



2026:DHC:2005



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IN THE HIGH COURT OF DELHI AT NEW DELHI**BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

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O.M.P. (COMM) 186/2025, I.A. 12141/2025&I.A. 12142/2025**NTPC LTD**

THROUGH ITS AUTHORISED REPRESENTATIVE MR. SALIL KUMAR PANDEY

REGD. OFFICE AT:

NTPC BHAWAN, CORE-7, SCOPE COMPLEX, 7

INSTITUTIONAL

AREA, LODHI ROAD, NEW DELHI – 110003Petitioner

(Through: Mr. Adarsh Tripathi, Mr. Vikram Singh Baid and Mr. Ajitesh Garg, Advs.)

versus

AMPL RESOURCES PRIVATE LIMITED

(ERSTWHILE AMBEY MINING PRIVATE LIMITED)

THROUGH ITS DIRECTORS / AUTHORIZED REPRESENTATIVE,

REGD. OFFICE AT: 8, AJC BOSE ROAD,

CIRCULAR COURT,

9TH FLOOR, UNIT-92, KOLKATA,

WEST BENGAL, 700017

.....Respondent

(Through: Mr. Udayan Jain, Ms. Kajal Sharma, Mr. Ranjan Mishra, Mr. Harsh Jaiswal, Ms. Amiti Gupta, Ms. Geetika Vyas, and Mr. Sonal Jain, Advs.)

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O.M.P. (COMM) 240/2025**AMPL RESOURCES PRIVATE LIMITED**

THROUGH ITS AUTHORISED REPRESENTATIVE

CIRCULAR ROAD, 9TH FLOOR,

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BLOCK-92, 8, AJC BOSE ROAD,
KOLKATA-700017

.....Petitioner

(Through: Mr. Udayan Jain, Ms. Kajal Sharma, Mr. Ranjan Mishra, Mr. Harsh Jaiswal, Ms. Amiti Gupta, Ms. Geetika Vyas, and Mr. Sonal Jain, Advs.)

versus

NTPC LIMITED

THROUGH ITS AUTHORISED SIGNATORY NTPC

BHAWAN, CORE -7,

SCOPE COMPLEX, INSTITUTIONAL AREA, LODHI

ROAD, NEW DELHI – 110003

.....Respondent

(Through: Mr. Adarsh Tripathi, Mr. Vikram Singh Baid and Mr. Ajitesh Garg, Advs.)

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Reserved on: 20.12.2025

Pronounced on: 26.02.2026

JUDGMENT

The present set of petitions has been filed both by the claimant as well as the respondent against the award dated 19.12.2024 (*hereinafter referred to as the “impugned award”*). The claimant, AMPL Resources Private Limited (*hereinafter referred to as “petitioner”*) is the petitioner in OMP (COMM) 240/2025 and the respondent, NTPC Limited (*hereinafter referred to as the “respondent”*), is the petitioner in OMP (COMM) 186/2025. The petitioner had instituted arbitration proceedings against the respondent seeking recovery of money allegedly due under Contract dated 17.12.2019 (*hereinafter referred to as “the Contract”*). In the impugned award, the

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claim of the petitioner has been partly allowed and the petitioner seeks severance and setting aside of the part rejecting its claim and award of the full claim in its favour. The respondent seeks that the award be set aside *in toto*.

Facts

2. The petitioner was awarded the Contract for coal transportation from a designated mine to designated railway sidings for a period of one year with effect from 26.11.2019, which was extendable for a further period of six months. The terms of the Contract were contained in the General Conditions of Contract (*hereinafter referred to as the "GCC"*), Special Conditions of Contract (*hereinafter referred to as the "SCC"*), the Technical specifications and drawings, Schedule of Quantities, Contractor's Bid Proposal No. 50727, and the Purchase Order dated 18.11.2019 (*hereinafter referred to as the "Purchase Order"*), among other documents. Under the terms thereof, the respondent would provide monthly schedules to the petitioner, specifying the quantity of coal to be transported.

3. After commencement of the work at the scheduled time, the respondent, *vide* letter dated 13.04.2020, citing lower coal requirements, directed the petitioner to suspend transportation till further notice. The petitioner, thereafter, on various dates, claimed dues under various heads. The respondent, in its letter dated 04.12.2020, refuted the claims, stating that the Contract stipulated payment only according to the quantity of coal which is transported, and therefore, the petitioner's claim for the whole contract was not acceptable. Disputes persisted with regard to the petitioner's claims, leading to the institution of arbitral proceedings.



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4. In the arbitral proceedings, the petitioner sought recovery of its purported dues (principal amount) as per the table extracted below:

Sl. No.	Particulars	Amount (in Rs)
1.	Fixed Cost Claim (Depreciation, Interest, Insurance, Tax, Salary, Minimum Guarantee, Camp Establishment)	8,16,66,916.00
2.	Fixed Office Expenses	3,32,90,985.00
3.	Retention Money Dues	95,25,979.00
4.	Loss of Profit Claim	11,75,71,640.00
Total		24,20,55,520.00

5. The claims for loss of profit and retention money dues were allowed, and the claims for fixed office expenses and fixed costs were rejected.

Findings in the Impugned Award

6. The following points for determination were framed by the sole arbitrator:

1. Whether the Claimant is entitled to the outstanding principal amount in the sum of Rs. 24,20,55,520.00?
2. Whether the claimant is entitled to interest on the outstanding principal @12% per annum up to 31.03.2023 in the sum of Rs. 6,77,22,492.00?
3. Whether the Claimant is entitled to *pendente lite* and future interest @12% p.a. on the allowed outstanding principal and interest amounts cumulatively?



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4. Whether the Claimant is entitled to the legal expenses as per actuals?
7. One of the questions framed by the sole-arbitrator for adjudicating the claim for the outstanding principal amount, which also has a bearing on the claim for interest on the principal amount, was whether the contract envisaged the transportation of a fixed quantity of coal.
8. The sole-arbitrator has examined the relevant clauses and recitals in the Contract, more particularly, the Bill of Quantity forming a part of the Letter of Intent, the Bill of Quantity forming a part of the Purchase Order, and Clause 8 of the SCC. It is pertinent to note that the petitioner's case before the sole-arbitrator was that the Contract was for transportation of 13,69,000 MT (Thirteen Lakh and Sixty-Nine Thousand Metric Tonne) of coal, with a permissible limit of deviation of (+/-) 30% (thirty per cent). The respondent's case, on the other hand, was that the contract envisaged transportation of coal according to the needs of the respondent, and did not guarantee any fixed quantity. Ultimately, in line with the petitioner's submissions and as contained in Clause 8.0 of the SCC, the sole-arbitrator held that the contract was for a fixed quantity of coal, with a permissible limit of deviation of (+/-) 30% (thirty per cent).
9. Upon adjudication of various other questions, the sole-arbitrator, finally, concluded that the respondent has breached the contract.
10. The claim for principal amount, under each of the four heads as per the table extracted above, was examined separately. At the outset, the sole-arbitrator rejected the contention of the respondent that the petitioner had not taken any steps to mitigate its losses, and, therefore, its claim for the entire principal amount could not be accepted, upon consideration of the evidence adduced.



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Claim for Fixed Costs

11. The sole arbitrator noted the petitioner's submission that it had incurred costs towards the deployment of manpower and machinery for the performance of its contractual obligations and that the machinery were subject to wear and tear during the period of contract, all of which were to be recoverable from the respondent. She also considered the submission that the petitioner was entitled to recover the interest liability it incurred on the loans taken for purchase of the aforesaid machinery. Documentary evidence of the same, namely, depreciation certificate for the machinery duly certified by a chartered accountant, interest certificate/repayment schedule for the machinery, copy of the insurance acquired towards the same, and various invoices for vehicles, equipment, materials, fuel, manpower, etc., as well as a bank guarantee, were appreciated by the sole arbitrator before holding that the petitioner had incurred the said costs.

12. The respondent's submission that the costs for arranging manpower and machinery stood included in the contract amount and no additional amount was payable to the petitioner was also noted, as also the submission that the claim for depreciation costs was expressly barred under the terms enumerated in the Purchase Order, and that it was the petitioner which was solely liable for procuring insurance policies for the machinery.

13. The sole arbitrator proceeded to note that the law of damages required the party which was not in breach of a contract, to be placed, as far as possible, in the same position as it would have been if the contract had not been breached by the other party. She noted that if there had not been any breach by the respondent, the petitioner would have received the entire contract amount of Rs. 1,16,77,57,000.00 (Rupees One Billion One Hundred



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and Sixty-Seven Million Seven Hundred and Fifty Seven Thousand only). However, noting that the petitioner would have, anyhow, incurred the aforesaid fixed costs in its performance of the Contract, it held that the same were not additional costs and expenses incurred on account of breach by the respondent and therefore, the petitioner was held as not entitled to recover the same.

Claim for Fixed Office Expenses

14. The petitioner had sought to recover certain costs and expenses allegedly incurred by it during the contract period for running its offices. Upon noting that there was no pleading by the petitioner that it would not have incurred the same if the respondent had fulfilled its part of the Contract, the sole arbitrator held that for the same reasons, as assigned for rejecting the claim for fixed costs, the claim for fixed office expenses could not be accepted.

Claim for Retention Money Dues

15. The sole-arbitrator noted that as per Clause 4 of Point C of the Purchase Order, only ninety per cent of the Running Account Bill was paid to the petitioner for the works executed by it. The remaining ten per cent of the bill amount was to be paid as per quarterly reconciliation of the works executed.

16. The parties made submissions on the aspect of 'reconciliation of the works executed'. The petitioner refuted the authenticity of the Statement of Final Deviation, which was prepared after assessment of the residual coal at the Katkamsandi siding, alleging that the same was prepared unilaterally, and was never supplied to the petitioner. The respondent contended that



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Statement of Final Deviation was prepared on the basis of assessment conducted in the presence of representatives of both parties and the same had not been objected to by the petitioner at the relevant time. Therefore, it was the respondent's case that the petitioner's challenge to the Statement of Final Deviation was only an afterthought.

17. Upon noting the submissions of the parties, the sole-arbitrator held that the Statement of Final Deviation was irrelevant to the question at hand, after considering Clause 4 of Point C of the Purchase Order, as per the terms of which, the quarterly 're-conciliation' of the work executed required reconciliation of 'the quantity of coal billed by the petitioner', 'the quantity as received by the respondent in rakes', and 'the quantity lying at the siding'. However, considering that in the preparation of the Statement of Final Deviation, only the quantity of coal to be transported as per the Letter of Allotment with the finally executed quantity and amount are taken into account, therefore, according to the sole-arbitrator, the Statement of Final Deviation did not fulfill the conditions mandated in Clause 4 of Point C of the Purchase Order.

18. Thereafter, the sole-arbitrator, considering that the respondent had not disputed the factum of its retention of an amount of Rs. 95,25,979.00 (Rupees Ninety-Five Lakh Twenty-Five Thousand Nine Hundred and Seventy-Nine only) from the petitioner, held that the petitioner was entitled to the same.

Claim for Loss of Profits

19. Considering the earlier finding that the Contract was for a fixed quantity and the respondent had breached it by not assigning work to the



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petitioner, the sole-arbitrator allowed the petitioner's claim for loss of profits. The sole-arbitrator again reasoned that the well settled principle of the law of damages was that the non-breaching party should, as far as possible, be placed in the same position as if the contract has been performed by the breaching party, and held that the petitioner was entitled to fifteen per cent of the amount that the petitioner would have earned if the balance work had been performed. The balance work was calculated by subtracting the quantity of coal transported by the petitioner from the stipulated contractual quantity from the contractual fixed quantity of 13,69,000 MT (Thirteen Lakh Sixty-Nine Thousand Metric Tonne). The profits were calculated at fifteen per cent on the basis of the 'Earnings Before Interest, Taxes, Depreciation and Amortisation' and the 'Profits Before Taxes' as submitted by the petitioner, as well as reports of auditors for the preceding financial years and a duly certified statement of long-term and short-term profits by the petitioner's chartered accountants.

Claim for Interest

20. The sole-arbitrator noted that it was not the respondent's case that the Contract did not allow for grant of interest, as also the fact that neither party led evidence with regard to the applicable rate of interest. Accordingly, it proceeded to award pre-litigation and *pendente-lite* interest on the awarded amount at the rate of twelve per cent per annum, which according to the arbitrator, was reasonable. Post award interest was also awarded at a rate which is 'two per cent higher than the rate of interest prevalent at the time of the award', in accordance with Section 31(7)(b) of the Act.

Claim for Legal Expenses

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21. On the reasoning that the petitioner has been awarded an amount of about fifty per cent of the claimed amount, the sole-arbitrator awarded the petitioner fifty per cent of the legal expenses claimed by it.

Submissions

22. Mr. Udayan Jain, learned counsel for the petitioner, submits that the award has been assailed on the following grounds:

22.1. The award suffers from perversity insofar as the petitioner's claims for 'fixed costs' and 'fixed office expenses' were rejected despite a clear finding that the petitioner had incurred such costs. He submits that the sole-arbitrator had proceeded on a perverse understanding of principles of contractual business and on the presumption that the aforesaid fixed costs/fixed office expenses were to be borne by the petitioner even if the respondent had not breached the contract. According to him, it is a first principle of contractual business that such costs are to be recovered from the contractual amount. Therefore, the petitioner was entitled to recover the fixed costs from the amount that would be paid in consideration for the work that would have been done if the contract was not breached.

22.2. The award is perverse insofar as the award of only fifty per cent of the claimed amount towards legal expenses is concerned, as the same is *de hors* any reasonable justification. He submits that the reasoning assigned for the same, being that since only fifty per cent of the claimed amount has been awarded, it would



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be fit to award fifty per cent of the claim towards legal expenses, is based on an erroneous analogy.

23. He submits that the impugned portions of the award are separable from the rest, and prays that the award be modified to the extent of allowing the petitioner's claims for fixed costs, fixed office expenditure and legal expenses, in full.

24. Mr. Adarsh Tripathi, learned counsel for the respondent opposes the aforesaid submissions and contends as follows:

24.1. The rejection of the petitioner's claims for fixed costs and fixed office expenses is neither perverse nor patently illegal. The fixed costs are factored into the contractual amount and once compensation for loss of profits is awarded, a separate award for fixed costs would amount to double liability on the respondent, which is contrary to the principle underlying Section 73 of the Contract Act, 1862.

24.2. The award of fifty per cent of the legal expenses claimed by the petitioner is justified, since, the determination of the amount to be awarded as costs is left to the discretion of the arbitrator under Section 31A(1) of the Act. Therefore, there can be no question of challenge to the same on the grounds of perversity or patent illegality under Section 34 of the Act.

25. Mr. Adarsh Tripathi submits that the respondent's independent challenge to the award is based on the following grounds:

25.1. The award is perverse insofar as the petitioner has been awarded loss of profits and interest calculated against the 'balance work' taking the contractual quantity to be 13,69,000



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MT (Thirteen Lakh and Sixty-Nine Thousand Metric Tonne), despite expressly finding that the said quantity was subject to permissible deviation of (+/-) 30% (thirty per cent). According to him, therefore, the loss of profits, if any, was to be calculated against seventy per cent of 13,69,000 MT, since the Contract envisaged the same to be the lower permissible contractual quantity, even as per the findings in the award.

25.2. The award is perverse and patently illegal insofar as the sole-arbitrator has awarded loss of profits in the teeth of the law laid down by the Supreme Court in the decisions in *Batliboi Environmental Engineers Limited v Hindustan Petroleum Corp. Ltd.*,¹ *All India Radio v. Unibros and Anr.*,² and *Unibros v. All India Radio*,³ and without any evidentiary basis. He contends that such damages could not have been awarded unless the petitioner proved that it had actually lost out on opportunities due to the breach of the Contract. He further points out that the petitioner had not produced any document showing any other work that it may have lost out on, on account of the breach. He submits that the principle laid down in the aforesaid cases has erroneously been interpreted in the award to apply only to cases involving delay in the completion of the contractual work, whereas it would be applicable even to cases involving breach during the original contractual period.

¹ (2024) 2 SCC 375

² 2010 (115) DRJ 573

³ 2023 SCC OnLine SC 1366

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25.3. The award is perverse as the rate at which the damages for loss of profits have been awarded, i.e., fifteen per cent, has been arrived at without any evidence having been led on that aspect by the petitioner. He submits that the sole-arbitrator has also not independently ascertained the rate at which the damages had to be awarded, and has proceeded on the premise that the rate claimed by the petitioner seemed reasonable. He places reliance on the decisions of the Supreme Court in *J.G. Engineers Private Limited v. Union of India and Another*,⁴ *M/s A.T. Brij Paul Singh and Others v. State of Gujarat*,⁵ and *Mohd. Salamatullah and Others v. Government of Andhra Pradesh*.⁶

25.4. The award is perverse insofar as the petitioner has been awarded interest on the awarded amount, without the Contract providing for the same. Further, with specific reference to the interest awarded on the retention money, he submits that the retention amount was not released to the petitioner only because the procedure prescribed under the Contract for the same could not be completed on account of the conduct of the petitioner and onset of the COVID pandemic. The sole-arbitrator, according to him, has failed to appreciate the said aspect.

26. He submits that aforesaid aspects go to the root of the award, and therefore, the impugned portions cannot be separated from the rest of the

⁴(2011) 5 SCC 758

⁵(1984) 4 SCC 59

⁶(1977) 3 SCC 590

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award. Therefore, according to him, the award is liable to be set aside *in toto*.

27. Mr. Udayan Jain opposes the aforesaid submissions and contends as follows:

27.1. The respondent is seeking re-evaluation of the findings in the award on merits and re-appreciation of the evidence, which are beyond the scope of the Court's power under Section 34 of the Act. Reliance is placed in this regard, on the decision of the Supreme Court in *Gayatri Balaswamy v. ISG Novasoft Technologies Limited*.⁷

27.2. The award of damages on account of loss of profits is justified as the petitioner had duly established the existence of the essential ingredients in this case; a. breach of the Contract, b. injury caused to the petitioner on account of the breach c. the injury caused is proximate to and attributable as a direct consequence of the breach. Reliance is placed on the decision of this Court in *Sudhershnan Kumar Bhayana v. Vinod Seth*,⁸ in this regard. He further submits that Courts have consistently held that loss of profits is a necessary and direct consequence of illegal/arbitrary cancellation/abandonment of a contract. Reliance is placed on the decisions in *Dwaraka Das v. State of M.P.*,⁹ and *Union of India v. M/s J. Sons Eng. Corp Ltd.*

⁷ 2025 INSC 605

⁸ 2023:DHC:7053-DB

⁹ (1999) 3 SCC 500

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&Anr.¹⁰ Therefore, according to him, there is no perversity in the impugned portion of the award.

27.3. He submits that the contention that the Contract allowed for a deviation of thirty per cent against the contractual quantity, and hence, any loss of profits, if awarded, could only be against seventy per cent of the contractual quantity, was not taken as a defence in the respondent's statement of defence and was only raised in the written submissions as an afterthought. Therefore, according to him, the respondent is foreclosed from raising such objection in a proceeding under Section 34 of the Act.

27.4. The award of interest is also justified despite there being no express provision in the Contract providing for the same, since the Contract did not prohibit the same.

Analysis

28. The scope for interference under Section 34 of the Act is quite limited and is only permissible when one or more of the explicit grounds laid down in the provision are satisfied. Section 34 is a carefully guarded provision which not only lays down the grounds which permit interference, but also cautions against any excessive interference by misconstruction of the grounds. The explanations in sub-section (2), starting with the words "*for the avoidance of doubt*", are suggestive of the legislative intent to not turn this limited remedy into a roving inquiry into the merits of the arbitral award or into a full-fledged appeal. In ***Ramesh Kumar Jain vs. Bharat Aluminium***

¹⁰2015:DHC:3350



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Company Limited,¹¹ the Supreme Court noted the narrow scope of this supervisory jurisdiction and the availability of four narrow grounds of challenge. The relevant part reads thus:

*“28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In **ONGC Limited. v. Saw Pipes Limited**, this court held that an award can be set aside under Section 34 on the following grounds: “(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal.”*

29. It is equally settled that the Court, while exercising its supervisory jurisdiction under Section 34, is not supposed to act like an Appellate Court. The scope of examination is not akin to a review of the merits of the dispute, rather, it is limited to situations wherein the findings are arbitrary, capricious or perverse, or when the conscience of the Court is shocked or the illegality is not trivial but goes to the root of the matter. The following observation of the Supreme Court in **MMTC Ltd. v. Vedanta Ltd.**,¹² is quite instructive:

“12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or

¹¹ 2025 SCC OnLine SC 2857

¹² (2019) 4 SCC 163

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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 ...”

30. In the present case, the cross-challenges to the impugned award are primarily based on the ground of perversity. The Supreme Court, in its decision in ***Delhi Metro Rail Corporation Limited v. Delhi Airport Metro Private Limited***,¹³ examined the scope of the term ‘perversity’ as interpreted in its earlier decisions, and held that a finding would be perverse if it is so irrational that no reasonable person could have arrived at the same. The instant challenges, therefore, allege that the impugned portions are perverse, being contrary to the sole-arbitrator’s own findings in the award and as such, could not have been arrived at by any reasonable person.

31. The petitioner’s challenge to the impugned award, on the aspect of rejection of its claim for fixed costs and fixed office expenses, is primarily based on the ground that the sole-arbitrator has given an explicit finding that the petitioner had incurred the said costs, but owing to a perverse understanding of business-practices, has proceeded on the presumption that the said costs were to be incurred by the petitioner, even if the Contract had not been breached by the respondent.

32. It is seen that in paragraphs 122 to 124 of the award, an explicit finding has been rendered that the petitioner had deployed such workforce and machinery at the site as it reasonably expected to be necessary to complete the work as and when required by the respondent. The said paragraphs are extracted below, for reference:

“122. The Tribunal notes, that in the letter dated 13.04.2020, NIL

¹³2024 INSC 2024



schedules or any of the communications issued by it, the Respondent had not indicated recommencement of the works. It also did not direct the Claimant to reduce or demobilize the manpower and machinery. The Respondent did not terminate the Contract with the Claimant but kept it alive. It is the case of the Respondent that the transportation of the coal is dependent on the Respondent's requirement for it for generation of electricity. Thus, it was the Respondent, rather than the Claimant, who was the positioned to assess/determine as to the time when the works will recommence. The NIL schedules were being issued on the monthly basis. Thus, the Tribunal cannot find fault with the Claimant expecting that the works can be recommenced at any time and in maintaining the manpower & machinery at the site.

123. The Respondent does not dispute that the Claimant was required to maintain adequate machine and manpower at the site to execute the works as and when schedules are issued by the Respondent. It is also not in dispute that the Respondent was empowered to impose heavy penalty and damages if the Claimant failed to perform the works as per the schedules issued to it.

124. The Tribunal also finds merit in the submission of the Claimant that the machinery and equipment at the site are specialised and included heavy items which are not easy to demobilize and remobilize when the works recommenced. Despite this position, the Tribunal notes that, the Claimant made effort to and did demobilize certain machinery and equipment such as Hyva tipper trucks and other vehicles. It also reduced the workforce and facilities.”

33. In paragraph 130 of the award, the sole arbitrator records the respondent's submission that the cost component, to be incurred initially by the petitioner, was included in the contractual price. In paragraph no. 131, the submission that as per the terms of the Contract, the petitioner was not entitled for any claim with respect to idleness of its machinery/manpower has been noted. The said paragraphs are reproduced below, for reference:

“130. The Respondent denies the claims of the Claimant. The Respondent has submitted that the costs incurred by the Claimant on account of arranging manpower and machinery stood included in the price to be paid to the Claimant under the Contract and no such expenses can be held to be additionally payable to the Claimant under the Contract.

131. Referring to Clause 12 of Point G under Important Notes in the



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PO, the Respondent submits that, the Claimant is not entitled for any claim whatsoever for the idleness of its tipping/trucks/Pay loaders/equipment/ employees for want of coal or lack of space available at the unloading site or any dislocation, reroute or non-availability of third-party Sampling team or any other reasons.”

34. Further, in paragraph 135 of the award, the principle of law of damages, requiring the non-breaching party to be placed in the same position as it would have been but for the breach of the contract, is noted. The sole-arbitrator proceeds to observe that under the Contract, the petitioner would have been entitled to the contractual amount, which would be the sum of the costs to be initially incurred by the petitioner and the profits that it would earn out of the contract. In paragraph 137, it is then held that the said costs were not additional costs and expenses incurred by the petitioner on account of the breach of the Contract and therefore, the petitioner was not entitled to the same. The said paragraphs are reproduced below, for reference:

“135. At the outset the Tribunal notes that it is a trite principle of the law if damages that the party which has not committed breach of the contract should be as far as possible be placed in the same position as if the contract had been performed by the breaching party. In the present case, the Contract was for transportation of 13,69,000 MT coal with a permissible deviation of +/-30%. Thus, had the parties performed the Contract without any breach or failure, at the end of the Contract Period, the Claimant would have been in a position where it would receive the Contract Price of 116,77,57,000.00. However, at the same time the Claimant would have incurred all costs and expenses for performing its part of the Contract. To put it differently, at the end of the Contract Period, the Claimant would have earned certain profit in the ordinary course of business, which is the difference between the total Contract Price and the expenses that the Claimant would have incurred to perform the Contract. Thus, essentially, this loss of profit would be the damages which would have been incurred by the Claimant. The Claimant's claims should be analysed in this context.

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137. Thus, the Tribunal finds that the Fixed Costs claimed by the Claimant are not additional costs and expenses incurred to the Claimant on account of breach of the Contract by the Respondent. Hence, it cannot be considered as losses or damages to the Claimant."

35. The petitioner's claim for fixed expenses has also been rejected on the same grounds as the claim for fixed costs, as noted above.

36. The aforesaid findings categorically suggest that as per the tribunal's understanding of the contract and respective obligations of the parties thereunder, the petitioner was only entitled to the contract price. It further implies that the contractual arrangement between the parties did not provide for any stipulation for payment of fixed costs or expenses in addition to the said contract price. Thus, as per the findings of the tribunal, it was an inherent part of the petitioner's contractual obligations to make arrangements for machinery, manpower and other facilities for the proper fulfilment of its part of the bargain and in lieu thereof, a contract price was fixed. The tribunal's view, furthermore, indicates that the petitioner was supposed to deduct the expenses/costs incurred by it from the contract price and to ascertain its profits after such deductions. The view taken by the tribunal is a possible view in light of the terms of contract, more specifically in light of the fact that there is no express stipulation for payment of fixed costs/expenses to the petitioner, over and above the contract price. Even if, *arguendo*, the entire contract would have been performed, there is nothing to suggest that the additional costs/expenses incurred by the petitioner in performance thereof were recoverable from the respondent, in addition to the payment of contract price. The tribunal's view that the respondent's obligation was limited to the payment of contract price and fixed



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costs/expenses were adjustable from the contract price itself and profits were to be ascertained after such adjustment, is a view which could have been taken by a reasonable man in light of the terms of the contract.

37. Therefore, the view taken by the sole arbitrator cannot be termed as perverse as it is a possible view of the contractual arrangement between the parties. It would be apposite, at this stage, to refer to the decision of the Supreme Court in ***Consolidated Construction Consortium Limited Vs. Software Technology Parks of India***,¹⁴ wherein the Court discussed the scope of Section 34 of the Act and unequivocally noted that the remedy under Section 34 is not meant for re-appreciation of evidence or to discard a possible view of the matter. The relevant part reads thus:

“46. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in Sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An 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 perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings Under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.”

¹⁴ (2025) 7 SCC 75

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38. Further, ***Hindustan Construction Co. Ltd. v. NHAI***,¹⁵ the Supreme Court has rendered the following observations on the scope of proceedings under Section 34 of the Act, especially when the arbitrator's interpretation of contract is challenged:

"27. For a long time, it is the settled jurisprudence of the courts in the country that awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with, lightly. The proposition was placed in State of U.P. v. Allied Constructions [State of U.P. v. Allied Constructions, (2003) 7 SCC 396] : (SCC p. 398, para 4)

"4. ... It was within his jurisdiction to interpret Clause 47 of the Agreement having regard to the fact-situation obtaining therein. It is submitted that an award made by an arbitrator may be wrong either on law or on fact and error of law on the face of it could not nullify an award. The award is a speaking one. The arbitrator has assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for the arbitrator to determine (see Sudarsan Trading Co. v. State of Kerala [Sudarsan Trading Co. v. State of Kerala, (1989) 2 SCC 38]). Section 30 of the Arbitration Act, 1940 providing for setting aside an award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an award cannot be set aside. The arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law."

28. This enunciation has been endorsed in several cases (Ref. *McDermott International Inc. v. Burn Standard Co. Ltd.* [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181]). In *MSK Projects (I) (JV) Ltd. v. State of Rajasthan* [MSK Projects (I) (JV) Ltd. v. State of Rajasthan, (2011) 10 SCC 573 : (2012) 3 SCC (Civ) 818] it was held that an error in interpretation of a contract by an arbitrator is "an error within his jurisdiction". The position was spelt out even more clearly in *Associate Builders* [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , where the Court said that : (Associate Builders

¹⁵ (2024) 2 SCC 613





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case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC p. 81, para 42)

“42. ... 42.3. ... 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. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.””

39. As discussed above, the view taken by the sole arbitrator is a fairly possible view in light of the contractual controversy between the parties, and even if it is held that an alternate view is possible, this reason is not enough to discard the view taken by the sole arbitrator. The distinction between supervisory jurisdiction and appellate jurisdiction would effectively be obliterated if the Court enters into re-appreciation of evidence to alter a legally possible view.

40. The award, therefore, insofar as it rejects the petitioner’s claims for fixed costs and fixed expenses, cannot be termed as perverse.

41. The petitioner’s challenge to the award of fifty per cent of the amount claimed towards legal expenses is also meritless. As rightly pointed out by Mr. Adarsh Tripathi, the grant of costs and the determination of the amount thereof, is left to the discretion of the arbitrator under Section 31A of the Act. In fact, the said provision explicitly provides that ‘costs’ would include ‘legal fees and expenses’ and that in determining the amount, the arbitrator shall have regard to ‘whether the party has succeeded partly in the case’. The said provision is extracted below, for reference:

31A. Regime for costs.—(1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—



(a) whether costs are payable by one party to another;

(b) the amount of such costs; and

(c) when such costs are to be paid.

Explanation.—For the purpose of this sub-section, “costs” means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators, Courts and witnesses;*
- (ii) legal fees and expenses;*
- (iii) any administration fees of the institution supervising the arbitration; and*
- (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.*

(2) If the Court or arbitral tribunal decides to make an order as to payment of costs,—

(a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or

(b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—

(a) the conduct of all the parties;

(b) whether a party has succeeded partly in the case;

(c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the arbitral proceedings; and

(d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

(4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—

(a) a proportion of another party’s costs;

(b) a stated amount in respect of another party’s costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date.

(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.

42. Therefore, on a bare reading of the said provision, it appears that the determination of costs falls within the discretionary realm of the arbitrator and the exercise of such discretion could be guided by the parameters laid



down in sub-section (4) of Section 31A. Evidently, one of the parameters is part success of the winning party. Therefore, it is clear that the sole-arbitrator was fully justified in determining the legal expenses to be paid by the respondent to the petitioner at fifty per cent of the claimed amount, as around fifty per cent of the petitioner's total claim came to be allowed. In view thereof, there is no infirmity in the exercise of discretion by the sole-arbitrator in determination of cost.

43. Adverting to the respondent's challenge to the award, it is seen that the dispute is with respect to the sole-arbitrator's perception of the quantity of coal envisaged under the Contract to be transported by the petitioner. In the award, the sole-arbitrator has proceeded on the basis that the contract stipulated the transportation of 13,69,000 MT (Thirteen Lakh Sixty Nine Thousand metric tonne only) of coal, despite explicitly finding that the said quantity was subject to a permissible limit of deviation of (+/-) 30% (Thirty per cent only). In paragraph 54 of the award, which is extracted below for reference, the sole-arbitrator records the said finding:

“ 54. In view of the above discussion, the Tribunal holds that Contract was fixed quantity contract with a provision for deviation +/- 30%.”

44. In paragraph 158 of the award, the submissions of the petitioner on its claim for loss of profits are recorded. The petitioner's claim, as recorded therein, was that under the Contract, it was to transport 13,69,000 MT (Thirteen Lakh Sixty-Nine Thousand metric tonne only) of coal and accordingly, the contractual amount was Rs. 1,16,77,57,000/-. Accordingly, the loss of profits was calculated against the balance amount out of Rs. 1,16,77,57,000/-. In paragraph 170 of the award, the sole arbitrator has



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accepted the contractual amount, as urged by the petitioner, to be Rs. 1,16,77,57,000/- and has proceeded to calculate the quantum of loss of profits accordingly. The aforesaid paragraphs are extracted below, for reference:

“158. The next claim of the Claimant is loss of profit. The Claimant submits that in lieu of the resources, it would have earned certain profits in the ordinary course of business. The Claimant has submitted that under the Contract it was required to transport 13,69,000.00 metric tonnes. Referring to the BOQ forming part of the LOA and the PO, the Claimant submits that the Tipper Loading of the mine end was to be carried out at the rate of ₹80.00 per metric tonnes and the Wagon Loading at Siding was to be carried out at the rate of 155.00 per metric tonne. Under the Contract, the Claimant was also required to transport a total quantity of 8,21,40,000 MK (metric tonnes per kilometre) (13,69,000 metric tonnes x 60 kms) of coal to be transported at the rate of ₹ 10.30 per MK. Thus, the total consideration of the Contract was ₹1,16,77,57,000.00.

XXXXX

170. The Tribunal has already noted above that the it is a well settled principle of the law of damages that the non-breaching party which is not at fault should be as far as possible be placed in the same position as if the contract has been performed by the breaching party. The Tribunal also found that had the parties performed the Contract without any breach or failure, at the end of the Contract Period, the Claimant would have been in a position where it would receive the Contract Price of ₹ 116,77,57,000.00, and would have earned certain profit in the ordinary course of business. Thus, essentially, the loss of profit is the damage which has ensued to the Claimant.”

45. On this aspect, the primary submission advanced on behalf of the petitioner is that the contention regarding permissible limits of deviation was not raised by the respondent in its statement of defence and hence, the same cannot be raised in a challenge under Section 34 of the Act. Essentially, it is an argument of default on the part of the respondent in raising this objection at the appropriate stage. Be that as it may, this Court does not find it necessary to examine this argument as the findings of the sole arbitrator are

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sustainable on merits. It is, no doubt, correct that the contract provided for a deviation of +/- 30% in the transferable quantity. It is also correct that the sole arbitrator has not taken the possible deviations into account and has proceeded to calculate the profits on the assumption that the entire transferable quantity of coal would have been transferred had the contract not been breached. However, it is of utmost importance to note that in calculation of loss of profits, the Court could only take into account the state of affairs in ordinary and natural course of events and the underlying assumption in the calculation of profits is the fulfilment of the contract, barring deviations or contingencies which may or may not have arisen. Essentially, the determination of loss of profits takes into account the 'expected' profits and the expectation ought to be based on the fulfilment of the whole contract i.e. transfer of the full quantity of coal.

46. The sole arbitrator has proceeded on the premise of fulfilment of the whole contract in ordinary course of events, without entering into the speculative zone of taking the deviations into account. This Court finds no perversity in the said view and again, it is a view which could flow from the mind of a reasonable man, as deviations are nothing but probable future contingencies. Furthermore, while calculating the loss of profits, an assumption of the quantity which ought to have been transferred by the petitioner to be 30% lesser than the fixed quantity would make it a vulnerable assumption, as such an assumption could also be made on the higher side to increase the quantity by 30%. Therefore, the sole arbitrator's finding is based on the fixed quantity of coal, without speculating any deviations, and the same is rightly intended to avoid any arbitrariness. This Court finds no infirmity in the said view, being a legally tenable view.



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47. The submission advanced on behalf of the respondent that the award of loss of profits to the petitioner is in contravention of the law laid down by the Supreme Court in *Batliboi Environmental Engineers Limited, All India Radio*, and *Unibros* is unfounded. The sole-arbitrator, upon examination of the aforesaid decisions, has concluded that the said cases, having involved an aspect of delay in completion of the contract and the consequential claim for loss of profits during the extended contract period, were not applicable in the present case, where the breach of the Contract was within the original contractual period. A perusal of the said decisions indicates that the facts therein involved delay in completion of the Contract for reasons attributable to the employer. There is no indication in any of the three decisions that the principle enunciated therein would be applicable to cases not involving any such aspect of delay. Further, as noted, with approval, by the Supreme Court in *McDermont International Inc v. Burn Standard Company Ltd.*,¹⁶ the Court, in *M.N. Gangappa v. Atmakur Nagabhushanam Setty & Co.*,¹⁷ has held that the method used for computation of damages will depend on the facts and circumstances of each case. While allowing the claim for loss of profits, the sole-arbitrator has reasoned that the Contract being a fixed quantity contract, would have entitled the petitioner to a certain amount of profit, that, ultimately, did not accrue to it on account of the breach by the respondent. Therefore, according to the sole-arbitrator, no additional evidence was required for the petitioner to establish that on account of the breach, it had lost the profits that it would have otherwise earned out of the Contract. The said conclusion, as correctly highlighted by Mr Udayan Jain,

¹⁶ (2006) 11 SCC 181

¹⁷ (1973) 3 SCC 406

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is in line with the decision of the Supreme Court in **Dwarka Das** and of this Court in **M/s J. Sons Engineers**. Further, in **A.T. Brij Paul Singh**, the facts involved were similar to those before the Court herein. The facts therein involved two suits arising out of similar contracts for similar works. The Trial Court had awarded damages for loss of profits at the rate of fifteen per cent of the price of the balance works in both the suits. The decision of the Trial Court in both the cases had been appealed against, before the High Court. While in one of the cases, the High Court held that the Trial Court was justified in computing the damages for loss of profits at the rate of fifteen per cent of the balance works, in the other case, the High Court held that actual loss of profit had to be proved and a mere percentage, as specified by the parties, would not furnish adequate evidence to sustain the claim. The Supreme Court, on an appeal against the High Court decision setting aside the judgment of the Trial Court, observed that in works contracts, an expectation of reasonable profit is implicit and in case of breach of the same, any loss of the same has to be compensated. The relevant portion of the said decision is extracted below, for reference:

“10.What would be the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid. In this case we have the additional reason for rejecting the contention that for the same type of work, the work site being in the vicinity of each other and for identical type of work between the same parties, a Division Bench of the same High Court has accepted 15% of the value of the balance of the works contract would not be an unreasonable measure of damages for loss of profit. We are therefore, of the opinion that the High Court was in error in wholly rejecting the claim under this head.

11. Now if it is well-established that the respondent was guilty of breach of contract in as much as the rescission of contract by the

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respondent is held to be unjustified, and the plaintiff-contractor had executed a part of the works contract, the contractor would be entitled to damages by way of loss of profits. Adopting the measure accepted by the High Court in the facts and circumstances of the case between the same parties and for the same type of work at 15% of the value of the remaining parts of the work contract, the damages for loss of profit can be measured.”

(Emphasis supplied)

48. The submission that the rate at which the damages for loss of profits were computed is perverse, also cannot be accepted. The sole-arbitrator has clearly considered the documents produced by the petitioner in this regard, i.e., auditors’ reports for the preceding years and certified statements from its chartered accountants regarding its short-term and long-term profits, and on the basis of the contents thereof, has found that the rate claimed by the petitioner, i.e., fifteen per cent of the balance contractual amount, was reasonable. The reliance placed by Mr. Adarsh Tripathi on the decisions of the Supreme Court in ***J.G. Engineers Private Limited, A.T. Brij Paul Singh,*** and ***Mohd. Salamatullah***, is misplaced for the fact that none of the said decisions lay down any straightjacket formula for determination of the rate at which damages are to be calculated. In fact, as noted earlier, in the decision in ***A.T. Brij Paul Singh***, the Supreme Court rejected the reasoning of the High Court that the Trial Court had computed the rate at which damages had been awarded on the basis of ‘inadequate evidence’ and upheld the judgment of the Trial Court. Similarly, in ***Mohd. Salamatullah***, the Supreme Court upheld the computation of damages by the Trial Court, which had been assailed before the High Court on the ground that the same had been arrived at without any evidentiary basis. Therefore, the award does not suffer from perversity or any illegality as far as the said aspect is concerned.



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49. The challenge to the award as regards the grant of interest at the rate of twelve per cent per annum is also *sans* merits. Under Section 31(7) of the Act, the arbitrator is expressly conferred with the power to include any interest component in the award, unless otherwise agreed by the parties. Further, the arbitrator is conferred with the discretion to determine the quantum of interest at such rate as he deems reasonable. The said provision is extracted below, for reference:

“31. Form and contents of arbitral award.—

XXXXX

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.”

50. The respondent has not pointed out any clause in the Contract prohibiting the grant of interest. Further, the submission that while awarding interest on the retention money, the sole-arbitrator failed to appreciate that the delay in releasing the same was attributable to the conduct of the petitioner itself and the onset of the COVID pandemic and therefore, interest could not have been awarded on the same, also cannot be accepted. Under Section 34 of the Act, the scope of interference by the Court is restricted. The Court cannot undertake the role of a fact-finding authority, and has to accept the factual findings in the award as they are. Reference can be made to the decision in ***Gayatri Balaswamy***. Therefore, it is not open for the respondent to urge the said submissions in the present proceedings. Therefore, there is no perversity or any other error in the award as far as the grant of interest is concerned.



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Conclusion

51. In view of the foregoing discussion, it is seen that the findings rendered in the impugned award do not suffer from any infirmity and the award, in its entirety, cannot be held as perverse or patently illegal. None of the grounds for setting aside the impugned award under Section 34 are attracted, and the issues raised by the parties herein essentially pertain to re-appreciation of the evidence for setting aside a legally possible view in the facts of the case, which is impermissible. Accordingly, the impugned award is upheld.

52. Thus, both the petitions stand dismissed. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

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aks.

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