by respondent on 25.1.2007. Final bill of Rs.1,49,33,340/- was submitted and after deducting on-account payment made, net amount payable towards final bill was Rs.41,63,602/-. During processing of final bill, it was found that manufacture’s test report/certificate in connection with supplied materials is not submitted, which was demanded and accordingly submitted by appellant. Upon verification of report/certificate, it was found that the company which issued test reports of galvanized mast was not the manufacturer company and it was also found that appellant has not submitted original challan of manufacturer and therefore, payment of final bill was withheld. To realize payment of final bill, appellant invoked arbitration clause in terms of arbitration clause contained in the agreement and requested for appointment of Arbitrator. When the Arbitrator was not appointed, an application was filed before this Court

under Section 11 (6) of the Act, 1996 for appointment of Arbitrator, which came to be registered as Arbitration Application No.27/2009. The Arbitrator was appointed by this Court with consent of the parties vide order dated 4.7.2011. Thereafter appellant submitted statement of claim along with documents before the Arbitrator. Respondents filed their statement of defense along with all relevant documents also giving point wise reply of the claim petition.

16. Upon consideration of the pleadings, documents and submission of learned counsel the parties, learned Arbitrator passed the award on 12.5.2015 dismissing the claim of appellant on the ground that the contract was not completed as per contract conditions. Being aggrieved by the aforesaid award passed by the learned Arbitrator, appellant preferred an application under Section 34 of the Act of 1996 and by the impugned order, the application filed under Section 34 of the Act of 1996 for setting aside of the award dated 12.5.2015 was dismissed by the learned Commercial Court.

17. Challenge to the impugned award in this appeal is mainly set out on following grounds;

- appellant is obliged to submit manufacture test report at the time of submitting final bill for payment and was supposed to submit at the time of receiving on-account payment only, which was released in favour

of appellant constituting a deemed acknowledgment of compliance with the requisite condition of submission of manufacturer's test report/certificate.

- Learned Arbitrator has failed to appreciate the oral and documentary evidence brought on record during arbitral proceedings and as such it is against the fundamental policy of India."

18. At this stage, it will be advantageous to have look at the impugned award passed by the learned Arbitrator. Perusal of the impugned award indicates that the claimant had claimed Rs.1,00,11,599/- detailed as under:-

SN	Items	Claimed Amt.
1.	Payment due from Railways against final bill No.Dy.CEE/Con/BSP/Ind Agro/750 dated 27.02.2008.	Rs.41,63,032/-
2.	18% interest p.a. from 14.05.06 (date of completion of work) to date of filing of instant claim.	Rs.40,58,956/-
3.	Amount deposited with Railways by claimant in accordance with terms and conditions of agreement.	Rs.8,29,867/-
4.	18% interest p.a. on Rs.8,29,867/- from the date on which the period of one year since completion of work got over.	Rs.6,59,744/-
5.	Legal fees and expenses in the	Rs.3,00,000/-

	matter.	
6.	Total	Rs.1,00,11,599/-

19. In regard to the claimant‟s entitlement to an amount of Rs.1,00,11,599/-, the observation of learned Arbitrator leading to conclusion contained in para 6.0 which are reproduced as under:

> “6.0 OBSERVATIONS OF ARBITRATOR AND OTHER IMPORTANT FACTS LEADING TO CONCLUSION
>
> 6.1. As stated in para 3.1 above, an agreement no. 21/CEE/Con/SECR/BSP/2005 in respect of the aforesaid work was entered into in writing between the claimant and the respondent no. 2 on 05.10.2005.
>
> 6.2. Final bill for an amount of Rs.1,49,33,340/- was prepared subsequently and the same was duly signed by the respondent no. 2 and other railway authorities and also by the claimant on 27/02/2008. In accordance to the aforesaid final bill, the claimant was entitled for the net payment due, after deducting on account payment, of Rs.41,63,032/-.
>
> 6.3. On 06/06/2008, the respondent no. 2 issued a communication to the claimant that the manufacturers test certificates for steel structures supplied should be produced before him so that the final dues in respect of the aforementioned works may be released.
>
> 6.4.As per the terms and conditions of the LOA, the claimant was supposed to submit the manufacturer test certificates in connection with the supplied materials only at theatre/o receiving On Account Payment and the fact

the On Account Payments were duly made by the respondent.

6.5. However, the claimant on 20/09/2008 supplied the respondent no. 2 with the Galvanizing Test Reports of Mast of the Manufacturer M/s. Unique Structure & Tower Ltd., Raipur dated 14/10/2005 and 10/11/2005 with protest on the ground that certificate already been submitted earlier. The claimant further requested the claimant, for releasing the final bill of the claimant.

6.6. The claimant submitted that the Galvanized Traction Masts were supplied by the claimant from approved sources and the respondent no. 2 has alleged it for the first time that the said materials were supplied from unapproved sources even after verifying about the genuineness of the material test report from the approved source, i.e. M/s. Unique Structure & Tower Ltd., Raipur.

6.7.The respondent no. 2 verified about the genuineness of the aforesaid test certificates issued to the claimant by M/s. Unique Structure & Tower Ltd., Raipur, whose letter dated 03/11/2008 confirmed about the genuineness of the same, but the same was rejected by Respondent.

6.8.The respondent no. 2 further issued a communication to the FA&CAO (Con)/SECR, Bilaspur on (08/04/2010 and thereby informed that the respondent no. 1 has approved for recovery of an amount of Rs.32.11 lacs for galvanized traction masts supplied from non-approved sources, and therefore the same may be recovered from the bill and kept in suspense.

6.9 The Respondent further stated that it is a fact that the Claimant has supplied Galvanized Test Certificate

from M/s Unique structure & Towers Ltd. Raipur, core approved sources, but Galvznized Mast were not manufactured by them. M/s Unique Structure & Tower Ltd., Raipur has only galvanized the masts and for that they have issued test certificate. Claimant has not submitted manufacturer challan in support of supply of Mast from approved source In yiew of the above, it is clear that Galvanized Mast supplied by Clamant were not manufactured by RDSO/CORE approved sources.

Thus Respondent requested for considering the above fact while deciding the arbitration cases.

6.10 As mentioned in para 5.4.1 by Respondent that the business of the claimant was banned for five years vide Railway Board's letter no. 2004/RE/240/3 dated 20.08.2007, however while going in detail the claimant clarified that the ban was on account of not replying the allegation letter from Railway Board. It is noted that the business of Claimant was banned by Railway Board for the sarne work covered under the agreement no. 21/CEE/CON/SECR/BSP/2005 dtd 05.10.2005 for which these arbitration proceedings are going on and therefore the genuineness of material supplied by them is under question. In the staterment of imputations, it is estimated that material worth Rs. 32.11 lakhs was supplied from non-approved sources.

6.11 As mentioned by Respondent in his counter statement against Para no. 6 and 8, it is noted that as per item no. 3 of special condition of contract, "All materials to be supplied by the contractor have to be duly inspected by RITES or a competent supervisor as appointed by Dy.CEE (CON)/BSP. No payment will be made unless the inspection certificate has been

submitted along with supplier's original challan The materials have to be procured only from approved sources of RDSO/CORE as applicable".

Since test certificate was rejected by Respondents on the ground of supply of material by and the Claimant was also banned by Railway Board for the same, it is non approved source and concluded that contract was not completed as per contract conditions."

20. Perusal of the above indicates that learned Arbitrator considering the pleadings of the parties and documents brought on record arrived at a conclusion that claim of appellant-claimant towards final bill is untenable on the ground the contract work was not executed as per contract conditions because genuineness of material is doubtful. It is also appearing that before arriving at his conclusion in respect of entitlement of appellant-claimant, learned Arbitrator has referred Item No.3 of Special Conditions which relates to 'material' and provides that all materials to be supplied by the contractor have to be procured from approved sources of RDSO/CORE as applicable.

21. Perusal of the order passed by learned Commercial Court would demonstrate that upon a comprehensive consideration of the decisions relied upon by appellant in support of submission that impugned award is against the fundamental policy of Indian law, relevant terms and conditions of the agreement, and documentary evidence available on record,

affirmed the arbitral award. The learned Commercial Court found that the learned Arbitrator had interpreted the contractual provisions in the context of the obligations undertaken by the parties and had assessed the appellant-claimant's entitlement in the light of the evidence produced in support of its claim. The approach adopted by the learned Arbitrator was neither arbitrary nor capricious, nor was any perversity or patent illegality demonstrated so as to warrant judicial interference within the permissible scope of review under the Arbitration and Conciliation Act, 1996. Accordingly, finding no ground to conclude that the arbitral award was contrary to the fundamental policy of Indian law or otherwise suffered from any infirmity warranting interference, the learned Commercial Court declined to set aside the award and upheld the decision of the learned Arbitrator.

22. This Court, while sitting in an appeal under Section 37 of the Act of 1996, is conscious about the limited scope of interference that can be exercised in such proceedings. The Court is precluded from re-appreciating evidence, re-assessing factual findings, or sitting in appeal over the Arbitrator's interpretation of the conditions of contract, so long as the view adopted by the Arbitrator is a plausible one founded on the material available on record Interference is permissible only on the limited grounds statutorily enumerated

in Section 34 of the Act of 1996, including where the award is in conflict with the public policy of India or is vitiated by patent illegality going to the root of the matter, and even then, re-appreciation of evidence is expressly impermissible.

23. Keeping in mind the above principle, we shall now proceed to examine whether on the grounds, as set out in the appeal, the award passed by learned Arbitrator warrants judicial interference within the narrow confines of Section 34 of the Act of 1996?

24. Here, it would be necessary to refer to the relevant conditions of the contract agreement. Chapter-2 of the contract agreement deals with conditions of prices and payment terms. Condition No.III relates to terms of payment, which reads as under:

> "III. Terms of Payment-
>
> Subject to any deduction or recoveries which the purchaser may be entitled to make under the contract, the contractor shall unless otherwise agreed to be entitled to get the payments subject to conditions stipulated in the subsequent clauses.

25. The procurement of material to be supplied by the contractor is governed by the provisions stipulated under the special conditions of contract, which reads as under:-

3.	Procurement of stores	All materials to be supplied by the contractor have to be duly

		inspected by RITES or a competent supervisor as appointed by Dy. CEE (CON) / BSP. No payment will be made unless the inspection certificate has been submitted along with supplier's original challan. The materials have to be procured only from approved sources of RDSO/CORE.

IV. On Account Payment.

On Account Payment to the extent of 75% will be made under total unit price of such items included in the schedule of prices only. and executed in terms of this contract for which CEE (CON/BSP/DY. CEE C/BSp considered appropriate and acceptable to make the on Account payment. All Invoices accompanied by the

I. Supplier's challan.

II. Inspection certificate granted by the Dy. CEE (C)/BSP or authorised representative.

III. Execution of indemnity bond on stamp duty materials supplied by the Railways

iv. Certificate of current statutory taxes and duties.

v. Manufactures test certificate.

vi. Contractor's test certificate.

vii. Consignee's test certificate at site.

viii. Detailed entries made in the measurement book.

> Up to 85% will be paid on the total unit price on erection/installation of the particular item of work against supply and erection."

26. From the above extracted conditions of the agreement between the appellant and respondents, it is manifest that the contract was to be executed in accordance with general conditions of contract and special conditions of contract. The contractor's entitlement to payment is expressly subject to the terms and conditions stipulated therein. The Special Conditions of Contract expressly stipulated that the materials to be supplied were required to be procured from RDSO/CORE-approved sources.

27. According to appellant, they have procured the supplied material from an approved source namely M/s Shree Bajrang Alloys Ltd. Raipur. However, they had submitted the manufacturer's test reports/certificates of M/s Unique Structure & Tower Ltd. Raipur, which had only galvanized the mast and not manufactured it. Thus, the condition regarding procurement of materials from approved sources is not fulfilled.

28. Appellant, being a party to the contract agreement, was bound by the terms and conditions stipulated therein, including the requirements prescribed under the Special Conditions of Contract. Where the contract expressly

mandates procurement of materials from RDSO/CORE-approved sources, compliance with such a stipulation is an essential contractual obligation and not a mere procedural formality. Consequently, the appellant was required to establish, by cogent and reliable documentary evidence, that the materials supplied under the contract had, in fact, been procured from an approved source. Although the appellant claims to have procured the materials from M/s Shree Bajrang Alloys Ltd., Raipur, whereas test reports submitted by appellant was issued by M/s Unique Structure & Tower Ltd., Raipur, which was admittedly had undertaken only the galvanization of the mast and was not its manufacturer. The test reports/certificates issued by the galvanizing agency, in the absence of supporting documentary evidence establishing the identity of the actual manufacturer and the source of procurement, cannot, by themselves, be treated as sufficient proof that the materials supplied were manufactured and procured in conformity with the requirements stipulated in the Special Conditions of Contract.

29. The question is not merely whether the supplied materials underwent galvanization or whether a test report was furnished, but whether the appellant has demonstrated, in accordance with the terms of the contract, that the materials supplied satisfied the prescribed requirements concerning

their source and procurement. It is well settled that where the terms of a contract prescribe a particular standard of compliance, the parties are bound by such terms, and a claim of compliance must be substantiated by evidence consistent with the contractual requirements. The appellant's assertion that the materials were procured from an RDSO/CORE-approved source cannot, by itself, dispense with the obligation to produce the requisite documentary evidence in support thereof.

30. From the impugned award it is evident that learned Arbitrator while rejecting claim laid by the appellant has considered the special conditions of the contract, Item No.3 relating to procurement of materials, in light of documentary evidence available on record and concluded that appellant failed to complete the contract in accordance with prescribed terms and conditions of contract. The said conclusion was primarily founded upon rejection by the respondents of galvanizing test report/certificate submitted by appellant on the ground that it was not issued by the manufacturer of materials supplied giving rise to suspicion regarding genuineness of material supplied and thereby considered insufficient to establish compliance with contractual requirement concerning the procurement and supply of materials from RDSO/CORE-approved sources. The conclusion of the learned arbitrator is

a finding of fact and in consonance of the terms and conditions of the contract agreement. The same cannot be considered as perverse or illegal or made without evidence in support of the finding. Hence, the arbitral award is neither against the fundamental policy of India nor suffer from any error law or fact apparent on the face of record.

31. So far as submission of learned counsel for appellant that the impugned award is in against the fundamental policy of Indian law, is concerned, it is not the case of appellant that the impugned award is passed disregarding any previous order of the Superior Court in India. It is also not the case of appellant that the principles of natural justice has been observed in breach. The principal grievance of appellant, as reflecting from the submissions advanced, is that the learned Arbitrator passed the impugned award without properly appreciating the evidence available on record, particularly the manufacturer's test report, and without correctly interpreting the relevant terms and conditions of the contract. In substance, the challenge is based upon alleged non-consideration of material evidence and an erroneous interpretation of contractual provisions. Rejection of claim for recovery of final bill amount relying on one of the special conditions of the agreement entered between the parties, cannot be branded as against the fundamental policy of India as the same does not violate

the provisions of the law and is also not against previous orders by the Courts and it is not against 'justice' as it is not something which shocks the conscience of the court by infraction of fundamental notions and principles of justice and that the same is also not against morality. Thus, in the absence of any facts and circumstances justifying that the award was against the fundamental policy of Indian law or injurious or harmful to public good or patently illegal or against legal provisions, mere submission to this effect in the course of argument cannot constitute a valid ground for setting aside the impugned award.

32. So far as submission of learned counsel for appellant that release of 85% on-account payment based on same test report/ certification estop the respondent from withholding the final bill, is concerned, this Court does not find any merit in this argument. The release of an on-account payment and final settlement of appellant’s bill stand on distinct contractual footings and are required to be examined in the light of the terms and conditions of the agreement. The question whether the materials supplied were procured from RDSO/CORE approved sources has to be determined on the basis of relevant contractual provisions and the documentary evidence available on record. Mere fact that a substantial portion of the payment was released on an ‘on-account’ basis cannot be

construed as an acknowledgment of complete contractual compliance or as a automatic waiver of the mandatory conditions prescribed under the general or special conditions of contract governing the admissibility and release of the balance payment.

33. During pendency of this appeal, by way of an application for taking documents on record (IA No.1/2018) placed on record letter dated 10.10.2014 with annexures, inspection certificate dated 18.11.2005, communication dated 03.12.2014 and 28.08.2009. **However, even upon consideration of aforementioned documents, it is significant to note that appellant has not placed on record the test report issued by the manufacturer.** Thus, the additional documents, by themselves, do not conclusively establish compliance with the contractual requirement concerning procurement of materials from RDSO/CORE-approved sources or cure the deficiency in the documentary evidence relied upon by the appellant. Mere production of an inspection certificate or subsequent correspondence cannot substitute for the specific documentary evidence required to establish compliance with condition of contract regarding procurement of material from approved source.

34. The interpretation placed by the Arbitrator on Item No.3 of the Special Conditions of Contract is a plausible and reasonable

interpretation. Even assuming *arguendo* that another view could be taken regarding the CORE clarification letter dated 03.12.2014 or the RITES inspection certificate, it is firmly established that where an Arbitrator construes the terms of a contract in a reasonable manner, the award cannot be set aside merely because an alternative interpretation is possible.

35. In case of **MMTC Ltd. vs. Vedanta Ltd.** reported as **(2019) 4 SCC 163**, Hon'ble Supreme Court has observed that interference with an order made under Section 37 cannot travel beyond the restrictions laid down in Section 34. Relevant para of said decision is reproduced herein below:-

> "12. 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."

36. In **Dyna Technology Private Limited v. Crompton Greaves Limited,** reported in **(2019) 20 SCC 1**, Hon’ble Supreme Court observed as under:

> “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."

37. In case of Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation Ltd. reported in (2022) 1 SCC 131, Hon’ble Supreme Court has observed as under:-

> "29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression 'patent illegality'. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the

> contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'.”

38. In case of **UHL Power Company Ltd v. State of Himachal Pradesh** reported in **(2022) 2 SCC 401,** Hon'ble Supreme Court has observed as under:-

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

39. In case of **Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking** reported in **(2023) 9 SCC 85,** a three-Judge Bench of Hon'ble Supreme Court has observed in Para-18 that the scope of appellate scrutiny under Section 37 of the Act of 1996 is necessarily co-extensive with the parameters mandated under Section 34 of the Act of 1996 and hence the said provision does not enlarge the jurisdiction of the appellate court. Para-18 of said decision is as follows:-

> "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.9 , is akin to the jurisdiction of the court under Section 34 of the Act. 10Scope 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."

40. In case of **Larsen Air Conditioning and Refrigeration Company vs Union of India**, reported in **(2023) 15 SCC 472**, Hon'ble Supreme Court has observed that the scope of interference in exercise of appellate power under Section 37 of the Act of 1996 is even narrower to review the findings of the awards, if it has been upheld or substantially upheld under Section 34. It was observed thus:-

> "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 (supra)]. 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. It is important to notice that the old Act contained a provision which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been reiterated decisively by this Court in Project Director, National Highways No. 45E and 220 National Highways Authority of India v M. Hakeem:"

41. The settled position has again been echoed in the case of **Reliance Infrastructure Ltd. vs State of Goa**, reported in **(2024) 1 SCC 479**, Hon'ble Supreme Court, has spelt-out the limits of judicial review qua the arbitral award in proceedings under Section 34 and even in appellate proceedings under Section 37 of the Act of 1996, as under:-

> "57. As noticed, arbitral award is not an ordinary adjudicatory order so as to be lightly interfered with by the Courts under Sections 34 or 37 of the Act of 1996 as if dealing with an appeal or revision against a decision of any subordinate Court. The expression "patent illegality" has been ex-posited by this Court in the cases referred hereinbefore. The significant aspect to be reiterated is that it is not a mere illegality which would call for interference, but it has to be "a patent illegality", which obviously signifies that it ought to be apparent on the face of the award

and not the one which is culled out by way of a long-drawn analysis of the pleadings and evidence.

58. Of course, when the terms and conditions of the agreement governing the parties are completely ignored, the matter would be different and an award carrying such a shortcoming shall be directly hit by Section 28(3) of the Act, which enjoins upon an Arbitral Tribunal to decide in accordance with the terms of contract while taking into account the usage of trade applicable to the transaction. As said by this Court in Associate Builders vs. DDA, if an Arbitrator construes the term of contract in a reasonable manner, the award cannot be set aside with reference to the deduction drawn from construction. The possibility of interference would arise only if the construction of the Arbitrator is such which could not be made by any fair-minded and reasonable person."

42. In case of **Somdatt Builders – NCC-NEC (JV) vs NHAI, (2025) 6 SCC 757**, Hon'ble Supreme Court relying on its earlier decisions, has held thus:-

(a) the Court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2) (b) (ii) i.e. if the award is against the public policy of India.

(b) Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the Court is shocked or when the illegality is not trivial but goes to the root of the matter.

(c) An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts.

(d) As far as interference with an order made under Section 34 by the Court under Section 37 is concerned, it has been held 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. (Reliance Infrastructure Ltd v. State of Goa2)

(e) The scope of interference under Section 37 is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 Act. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow."

43. Thus, none of the grounds raised by appellant, which are mainly on factual aspects, come under the purview of Section 34 of the Act of 1996. Learned Arbitrator has considered all the factual aspects, discussed about the entitlement of appellant-claimant and passed the impugned award after providing due opportunity of hearing to both parties. It does not suffer from any breach of natural justice, nor can it be termed perverse, irrational, or arbitrary. The findings do not shock the judicial conscience, nor do they run counter to any fundamental policy of Indian law or statutory mandate.

44. For the foregoing reason and discussion, we find this appeal devoid of merit and accordingly, the same is dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sushma Sawant)
Judge

roshan/-