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HIGH COURT OF CHHATTISGARH AT BILASPUR

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ARBA No. 79 of 2021

M/s Gupta And Company Through Its Proprietor Sanjay Gupta S/o B. D. Gupta, Aged About 43 Years R/o Main Road, New Market, Dalli Rajhara, District Balod Chhattisgarh 491227

--- Appellant

versus

M/s Dheeraj Traders Through Its Proprietor Dheeraj Shukla, R/o 15-A, Street Npa, Sector-9, Bhilai, Durg, Chhattisgarh 491001

--- Respondent

For Appellant	:	Mr. Sanjay Kumar Gupta, Appellant-in-person
For Respondent	:	Mr. B.P. Sharma, Advocate with Mr. Samdarsh Nirankari, Advocate

BALRAM PRASAD DEWANGAN
Digitally signed by BALRAM PRASAD DEWANGAN

Division Bench

Hon'ble Shri Parth Prateem Sahu, Judge

Hon'ble Smt. Sushma Sawant, Judge

CAV Judgment

Per **Parth Prateem Sahu, J**

1. Appellant has filed this arbitration appeal U/s. 13 of the Commercial Court Act, 2015 read with Section 37 (1) (C) of the Arbitration and Conciliation Act, 1996 (In short ‘the Act, 1996’) questioning the legality and sustainability of the order dated 04.10.2021, passed in Arb. MJC No. 02 of 2019, whereby learned Commercial Court (District Level),

Atal Nagar, District – Raipur (C.G.) has dismissed the application filed U/s. 34 of the Act, 1996 affirming the award dated 30.11.2018 passed by Micro, Small and Medium Enterprises Facilitation Council (In short "Council").

2. Case of appellant in brief is that appellant filed an application/reference before the Chairman Micro & Small Enterprises Facilitation Council Raipur pleading therein that appellant-firm is a service provider duly registered with the District Trade and Industries Center, Balod and engaged in construction site preparation in connection with mining since May, 2013. The Steel Authority of India Limited (SAIL) had issued Notice Inviting Tender (NIT) for hiring of heavy earth moving machinery drill etc. for excavation, loading and transportation of ore and allied works. The said work was awarded to Hindustan Steelworks Construction Limited (HSCL), who sublet the work to respondent vide work order dated 12.01.2015. Upon receipt of work order, respondent approached appellant to perform the sublet work as a service provider to respondent by executing and supervising the same. It was agreed between the parties that professional fees of appellant would be 20% of the total bill that would be raised by the respondent. Respondent had issued an authorization letter dated 11.10.2014 in favour of the appellant as the signing authority on their behalf to sign all documents regarding gate passes/permission/log books and all communication with HSCL, BSP mines, management regarding the allotted work. appellant mobilized all his resources and started the work. As per terms and conditions agreed between the parties, respondent made payment of Rs.7,07,100/- to appellant i.e.

20% of total bill that was raised by respondent company for the month of November, 2014 after deducting TDS.

3. In January 2015, at the request of the Respondent, the appellant continued the work and incurred expenses of ₹56,75,456/- from his own pocket on the assurance of reimbursement. Respondent initially stated non-receipt of payments from SAIL and HSCL as the reason for non-payment. However, despite receiving the payments from HSCL, respondent deliberately withheld the expenses and commission of appellant for December 2014, compelling the appellant to stop work from March 2015. Despite repeated requests, respondent failed to pay ₹56,75,456/- towards expenses and ₹45,50,000/- towards commission for December 2014 to February 2015. Consequently, legal notice was sent to respondent on 21.05.2015, which was replied by respondent.

4. Respondent filed its reply categorically refuting the pleadings and the claim made by appellant. It was denied that respondent approached appellant for execution of contract awarded to him. It is also denied that appellant was possessing necessary experience and expertise and having necessary machinaries for execution of the work. It was pleaded that as per verbal agreement, applicant will raise the bill @ Rs. 76/- cubic meter. Respondent had paid Rs.55,00,000/- to appellant in cash from time to time and credited an amount of Rs.93,00,000/- in his account. The above amount was paid for the period from 02.01.2015 to 27.02.2015. Respondent has paid total amount of Rs.1,48,00,000/- to appellant during the period from 20.10.2014 till 27.02.2015. The fact of payment of commission as also the expenses incurred by appellant of Rs.56,75,456/- was also denied.

5. On receipt of reference/application, the Council initiated conciliation proceedings under Section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006 (In short ‘the Act, 2006’), however, the parties could not be reconciled. Therefore, the Council terminated the conciliation proceedings under Section 18(2) of the Act, 2006, and arbitration proceedings were initiated under Section 18(3) of the Act, 2006.

6. The Council, after hearing both parties and affording them a proper opportunity of hearing, passed an award dated 30.11.2018, rejected the claim of appellant holding that in absence of a written agreement, the nature, general terms, and conditions of the work to be performed by the appellant could not be ascertained.

7. Being aggrieved by rejection of his claim by the Council, appellant filed an application under Section 34 of the Act, 1996, before the Commercial Court (District Level), Atal Nagar, Raipur. The said application also came to be dismissed vide impugned order affirming the award passed by the Council..

8. Appellant-in-person would submit that the impugned order passed by the Council rejecting his claim, which has subsequently been affirmed by the Commercial Court is erroneous, contrary to the facts and law. Appellant submits that the Council acted illegally by conducting arbitration in the same dispute after having acted as a Conciliator, as Section 80 of the Act, 1996, prohibits such action unless the parties have agreed otherwise. He submits that the impugned award is contrary to the fundamental policy of Indian law and suffers from patent illegality. It is contended that the Council failed to properly

consider the relevant facts and circumstances of the case and did not adequately justify the conclusions reached in the award. He further submits that the Council while passing the award failed to consider several material aspects of the dispute, which were necessary for a fair and proper adjudication of the claim of appellant. The impugned award does not reflect due consideration of the relevant facts and circumstances. Appellant submits that the Council rejected the claim solely on the ground that no written agreement existed between the parties. It is contended that the Council ought to have considered the relevant facts and circumstances of the case before rejecting the claim on that ground. The law does not require every agreement to be in writing for it to constitute a valid and enforceable contract, as an oral agreement may also constitute a valid contract. The Council has further failed to consider this fact that respondent himself has admitted that there was a contract between the parties with respect to the execution of works allotted by HSCL. He submits that issuance of an authority letter by the respondent in his favour, coupled with the admitted payment of Rs. 7,07,100/- and the alleged further payment of Rs. 1,48,00,000/- by the respondent to the appellant, indicates the existence of a contractual relationship between the parties. These circumstances ought to have been considered by the Council while examining the claim of appellant, instead of rejecting the same solely on the ground that no written agreement existed between the parties. He therefore, submits that the reason assigned by the Council for rejecting the claim of appellant warrants interference and that the impugned award is liable to be set aside.

9. Learned counsel for respondent opposes the submission made by appellant and supports the impugned order. He submits that there is no duly executed agreement between parties in respect of the work or services in question. In absence of such an agreement, the claim of the appellant is untenable. He also submits that appellant has failed to produce any documentary evidence establishing an agreement for payment of professional fees at the rate of 20% of the total bill. He submits that reliance placed on the Form 26AS TDS certificate of respondent issued in favour of appellant is misplaced, as the same, by itself, does not establish the alleged contractual arrangement or the agreed rate of commission. He further submits that appellant failed to provide any bills, receipts, or other supporting documents to prove the alleged expenditure of ₹56,75,456/- incurred by him, therefore, the claim remains unproved and is liable to be rejected for want of supporting evidence. He submits that the award passed by Council rejecting claim of appellant is based on the due consideration of the documents and the material available on record, which has subsequently been affirmed by learned Commercial Court, which does not call for any interference.

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

11. Before proceeding to consider the rival contentions advanced by the parties, it would be appropriate to refer to the relevant statutory provisions. In this regard, Section 18 & 24 of the Micro, Small and Medium Enterprises Development Act, 2006 (In short ‘the Act, 2006’), are relevant and are reproduced here-in-below :-

“Section - 18. Reference to Micro and Small Enterprises Facilitation Council.—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under Section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located

within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference."

Section -24. Overriding effect.—The provisions of Sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

12. Sections 80 of the Act, 1996 is also relevant, which reads as under :-

"**80:- Role of conciliator in other proceeding**. - Unless otherwise agreed by the parties:-

(a) the conciliator shall not act an as arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;

(b) the conciliator shall not be presented by t he parties as a witness in any arbitral or judicial proceedings."

13. A bare perusal of Section 18(2) of the Act, 2006 shows that, upon a reference being made to the Council is required to conduct conciliation either by itself or by referring the matter to an institution or centre providing alternate dispute resolution services. For the purpose of such conciliation, the provisions of Sections 65 to 81 of the Act, 1996 have been made applicable to the dispute as if the conciliation were initiated under Part III of the said Act. Section 80 of the Act, 1996 places a restriction on a conciliator acting as an arbitrator in respect of a dispute that was the subject matter of conciliation proceedings, or in

respect of another dispute arising out of the same contract or legal relationship, subject to the exceptions contained therein. However, Section 18(3) of the Act, 2006 specifically provides that where the conciliation initiated under Section 18(2) is unsuccessful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to an institution or centre providing alternate dispute resolution services for such arbitration. The provision further stipulates that the provisions of the Act, 1996 shall then apply to the dispute as if the arbitration were pursuant to an arbitration agreement referred to in sub-section (1) of Section 7 of that Act. Furthermore, Section 24 of the Act, 2006 gives overriding effect to Sections 15 to 23 of the said Act, notwithstanding anything inconsistent contained in any other law for the time being in force. Thus, the statutory scheme contemplates a distinct procedure under which the Facilitation Council may, upon the failure of conciliation, proceed to arbitrate the dispute, notwithstanding the general restriction contained in Section 80 of the Arbitration and Conciliation Act, 1996.

14. The aforesaid issue has been authoritatively settled by the Hon'ble Supreme Court in **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd., (2023) 6 SCC 401**, wherein it was held that the Facilitation Council is competent to act as both conciliator and arbitrator under Section 18 of the Act, 2006. In view of the specific statutory framework and the law laid down by the Hon'ble Supreme Court, the fact that the Council had earlier conducted conciliation proceedings does not, by itself, render it incompetent to arbitrate the

dispute upon the failure of conciliation. Accordingly, the submission of appellant that the Council was precluded from acting as an arbitrator by virtue of Section 80 of the Act, 1996 is devoid of merit and is rejected.

15. The Council, while rejecting the claim of appellant, observed on due consideration of the pleadings, documentary evidence, and submissions advanced by the parties, that appellant had failed to establish its entitlement to the amount claimed through reliable documentary evidence. The Council further observed that no written agreement had been executed between the parties and no work order had been issued by the respondent in favour of the appellant. Therefore, in the absence of any written agreement, the nature and terms of the work, the agreed rate of professional fees, and the expenditure allegedly incurred by the appellant could not be ascertained. Further, the appellant had failed to produce sufficient evidence to establish the agreed payment of professional fees at the rate of 20%, substantiate the expenditure of ₹56,75,456/-, or prove the authenticity of the email dated 15.03.2015 and details of payment therein. The Council also held that the Form 26AS and TDS certificates, by themselves, were insufficient to establish an agreement for payment of professional fees at the rate of 20% of the total bill amount. Accordingly, after the failure of conciliation proceedings under Section 18(2) of the Act, 2006, and the commencement of arbitration proceedings under Section 18(3) of the said Act, the Council concluded that the appellant had failed to establish its claim and, consequently, rejected the same by the impugned arbitral award.

16. In case at hand oral agreement is not disputed. However, the existence of a contractual relationship, by itself, does not establish the specific terms of the contract or the amount payable thereunder. In the present case, although the appellant relied upon the authorization letter dated 11.10.2014 and the alleged payment of ₹7,07,100/-, it was necessary to establish that the parties had agreed to professional fees at the rate of 20% of the total bill and that the appellant was entitled to the amounts allegedly incurred from his own funds, however, the appellant had failed to produce cogent documentary evidence establishing the agreed rate of professional fees or substantiating the alleged expenditure incurred by him.

17. The appellant failed to establish or demonstrate any specific ground or material fact to show that the impugned arbitral award is in conflict with the public policy of India or falls within any of the grounds enumerated under Section 34 of the Act, 1996, warranting interference by this Court.

18. In appeal filed under Section 37 of the Act,1996, this Court have very limited jurisdiction to interfere with the order U/s. 34 and award. Interference is permissible only on the grounds as provided under Section 34 of the Act, 1996, is made out. The grounds enumerated for interference in the award under Section 34 is extracted below for ready reference :-

> "**34. Application for setting aside arbitral award.**-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]-

(i) the party was under some incapacity,

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force,

(iii) the party making application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case,

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or it contains decisions on matters beyond the scope of the submission to arbitration.

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

19. In **Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1,** Hon'ble Supreme Court while considering the scope of interference of Court under the Act, 1996 has observed thus :-

> "**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."

20. In case of **Somdatt Builders-NCC-NEC (JV) v. NHAI, (2025) 6 SCC 757,** Hon'ble Supreme Court relying upon its earlier decision, has observed thus :-

> **"45.** In *MMTC Ltd.* v. *Vedanta Ltd.* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , this Court held that as far as Section 34 is concerned, the position is well settled that 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. 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. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. 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."

21. In a very recent case of **Reliance Infrastructure Ltd. v. State of Goa, (2024) 1 SCC 479,** Hon'ble Supreme Court reiterating the principles laid down in case of **Delhi Airport Metro Express Private Ltd. Vrs. Delhi Metro Rail Corporation Ltd., (2022) 1 SCC 131**, observed thus-

> "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 reappreciate 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”.

22. The question of whether an arbitral award is liable to be set aside on the ground of the ward being in conflict with the fundamental policy of India came up for consideration before the Supreme Court in **OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited & Anr.,** reported in **(2025) 2 SCC 41**7, wherein the Hon’ble Supreme Court after discussing the position of law before and after the amendment to the Act with respect to an arbitral award being in conflict with the fundamental policy of Indian law, held as under :–

> “55. The legal position which emerges from the aforesaid discussion is that after “the 2015 Amendments” in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase “in conflict with the public policy of India” must be accorded a restricted meaning in terms of Explanation 1. *The expression “in contravention with the fundamental policy of Indian law” by use of the word “fundamental” before the phrase “policy of Indian*

law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(a) violation of the principles of natural justice;

(b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).

23. Hon'ble Supreme Court in case of **Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, (2025) 7 SCC 757,** has held that the arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of

interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has to limit its jurisdiction within the four corners of Section 34. It is a restrictive jurisdiction and has to be invoked in a conservative manner.

24. Having considered the submissions and findings recorded by the learned Commercial Court and the arbitral tribunal, this Court is of the considered view that no ground contemplated under Section 34 of the Act, 1996 is made out warranting interference with the impugned award. The Council/Tribunal, upon consideration of the pleadings and material available on record, found that the appellant failed to establish the alleged terms of the contractual arrangement, particularly the agreed rate of professional fees and the alleged expenditure incurred by him. Such findings, being findings of fact based on the material placed before the Council, cannot be re-appreciated by this Court in exercise of the jurisdiction under Section 37 merely because another view may be possible. This Court cannot sit in appeal over the award or undertake a re-assessment of the evidence so as to substitute its own view for that of the Arbitral Tribunal. There is nothing on record to demonstrate that the findings of the Arbitral Tribunal are perverse, patently illegal, contrary to the fundamental policy of Indian law, or otherwise fall within any of the grounds enumerated under Section 34 of the Act, 1996. The award, therefore, does not call for interference within the limited contours of the jurisdiction conferred upon the Court under Section 34 of the Act, 1996.

25. For the foregoing reasons and discussions we are of the considered view that no case is made out for interference with the order passed by the Commercial Court (District Level) dated 04.10.2021 as well as with the award passed by the Arbitrator/Council dated 30.11.2018.

26. Accordingly, the appeal being sans merit is liable to be and it is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sushma Sawant)
Judge

Balram