* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 09.02.2026
Pronounced on : 18.05.2026
Uploaded on : 20.05.2026

\+ **FAO 165/2015 & CM APPL. 9219/2015, CM APPL. 52912/2018**

M/S UDK PAPERS PVT LTD .....Appellant
Through: Mr. K. Venkatraman and Mr. D. K. Chawla, Advocates.

versus

M/S MAGNUM VENTURES LTD .....Respondent
Through: Mr. Neeraj Gupta and Mr. Rajat Asija, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the "Act") against the judgment dated 28.02.2015 passed by the learned ADJ in Original Objection No. 5/2013 (New No. 195/2015).

Vide the impugned order, the objections filed by the appellant herein under Section 34 of the Act against the arbitral award dated 10.10.2012 (hereinafter the "Award") were dismissed.

2. The Award came to be passed in the context of a business transaction for the supply of paper. In its claim petition, the claimant (respondent before this Court) averred that it is engaged in the business of manufacturing and

selling different types and qualities of paper. On being approached by the appellant, it had supplied different types of paper as per the appellant's requirements. Against the supply of the said goods, the claimant raised bills from time to time, which were duly paid, save for the appellant's default in making payments against the bills raised between 05.07.2009 and 16.11.2009. The total amount payable was claimed to be Rs.7,64,526/-. The details of the bills were exhibited as Ex. CW-1/2 to Ex. CW-1/7. The claimant further claimed interest @ 24% per annum up to 31.01.2011. The claimant also relied upon the C-Forms issued by the appellant company.

The appellant company appeared before the learned arbitrator, contested the claim, and filed its written statement as well as evidence by way of affidavit. It contested the jurisdiction of the arbitral tribunal to entertain the claim petition. It also filed an application under Order VII Rule 11 CPC, which was dismissed. It further objected to the learned arbitrator assuming jurisdiction on the ground that no consent was ever given for his appointment by the appellant. On merits, it was claimed that the claimant had not supplied the proper material in terms of the orders placed. It was claimed that against the samples of 'High Bright' paper quality, the claimant had supplied material of ordinary quality from 01.04.2008 to 16.11.2009. The bills, however, were raised for 'High Bright' paper quality. When this was objected to, the claimant agreed to give a discount @ Rs.250/- per MT at the end of the financial year; however, it failed to keep the said promise. It was claimed that the claimant had supplied a total of 293 MT of material in the aforesaid period, with the discount amounting to Rs.7,32,500/-. The adjustment as promised was not given by the claimant. It was claimed that the material against Bill No. 1308 dated 17.05.2009 of 8779.2 kg and against Bill No. 127 dated 17.05.2009 of 6550.02 kg was received in wet and damaged condition, for which the claimant had promised an adjustment @ Rs.5/- per kg, totalling Rs.76,647/-. It was also claimed that an authorized representative of the appellant had visited the *Ghaziabad* office of the claimant, where he was assured that credit notes of Rs.7,32,500/- and Rs.76,647/- would be raised, which was not done. The appellant company claimed that it was entitled to an adjustment of Rs.7,32,500/- and Rs.76,647/- and, in fact, it is the claimant who was liable to pay an amount of Rs.44,621/-. The proceedings also reveal that the appellant had filed written submissions and, by way of a separate application dated 05.09.2012, prayed for an opportunity to cross-examine the claimant. The said application was rejected by the learned arbitrator on 14.09.2012, observing that he had examined the two bills as well as the concerned C-Forms. Further, the account of the appellant showed a balance of Rs.7,64,526/-. The application was rejected by stating that it was not necessary to grant the opportunity to cross-examine.

The objections filed by the appellant under Section 34 of the Act were also rejected by observing that the same were vague and general in nature and no material/document was pointed out that could be said to have been overlooked by the learned arbitrator. Insofar as the objection regarding not being granted the opportunity to cross-examine the claimant is concerned, the same was brushed aside by stating that the rejection of the opportunity would not vitiate the Award.

3. Before this Court, learned counsel for the appellant has restricted the

challenge in the appeal only to the denial of the opportunity to cross-examine the claimant. The other objections to the Award are not pressed.

4. As far as the scope of interference in an appeal under Section 37 of the Act is concerned, the law is well settled. In Larsen Air Conditioning and Refrigeration Company Vs. Union of India[1], it has been held in paragraph 15 as under: -

> "*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 [Associate Builders v. DDA, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204], SCC p. 81, para 42]. 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.*
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> *16. 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 1996 Act. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this court in NHAI v. M. Hakeem [NHAI v. M. Haeem, (2021) 9 SCC 1 : (2021) 4 SCC (Civ) 437]: (SCC p. 28, para 42)*
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> > *'42. It can therefore be said that this question has now been settled finally by at least 3 decisions [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] [Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] [Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd., (2021) 7 SCC 657] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been*

[1] (2023) 15 SCC 472

pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.""

5. The Supreme Court, in its earlier decision in *Renusagar Power Co. Ltd Vs. General Electric Co.*[2], held that "public policy" includes: -

a. fundamental policy of Indian law;
b. the interests of India; and
c. justice and morality.

6. In *Oil & Natural Gas Corporation Ltd Vs. Saw Pipes Ltd.*[3], the concept of "public policy" and the scope of interference on this ground were expanded. It was held that "patent illegality" is one of the grounds included therein. Later, in *ONGC Vs. Western Geco International Ltd.*[4], three more grounds were added to the "public policy of India", namely: (i) a judicial approach is not adopted by the Arbitral Tribunal; (ii) principles of natural justice, including the opportunity of hearing, are not followed by the Tribunal; and (iii) perversity and irrationality.

7. A gainful reference may also be made to the decision of the Supreme Court in *Sohan Lal Gupta Vs. Asha Devi Gupta*[5], wherein, while discussing what constitutes a reasonable opportunity of "putting case" in an arbitration, the Supreme Court laid down the following conditions: -

"*23. For constituting a reasonable opportunity, the following*

[2] 1994 Supp (1) SCC 644
[3] (2003) 5 SCC 705
[4] (2014) 9 SCC 263
[5] (2003) 7 SCC 492

conditions are required to be observed:

1. *Each party must have notice that the hearing is to take place.*
2. *Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.*
3. *Each party must have the opportunity to be present throughout the hearing.*
4. *Each party must have a reasonable opportunity to present evidence and argument in support of his own case.*
5. *Each party must have a reasonable opportunity to test his opponent's case by cross-examining his witnesses, presenting rebutting evidence and addressing oral argument.*
6. *This hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument.*"

(emphasis supplied)

8. The facts noted above show that while the claimant had premised the claim on the basis of the bills raised as well as the C-Forms against them, the appellant had claimed that there was an oral understanding between the parties whereby the claimant had promised to grant adjustments on two occasions, which eventually were not granted. The learned arbitrator denied the opportunity to cross-examine despite the application filed in this regard. The application was dismissed by merely stating that both the bills were examined. A perusal of the order dated 14.09.2012 would show that the same failed to even take note of the submission that the appellant had set up the defence of an oral promise of adjustment made by the claimant.

9. Section 34(2) of the Act provides for setting aside of an arbitral award if the Court finds that the same is in conflict with the public policy of India. Indeed, the arbitrator is the master of the evidence placed before them and examines the quality and quantity of evidence placed before them when they deliver the arbitral award. However, the *proviso* to Section 24 of the Act

stipulates that if a party before the arbitrator seeks to lead oral evidence, it must be granted, as the expression used is "…shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party…". Bearing in mind that the defence set up by the appellant is of an oral understanding, as per which it is claimed that the claimant had not provided the adjustment, the denial of opportunity to cross-examine the claimant vitiates the Award as being contrary to the public policy of India.

10. The ground on which the Award stands vitiated could perhaps have been cured by following the procedure entailed in sub-section 34(4) of the Act. The said provision contemplates adjournment of the objection proceedings, affording an opportunity to the arbitral tribunal to eliminate the grounds for setting aside the arbitral award, and resume the proceedings thereafter. However, there is no indication that such a request was made by the appellant before the Court dealing with the objections.

11. In *Gayatri Balasamy Vs. M/s ISG Novasoft Technologies Ltd.*[6], the Supreme Court held that the power to remand under Section 34(4) of the Act may be exercised by the Court on an oral request, and it is not necessary for a party to make a written application in this regard; however, a request must be made, as there is no *suo moto* power of remand.

12. The appellant has now preferred such a request before this Court, having specifically prayed in the present appeal for remanding back of the matter to the learned arbitrator, and having further reiterated the same request in its written submissions.

13. Considering all the above, the present appeal is allowed, and the

[6] 2025 INSC 605

impugned order is set aside. Without expressing any final opinion on the merits of the remand request made by the appellant, the matter is remitted to the Court below to consider the submission on Section 34(4) of the Act on its own merits in accordance with the law.

14. The matter shall be listed before the concerned Court at the first instance on 28.05.2026, for further directions.

15. The present appeal, along with the pending applications, is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

MAY 18, 2026
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