A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBA No.8 of 2023
Along with
W.P.(C) No.7019 of 2024

(From the judgment dated 04.02.2023 passed by the learned District Judge, Jagatsinghpur in ARBP No.3 of 2019 arising out of arbitral award dated 12.4.2019 passed by the learned Sole Arbitrator Retd. Justice M.M.Das)

(ARBA No.8 of 2023)

Paradip Port Trust (PPT) **....** ***Appellant (s)***

-versus-

M/s.- Modi Projects Limited **....** ***Respondent (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Appellant (s) : *Mr. Goutam Mishra, Sr. Adv.*
Along with
Mr. Jyoti Ranjan Deo, Adv.

For Respondent (s) : *Ms. Pami Rath, Sr. Adv.*
Along with
Mr. J.Mohanty, Adv.

(W.P.(C) No.7019 of 2024)

M/s.- Modi Projects Limited, Kanke Road, Ranchi **....** ***Petitioner (s)***

-versus-

Union of India & Anr. **....** ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner (s) : *Ms. Pami Rath, Sr. Adv.*
Along with
Mr. J. Mohanty, Adv.

For Opp. Party (s) : *Mr. Goutam Mishra, Sr. Adv.*
Along with
Mr. Jyoti Ranjan Deo, Adv.
(for O.P.2/PPT)
Mr. P.K. Parhi, (DSGI)
(for O.P.1/Union of India)

CORAM:
DR. JUSTICE SANJEEB K. PANIGRAHI

DATE OF HEARING:-30.05.2025
DATE OF JUDGMENT:-26.08.2025

Dr. S.K. Panigrahi, J.

1. Since these applications arise from the same facts and involve the same parties, the same were taken up for hearing together and are being dealt with by this Common Judgment and Order

2. This Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "A&C Act" for brevity) has been filed seeking setting aside of the judgment dated 04.02.2023 passed by the learned District Judge, Jagatsinghpur in Arbitration Petition No.3 of 2019 arising out of arbitration award dated 12.04.2019 passed by the Ld. Sole Arbitrator Retd. Justice M.M.Das. The Writ Petition is preferred by the Respondent in ARBA No.8 of 2023 seeking a direction to the Appellant in ARBA No.8 of 2023 to accept the proposal submitted by the Respondent on 03.08.2023 in pursuance of the Vivad Se Viswas II Scheme.

3. As the Writ Petition seeks a direction that pertains to execution of the award that is under challenge in the ARBA, it is considered apposite to first deal with the questions raised vis-à-vis sustainability of the award itself.

I. FACTUAL MATRIX OF THE CASE:

4. The Appellant invited tenders for the work of "Railway Works for Deep Drought Berths at Paradip Port". Pursuant to such invitation, the

Respondent submitted its tender on 30.11.2013. Subsequently, the letter of award was issued in favour of the Respondent on 4.12.2014 for a total value of Rs.78,65,64,301.50/. The date of commencement of work was stipulated to be 5.1.2015 and the scheduled date of completion was by 4.4.2016.

5. On 1.6.2015 an agreement was executed between the Parties specifying all the terms and conditions for the work in question.

6. The Respondent submitted an application on 29.3.2016 seeking extension of time. The extension was provided up till 30.3.2017 with imposition of liquidated damages/penalty.

7. As the work could not be completed within the extended period, the Appellant terminated the contract vide letter dated 4.4.2017. The Respondent thereafter, invoked arbitration for adjudication of the dispute arising out of the termination, imposition of damages, delay and incidental issues.

8. Thereafter, Ld. Single Arbitrator, Retd. Justice M.M. Das was appointed to adjudicate upon the dispute between the Parties.

9. After hearing the parties, the Ld. Sole Arbitrator was pleased to pass his final award on 12.4.2019 wherein, the Ld. Sole Arbitrator was pleased award Rs.13,66,01,820/- in favour of the Respondent.

10. Aggrieved, the Appellant assailed the final award dated 12.4.2019 under Section 34 of the A&C Act in the Court of the learned District Judge, Jagatsinghpur in Arbitration Petition No. 3 of 2019. Vide judgment dated 4.2.2023, the Ld. District Judge, Jagatsinghpur was pleased to dismiss the same upon arriving at the conclusion that the award was not in violation of the public policy of India, did not contain any plausible fact

that would shock the conscience of the court and did not have any patent illegality on the face of the record.

11. Aggrieved by the same, the instant Appeal has been preferred.

12. The Appeal u/s 37 of the A&C Act was filed on 23.3.2023. During the pendency of the same before this Court, the Respondent preferred Writ Petition No. 7019 of 2024 on 18.3.2024 seeking a direction against the Appellant to accept the proposal submitted by it on 3.8.2023 in pursuance to the Vivad se Vishwas II (contractual disputes) scheme dated 29.5.2023.

13. As the facts leading up to the instant Applications have been laid down, this Court shall endeavour to summarise the contentions of the Parties and the broad grounds that have been raised to seek the exercise of this Court's limited jurisdiction available under S. 37 of the A&C Act.

II. APPELLANT'S SUBMISSIONS

14. The counsel for the Appellants assails the arbitral award and the judgment passed by the learned District Judge, mainly on the ground that the learned District Judge has completely failed to deal with or cogently answer the grounds raised by the present appellant in its application under Section 34 of the A & C Act, 1996, challenging the Award dated 1.3.2016, passed by the learned Sole Arbitrator, and has disposed of the matter in a cursory, casual and lackadaisical manner with complete non-application of mind contrary to the well settled propositions of law and, hence, both the impugned order and the Final Award are liable to be set aside.

15. It is also contended that the Ld. District Judge being the final court on facts did not take into account the alleged errors in facts that had been

committed by the Ld. Arbitrator and therefore by allegedly relying on the erroneous findings of the Ld. Arbitrator, the Ld. District Judge has committed gross illegality and such a judgment is liable to be interfered with and set aside.

III. RESPONDENT'S SUBMISSIONS

16. *Per contra*, learned counsel for the present Respondent contends that the Appellant has not been able to showcase any reasonable ground for interfering with the impugned judgment apart from making bald statements towards the same. It was vehemently submitted that the scope of interference of this Court in an application u/s Section 37 of the A&C Act is extremely limited and this Court cannot reappreciate evidence at this stage, therefore it may not revisit the factual findings of the Ld. Tribunal apart from testing the same on the touchstone of reasonableness. It was also submitted that the Ld. District Judge had considered all the material aspects of the contentions raised by the parties and also duly regarded their submissions thereby warranting no interference with the concurrent views of the Ld. Arbitral Tribunal as well as the Ld. District Judge.

17. It is submitted that the award is based on appreciation of the material and evidence that were placed before the arbitrator and it is not open in these proceedings to re-appraise the same. It is, thus, prayed that the present appeal needs to be dismissed.

18. On the question of its prayers in the Writ Petition, it was contended by the Ld. Counsel for the Respondent that the intent of the Government, reflected in Clause 18 of the scheme, is unmistakable. It envisions reducing the burden of litigation by ensuring that smaller disputes are

concluded without unnecessary prolongation. Any contrary interpretation would defeat the very object of the scheme, which is to prevent the government machinery from being entangled in avoidable disputes, especially where the monetary value falls well within the specified threshold. Therefore, the proposal submitted by it on 3.8.2023 in pursuance to the Vivad se Vishwas II (contractual disputes) scheme dated 29.5.2023 ought to be accepted by the present Appellant.

IV. ISSUES FOR CONSIDERATION

19. Having heard the parties and perused the materials available on record, this court here has identified the following issues to be determined:

A. Whether this Court should interfere with the impugned order given the narrow scope of its powers under Section 37 of the A&C Act?

B. Whether Clause 18 of the Vivad se Vishwas II (contractual disputes) scheme dated 29.5.2023 is mandatory in nature?

V. ISSUE A: WHETHER THIS COURT SHOULD INTERFERE WITH THE IMPUGNED ORDER GIVEN THE NARROW SCOPE OF ITS POWERS UNDER SECTION 37 OF THE A&C ACT?

20. Before going into the merits of the contentions, it is necessary to outline the ambit and scope of section 37(2)(b) of 1996 Act. The said section is extracted below:—

> *"37. Appealable orders.—(1)[Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely:—*
> *xxxxxxxxxx*
> *(2) Appeal shall also lie to a court from an order of the arbitral tribunal—*

(a) accepting the plea referred to in sub-section (2) or subsection (3) of section 16; or
(b) granting or refusing to grant an interim measure under section 17."

21. The Supreme Court and this Court in catena of judgments have held that the powers of Appellate Court while exercising jurisdiction under section 37(2)(b) of 1996 Act against orders passed by the Arbitral Tribunal is very restricted and narrow.

22. Further, in ***Haryana Tourism Limited v. Kandhari Beverages Limited***[1], wherein the Supreme Court observed that while the Courts in an appeal under Section 37 are empowered to set aside an award, the Court cannot enter into the merits of the claim and the award may be interfered with only when the award stands contrary to:— (a) the fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality; or (d) if the order is patently illegal. The Supreme Court in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[2], further observed that an impugned award cannot be interfered unless the substantive provision of law or the terms of the agreement are breached. Further, reference can be made to the decisions of the Delhi High Court in the cases of ***Shamlaji Expressway (P) Ltd. v. National Highway Authority of India***[3], wherein the Delhi High Court reiterated the principles laid down in ***Dinesh Gupta v. Anand Gupta***[4], ***Augmont Gold Pvt. Ltd. v. One 97***

[1] (2022) 3 SCC 237
[2] 2024 SCC OnLine SC 2632
[3] 2024 SCC OnLine Del 7131
[4] 2020 SCC OnLine Del 2099

Communication Ltd.[5]***,*** and ***Sanjay Arora v. Rajan Chadha***[6]. These decisions reaffirm that judicial interference is warranted only in cases of patent illegality, violation of principles of natural justice, or perversity in the arbitral order.

23. Given the recurrent usage of the terms patent illegality, natural justice, perverse, reasonable among other terms, which are not amenable to rigid legal definition and each being susceptible to varying interpretations, the Court finds it appropriate, at the outset, to ascertain their precise meanings and the same would serve as the essential benchmarks in determining the permissible scope of appellate intervention under Section 37 of the Act. It is equally necessary to examine how the Courts have interpreted and delineated the scope of these terms generally, and specifically within the context of Arbitration.

24. The term patent illegality was first elaborated by the Supreme Court in ***ONGC v. Saw Pipes***[7], in the context of arbitration law, wherein it was observed that if an award is contrary to substantive law, the provisions of the Act, or the terms of the contract, it would be patently illegal and could be interfered with under Section 34. However, such procedural failure must be evident.

25. Subsequently, based on the recommendations of the 246th Law Commission Report, an amendment was introduced in Section 34 of the AC Act in 2015. This amendment expanded the scope of "public policy of India," which had been narrowly interpreted in earlier judicial

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[5] (2021) 4 HCC (Del) 642
[6] (2021) 3 HCC(Del) 654
[7] (2003) 5 SCC 705

pronouncements. Over time, various cases have relied on the ground of patent illegality. In general, patent illegality refers to an error of law that goes to the root of the matter. Such an error may involve inconsistency with common law, the Constitution, or a statutory provision. The definition of patent illegality and other related terms, as provided in Ramanath Aiyar's Major Law Lexicon, offer a comprehensive understanding of the concept of patent illegality. The treatise defines patent illegality as a legal defect that is apparent on the face of the record without requiring extrinsic evidence or interpretation. This concept is closely linked to patent ambiguity, which refers to an ambiguity that is evident from the language of an instrument itself. A latent ambiguity, in contrast, is one that is not immediately visible but emerges when extrinsic evidence is examined.

26. A patent ambiguity is an ambiguity that arises solely from the language of an instrument. It is distinguished from a latent ambiguity, which occurs when the words in an instrument apply equally well to two distinct things or subject matters and require external evidence to resolve. A patent defect is a defect that is plainly visible and can be discovered through reasonable inspection and diligence. The definition emphasizes that it is not necessary for the defect to have been observed by a party, rather, it must be observable upon exercising ordinary caution itself. It is understood that this principle is relevant in cases where defects are apparent on the face of it. A patent error is an error that is self-evident, requiring no elaborate reasoning or extensive analysis to be demonstrated. The Supreme Court in ***Surya Dev Rai v.***

Ram Chander Rai[8] held that a patent error must be one that is demonstrable without engaging in a long-drawn argument. Similarly, in ***Ranjeet Singh v. Ravi Prakash***[9] it was observed that when two opinions are reasonably possible on the same material, the finding of one over the other cannot be termed as a patent error.

27. Moving back to the context of arbitration, it becomes imperative to examine the scope and relevance of a patent illegality in the realm of arbitral proceedings. While patent error, patent ambiguity, and patent defect generally refer to errors or defects that are self-evident and discernible without elaborate reasoning, the concept of patent illegality, in arbitration jurisprudence has acquired a distinct connotation. The Supreme Court in ***Delhi Airport Metro Express (P) Ltd. v. DMRC***[10] elucidated the contours of patent illegality in the context of arbitral awards. It was observed that patent illegality must be of such a nature that it goes to the root of the matter and fundamentally affects the fairness and legality of the arbitral process.

28. The Supreme Court has clarified that not every error of law committed by the Arbitral Tribunal qualifies as patently illegal. Similarly, a mere erroneous application of the law does not amount to patent illegality, unless it has a direct impact on the outcome of the case. Contraventions of law that do not involve public policy or public interest fall beyond the scope of the doctrine. It is equally important to note that the terms ambiguity, error and defect, command a lesser threshold as compared

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[8] (2003) 6 SCC 675
[9] (2004) 3 SCC 682
[10] (2022) 1 SCC 131

to an illegality. Illegality refers to contravention of the law and patent illegality would effectively mean an unequivocal contravention of the law that is writ large on the face of the record. Therefore, a higher standard is required to prove patent illegality as compared to a mere defect or ambiguity or error.

29. Understandably, judicial interference under Section 34(2-A) of the AC Act, is strictly limited to instances where the decision of the Arbitral Tribunal (AT) is wholly untenable, for instance:—

a. When the Arbitral Tribunal (AT) adopts an interpretation of a contract that no fair-minded or reasonable person would endorse.

b. When the Arbitral Tribunal (AT) exceeds jurisdiction by dealing with matters not contemplated in the contract.

c. When the award is completely devoid of reasons.

d. When the findings are based on no evidence or are reached by ignoring material evidence, rendering them perverse.

e. When an Arbitral Tribunal (AT) relies on documents not provided to the opposing party, thereby violating the principles of natural justice.

30. In ***Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum***[11], while delineating the contours of patent illegality, the Supreme Court emphasized the fundamental principle that a judicial precedent is binding only on the issue of law that is expressly raised and decided. The Apex Court cautioned against interpreting judicial pronouncements in isolation, detached from the factual matrix in which they were rendered. It

[11] (2022) 4 SCC 463

reiterated the well-established legal proposition that judgments and observations in judgments are not to be read as Euclid's theorems or as provisions of statute. Judicial pronouncements must be understood within the specific factual setting of the case and not to be extrapolated as rigid legal definitions, as if incorporated in a statute.

31. Building upon the foregoing discussion on patent illegality, it becomes imperative to delve into the interpretative contours of key terms such as reasonable person, fair-minded, natural justice, public policy, perverse, and possible-view. These terms frequently appear in judicial determinations concerning arbitral awards and their validity under Section 34 and Section 37 of the AC Act. Their precise meanings, as expounded through case law and legal dictionaries, provide valuable insight and guidance in assessing the threshold for judicial interference in arbitral proceedings.

32. The term possible view refers to a conclusion that can reasonably be reached, irrespective of whether a superior Court agrees with it or not. As elaborated in ***Murugesan v. State***[12], a possible view is one of reasonable legal or factual interpretation, as opposed to an arbitrary or manifestly erroneous finding. The Oxford English Dictionary defines possible as something capable of existing, happening, or being achieved or that may exist or happen but is not certain or probable. In legal parlance, a possible view is not synonymous with an infallible or correct view rather it denotes a perspective that is within the bounds of rational acceptability.

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[12] (2012) 10 SCC 383

33. The distinction between possible, practicable, and practical is also noteworthy. While possible is regarding the inherent potential of an event occurring, practicable depends on circumstantial feasibility, and practical relates to the actual implementation or application of a concept.

34. In the context of arbitral awards, a possible view is not to be conflated with an erroneous view. Judicial interference is warranted only when the award is so unreasonable that no fair-minded or reasonable person could have arrived at such a conclusion. This principle was re-iterated in ***Hakeem Khan v. State of M.P.***[13]***,*** which reaffirmed that unless the conclusion of a Court is entirely disconnected from the evidence or legal reasoning, they must refrain from intervening under the guise of correcting mere errors of judgment.

35. Building upon the foregoing discussion on patent illegality and possible view, it is further necessary to explore the concept of reasonable view.

36. The term 'reasonable' is inherently relative and context-dependent. As observed in ***Chintamanrao v. State of M.P.,*** [14]reasonableness implies intelligent care and deliberation. Courts have consistently held that a reasonable view is one that aligns with logical thought and legal principles, taking into account the circumstances of each case. In ***Raghunath G. Panhale v. Chaganlal Sundarji***[15], the Supreme Court clarified that reasonableness does not imply an ideal or perfect solution but one that is fit and appropriate to the end in view.

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[13] (2017) 5 SCC 719
[14] 1950 SCC 695
[15] (1999) 8 SCC 1

37. The reasonable view standard is distinct from correctness or best possible view. It acknowledges that different adjudicators may reach different conclusions based on the same set of facts, as long as those conclusions are within the bounds of rationality. As held in ***Veerayee Ammal v. Seeni Ammal***[16], reasonableness varies in its conclusions according to the idiosyncrasies of the individual and the times and circumstances in which he thinks. However, while individual perception may vary, Courts maintain that reasonableness must be assessed within the four corners of the law.

38. In the context of arbitral awards, reasonable view means a conclusion drawn from the evidence and legal principles that a fair-minded and rational person could reach, even if it is not the only possible conclusion. The Supreme Court in ***Delhi Airport Metro Express Pvt. (supra),*** cautioned against judicial interference in arbitral findings unless the view of the AT is so perverse that no reasonable person could have arrived at such a conclusion.

39. Furthermore, the reasonable person standard, which forms the backbone of negligence and contract law, plays an important role in arbitration jurisprudence. As noted in ***Kumaon Mandal Vikas Nigam Ltd. v. Girja Shanker Pant***[17], a reasonable person is one who acts with ordinary prudence, fairness, and diligence in the circumstances. Thus, when Courts review an arbitral award but they are not to replace the reasonable view of the arbitrator with what the Court believes to be the correct view.

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[16] (2002) 1 SCC 134

[17] (1999) 2 SCC 10

40. The final aspect that remains is perversity. A perverse finding is one that is so manifestly unreasonable, irrational, or contrary to the weight of evidence that no reasonable person would have arrived at such a conclusion.

41. The Supreme Court, in ***Kuldeep Singh v. Commissioner of Police***[18], clarified that a finding is not perverse if there is some evidence on record which is acceptable and which could be relied upon, however, compendious it may be. However, a finding that is based on no evidence, or an inference drawn in an unacceptable manner, can be considered perverse. This principle was further elucidated in ***Vishwanath Agrawal v. Sarla Vishwanath Agrawal***[19], wherein the Court held that a finding is perverse if it is not only against the weight of evidence but altogether against the evidence itself. In arbitration, the principle of perversity is particularly relevant when reviewing an arbitral award for patent illegality. In ***Sumitomo Heavy Industries Ltd. v. ONGC Ltd.,*** [20]the Supreme Court held that the findings of the Arbitral Tribunal must be set aside if they outrageously defy logic or suffer from irrationality.

42. Further, in ***S.R. Tewari v. Union of India*** [21]the Court laid down parameters to determine perversity, holding that a decision suffers from this vice if:—

a. It ignores or excludes relevant material;

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[18] (1999) 2 SCC 10
[19] (2012) 7 SCC 288
[20] (2010) 11 SCC 296
[21] (2013) 6 SCC 602

b. It takes into consideration irrelevant or inadmissible material;

c. It is against the weight of evidence;

d. It is so outrageously illogical.

43. Further, in ***Gaya Din v. Hanuman Prasad***[22], the Supreme Court emphasized that a finding can be deemed perverse if it is not supported by evidence brought on record, is contrary to law, or suffers from procedural irregularity. This is a critical test in arbitral proceedings, as ATs are bound by the principles of natural justice and reasoned adjudication.

44. The concept of perverse verdicts has also been examined in common law jurisdictions, where Courts have held that a jury or tribunal acts perversely if it refuses to follow legal directions or draws a conclusion that is entirely unsupported by evidence. In India, this principle is mirrored in ***Triveni Rubber and Plastics v. CCE***[23], where the Apex Court observed that a finding is perverse if no reasonable person would arrive at such a conclusion.

45. Thus, when an arbitral award is challenged on the ground of perversity, the Appellate Court is not permitted to re-appreciate evidence as if it were sitting in an ordinary appeal. Instead, it must assess whether the impugned Award/Order is so irrational that it falls outside the realm of legally sustainable conclusions. If the AT takes a view that is merely incorrect but reasonably possible, it will not be interfered with.

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[22] (2001) 1 SCC 501

[23] 1994 Supp (3) SCC 665

46. Furthermore, in ***GLS Foils Products (P) Ltd. v. FWS Turnit Logistic Park***[24], the Apex Court observed that the scope of review under Section 37(2)(b) is not that of a regular appeal. The discretionary jurisdiction exercised by the AT should not be interfered with, unless it is palpably arbitrary or unconscionable.

47. Thus, under Section 37 proceedings, the Appellate Courts must exercise restraint, intervening only in cases of arbitral decisions that are perverse, arbitrary, or fundamentally illegal. It must be acknowledged that an AT is a forum of choice of the parties and unless an award is so outrageous that it militates against the very idea of fair adjudication or is affected by the vices discussed in detail above, intervention must be avoided, so as to ensure that the alternate mode of resolution voluntarily adopted by the parties remains effective and is not reduced to a subordinate forum whose every act is vulnerable to be attacked before the Appellate Court.

48. The Appellate Court while exercising powers/jurisdiction under section 37 of 1996 Act and more particularly under section 37(2)(b) of 1996 Act has to keep in mind the limited scope of judicial interference as prescribed under section 5 of 1996 Act. Section 5 of 1996 Act clearly reflects the legislative intent to minimize judicial interference in the arbitration process. Unlike the appeals under other statutes, the appeals under 1996 Act against the orders passed by the Arbitral Tribunal are subject to strict and narrow grounds. The 1996 Act aims at minimal court involvement, thereby to uphold the autonomy and efficiency of the arbitration process.

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[24] (2022) 1 SCC 712

49. The Appellate Court is not required to substitute its views with the view taken by the Arbitral Tribunal which is a reasonable or a plausible view except where the discretion is exercised arbitrarily or where the Arbitral Tribunal has ignored the settled principles of law. In fact, the whole purpose to bring the 1996 Act is to give supremacy to the discretion exercised by the Arbitral Tribunal. The Appellate Court is not required to interfere in the arbitral orders especially a decision taken is at an interlocutory stage. The Appellate Court is only required to see the whether the Arbitral Tribunal has adhered to the settled principles of law rather than re-assessing the merits of the Arbitral Tribunal's reasoning.

50. It would thus appear to be well settled that the powers under Section 37(2)(b) is to be exercised and wielded with due circumspection and restraint. An appellate court would clearly be transgressing its jurisdiction if it were to interfere with a discretionary order made by the Arbitral Tribunal merely on the ground of another possible view being tenable or upon a wholesome review of the facts the appellate court substituting its own independent opinion in place of the one expressed by the Arbitral Tribunal. The order of the Arbitral Tribunal would thus be liable to be tested on the limited grounds of perversity, arbitrariness and a manifest illegality only.

51. To sum up, it is clear that in view of the limited judicial interference, the Appellate Court has to exercise its power only if the arbitral order suffers from perversity, arbitrariness and a manifest illegality.

52. In view of the foregoing, this Court shall carefully examine the arguments advanced by the counsel for the Appellant, wherein it is

asserted that the claims upheld by the Arbitrator are inconsistent with the terms of the contract or that the impugned Award lacks any supporting material or evidence.

53. *Prima facie*, a perusal of the impugned judgment and Award unequivocally demonstrates that the Arbitrator relied upon written submissions, documentary evidence, and the statements of the parties involved in the transaction to determine and quantify the claims.

54. The Ld. District Judge has first and foremost taken note of the scope of its powers under Section 34 of the A&C Act and the settled position of law pertaining to the grounds where it may exercise its powers which is in line with the position of law laid down by the Supreme Court in ***PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Ors.***[25]***; K. Sugumar and Anr. v. Hindustan Petroleum Corporation Ltd. & Anr.***[26]***; UHL Power Company Ltd. v. State of Himachal Pradesh***[27]***; Sutlej Construction Limited v. Union Territory of Chandigarh***[28]***; Venture Global Engineering v. Satyam Computer Services Limited and Anr.***[29] and ***Patel Engineering Limited v. North Eastern Electric Power Corporation Limited***[30].

55. Thereafter, the Ld. District Judge has taken note of the contentions of the Parties including the law relied upon by either side. Then the Ld. District Judge applied its mind and referring to the findings of the Ld. Arbitrator

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[25] AIR 2021 SC 4661
[26] (2020) 12 SCC 539
[27] (2022) 4 SCC 116
[28] (2018) 1 SCC 718
[29] (2010) 8 SCC 660
[30] (2020) 7 SCC 167

has come to the conclusion that the Ld. Arbitrator has arrived at its findings after due consideration of the documents on record, the agreement and the evidence adduced by the Parties. Such a finding having being arrived at cannot be trifled with in the absence of a glaring error as it is trite in law that a finding arrived at by the Ld. Arbitral Tribunal if plausible, cannot be interfered with.

56. This Court, therefore, does not find that the order of the Tribunal, as confirmed by the learned District Judge, is so perverse or suffers from patent illegality which requires interference.

57. In view of the discussion above, this Court finds no infirmity, illegality or impropriety in the award or the order of the learned District Judge, which would require interference in the present appeal.

VI. ISSUE B: Whether Clause 18 of the Vivad se Vishwas II (contractual disputes) scheme dated 29.5.2023 is mandatory in nature?

58. It is necessary to extract the salient features of the Scheme. The same reads as under:—

> ***"Office Memorandum***
>
> ***Subject: Vivad se Vishwas II (Contractual Disputes).***
>
> *The undersigned is directed to refer to Rule 227 A of the General Financial Rules (GFRs), 2017 and Department of Expenditure's (DoE's) "General Instructions on Procurement and Project Management" containing instructions to deal with dispute cases. Para 16.4 of the "General Instructions" is reproduced below:*
>
> *Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with interest, at a rate which is often far higher than*

the Government's cost of funds. This results in huge financial losses to the Government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past but have not been fully complied with.

2. NITI Aayog had also established a Task Force on Conciliation Mechanism, and had circulated the final report of the Task Force. Following excerpt from the final report is highlighted:

A consideration of even more importance with respect to contracts between Government and Private entities. The same being critical not only to facilitate an overall pro-business environment but also to attract private investment in the country, to encourage private investors to establish and continue short-term and long-term contractual association with the Government, and not be wary of it.

3. It is understood, however, that more efforts are required to clear the backlog of old litigation cases. Such cases are holding back fresh investment, reducing the ease of doing business with the Government, tying up scarce working capital and indirectly reducing competition for newly floated tenders. In this context, after due study of the experience in past cases, Government has decided to implement a one time settlement scheme called "Vivad se Vishwas II (Contractual Disputes)" to effectively settle pending disputes. Applicability:

4. The scheme will apply to contractual disputes where one of the parties is either the Government of India and/or an organisation detailed below. Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the scheme shall also be applicable

a) to all Autonomous Bodies of the Government of India;

b) to public sector banks and public sector financial institutions;

c) to all Central Public Sector Enterprises;

d) to Union Territories without legislature and all agencies/undertakings thereof; and

e) to all organisations, like Metro Rail Corporations, where Government of India has shareholding of 50%; however, these organisations can opt out of the scheme at their discretion, with approval of the Board of Directors.

The above mentioned organisations shall hereinafter be referred to as "procuring entities." The other party in dispute with the procuring entity shall be referred to as contractor(s) hereinafter.

5. Disputes where the award by court/Arbitral Tribunal (AT) is only for monetary value will be eligible for settlement under this scheme. In case the award stipulates specific performance of contract (either fully or partially); such awards will not be eligible for settlement through this scheme.

6. Cases shall satisfy following criteria to be eligible for settlement under this scheme:

Status of dispute	***The award shall have been issued upto the following date***
Arbitral Award passed	***31.01.2023.***
Court Award passed	***30.04.2023.***

7. The scheme will be applicable only to those contractors who wish to participate in the scheme. Central Public Sector Enterprises (CPSEs) etc., who are contractors to the procuring entities as listed above, are also eligible to submit their claims under this scheme.

8. The scheme shall apply only for cases involving domestic arbitration *and cases under international arbitration are not eligible to be settled under this scheme.*

9. The scheme shall be applicable to all kinds of procurement including procurement of goods, services and works. The scheme is also applicable to all "earning contracts" (i.e. contracts where government receives money in exchange for goods, services, rights, Court Award passed etc.) as well as contracts under Public Private Partnership (PPP) arrangements. Amount payable under the scheme

10. The settlement amount that shall be offered to Contractors for various categories of disputes is as under:

Sl. No.	*Status of dispute*	*Settlement Amount*
(a)	*Court Award passed on or before 30.04.2023.* *Notes:* *i. Case may or may not be under further appeal.* *ii. Court award will include the cases where the parties have approached the courts directly or approached the court subsequent to arbitral award (under any provision of the Indian Arbitration and Conciliation Act, 1996). However, Interim Orders under Section 9 of the Indian Arbitration and Conciliation Act, 1996, shall not be considered as an award eligible for settlement under this scheme.*	*85% of the net amount awarded/up held by the court or 85% of the claim amount lodged by the contractor under this scheme, whichever is lower.*

(b)	***Arbitral Award passed on or before 31.01.2023.*** ***Notes:*** ***i. Case may or may not be under challenge/appeal before a Court.*** ***ii. Arbitral Award passed by the Micro and Small Enterprises Facilitation Council (MSEFC) or Arbitral Tribunal appointed on reference by MSEFC under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, shall also be included under this scheme.*** ***iii. However, Interim Orders of the Arbitral Tribunal under any provision of the Indian Arbitration and Conciliation Act, 1996, shall not be considered as an award eligible for settlement under this scheme.***	***65% of the net amount awarded/upheld by the court or 65% of the claim amount lodged by the contractor under this scheme, whichever is lower.***
Notes for both (a) and (b) as above	*1. In case, the award directs 'X' to be paid to contractor and 'Y' to be paid to procuring entity by the contractor, then the net amount awarded shall be (X-Y) and the amount payable under this scheme will*	***Page 10 of 17***

	be 85% or 65%, as the case may be, of (X-Y). *2. In case no payment or only partial payment has been made as per the award within the stipulated time given in the award itself (time should be taken as 30 days in case there is no time stipulated in the award for making payments), simple interest at the rate of 9% per annum will be payable on 85%/65% of the net amount awarded, as the case may be, minus the amount already paid, if any, for time period beyond such stipulated period till date of acknowledgement email, as specified in Step 3 of para 14, by the procuring entity.* *3. It is further clarified that such 9% interest will be paid only on the net amount payable under this scheme after deducting the payments already made.* *4. Even if award mentions any rate of interest (may be below or above 9%) for payments made after the stipulated period for making such payments, still interest payable under this scheme shall only be 9% simple interest per annum.*	

	Illustration 1: *Award* *Rs. 1,00,000/- in favour of contractor plus interest as indicated below.*	

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Submission of claims and Time periods

14. Contractors should submit their claims through Government e-Marketplace (GeM), for which GeM will provide a dedicated link on their portal for implementation of this scheme. The link/portal will provide functionality to contractors to register their claims through their authorized personnel. For non-GeM contracts of Ministry of Railways, contractors should register their claims on !REPS (www.ireps.gov.in). The information regarding contracts for which claim is to be lodged on !REPS will be provided on GeM as well as IREPS. The broad features of these portals are as under:

Step 1: The registered contractor shall list out the eligible disputes which it is willing to settle under this scheme, on the portal. The list of the procuring entities will be available through drop down menu on the portal. The details of the dispute should contain atleast the following: contract number, procuring entity/contracting authority, paying authority, net award amount (as detailed in para 1 O(a) and 1 O(b)), claim amount with details thereof and the status of the dispute.

Step 2: GeM shall intimate (through dashboard) such details to the procuring entities to verify the dispute under this scheme. The procuring entity shall verify the claim details and update the same, if any. Each entry on the portal shall be dispute specific. There can be more than one dispute under same contract, which shall be claimed, under this scheme, separately.

Step 3: The procuring entities shall evaluate the settlement amount due, as per this scheme and offer it to contractor for acceptance normally within two weeks of receipt of claims on the portal. The contractor will be required to accept the offer

within the prescribed time period. If the contractor accepts the offer Step 4 shall follow else Step 5 shall follow. Time available for contractor to respond to the offer shall be 30 (thirty) calendar days only (Calendar day ending at midnight). There shall be no option for any relaxation, including claims of GeM portal not working on last day, etc. However, the procuring entity shall have the authority to amend/withdraw the offer, under this scheme, at any time before the acceptance by the contractor.

Immediately on acceptance of the settlement offer under the scheme, an acknowledgement through email, of the parties reaching such settlement, shall be automatically generated and sent to both the parties by the portal.

Step 4: The contractor will be given 45 days (or longer period if permitted by the procuring entity), from the date of the acknowledgement email as indicated in Step 3 above, to file application for withdrawal of the case before the court. However, only after the contractor uploads the document indicating that court has permitted to withdraw the case, if applicable, should the settlement agreement under this scheme be executed and the payments made by the procuring entities.

In case the procuring entity has to withdraw the case from court, the procuring entity shall also file an application for such withdrawal within 45 days. The settlement agreement shall be executed within 30 days of submission of application of withdrawal of case from the court in such cases, without waiting for formal permission of the court regarding withdrawal of the case.

If the contractor agrees to the settlement under this scheme, a settlement agreement (a model agreement is at Annexure I which the procuring entities are free to appropriately modify, without changing core terms, based on their past experience, local needs etc.) may be digitally signed, preferably in pdf format, by both the parties. The settlement agreement shall have the same meaning and consequence as the settlement agreement consequent to successful conciliation as per The Arbitration and Conciliation Act, 1996. The settlement agreement shall be signed only by the parties without any need for attestation of

any conciliator. Stamp duty for the settlement agreement, in all cases under this scheme, shall be paid by the contractor.

The settlement agreement shall clearly state that even though the dispute is finally settled, the settlement does not decide on any issue, either of law or of fact, under dispute. Further, it should be clearly stated and implied from the settlement agreement that as a process of settlement the parties shall withdraw all litigation pending related to this dispute, willingly, without duress and after fully understanding the consequences.

The Settlement Agreement shall contain a statement to the effect that each of the persons signing thereto (i) is fully authorized by the respective Party he/she represents, (ii) has fully understood the contents of the settlement agreement, (iii) is signing on the settlement agreement out of complete free will and consent, without any pressure, undue influence, and (iv) the settlement agreement shall be final and binding on and enforceable against the Party and the persons claiming under/through him.

The procuring entity or the contractor, as the case may be, shall make payments within 30 days of the execution of the settlement agreement.

Step 5: If the contractor does not accept the offer: the ongoing litigation process may continue.

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18. ***In all cases where the claim amount is Rs. 500 crore or less, procuring entities will have to accept the claim, if the claim is in compliance with these guidelines****."* (emphasis is ours)

59. It is pertinent to mention that Clause 18 of the said Scheme provides that where the claim is 500 crore or less, then the entity "will have to accept" the claim if the claim is covered as per the guidelines.

60. The essence of the scheme is that once a contractor makes a claim in compliance with its parameters, the procuring entity does not have the

discretion to disregard it. The policy has clearly mandated that where the amount involved is below the ceiling of ₹500 crore, the claim must be entertained and accepted. This statutory compulsion removes the element of subjectivity in the decision-making process of public undertakings.

61. When one applies the principles of administrative law, it becomes evident that an instrumentality of the State cannot act arbitrarily. If the scheme itself stipulates that certain claims "will have to be accepted," the obligation becomes binding. A refusal in such circumstances would be contrary not only to the scheme but also to the constitutional mandate of fairness under Article 14.

62. It is also important to emphasize that the scheme was not drafted in a vacuum; it arose from a recognition that contractors frequently succeed in arbitration and litigation against the State, leading to higher financial liabilities with interest. Thus, the legislative wisdom was to settle at a reduced figure upfront. Once a contractor chooses to settle under such terms, the procuring entity cannot deny the claim without violating the legitimate expectation generated by the scheme.

63. The doctrine of legitimate expectation assumes great relevance here. Contractors, reading the scheme, are led to believe that if their awards are within the stipulated parameters, they can obtain a final settlement. To withdraw that assurance after claims are submitted would be to undermine trust in government policy and would amount to acting in a capricious manner.

64. Furthermore, the timelines fixed in the scheme impose a duty on the procuring entities to act with expedition. When the scheme provides a

period within which the offer has to be made and acceptance communicated, any delay or inaction frustrates the mechanism. The government or its undertakings cannot choose to sit over such claims, thereby defeating the carefully constructed process.

65. A consideration of public policy also supports this interpretation. The scheme's avowed purpose is to ease the climate of doing business with the State. If claims under ₹500 crore are still subjected to hesitation, scrutiny beyond the guidelines, or outright rejection, the policy would lose credibility and discourage private participation in public contracts.

66. Ultimately, the obligation created by the scheme is mandatory in nature, not directory. Once the twin conditions are satisfied—that the award is monetary in nature and the amount is below ₹500 crore—the procuring entity "shall" accept the claim. This language leaves no room for discretion, and therefore, in the present case, the claim must be considered and settled in accordance with the scheme.

67. Therefore, with regards to the prayer in Writ Petition No.7019 of 2024 on 18.3.2024 whereby the Respondent Contractor has sought a direction against the Appellant to accept the proposal submitted by it on 3.8.2023 in pursuance to the "Vivad se Vishwas II" (contractual disputes) scheme dated 29.5.2023, this Court is of the opinion that the proposal ought to be considered in accordance with the scheme and be disbursed if found to be within the contours of the same, given the mandatory nature of the scheme.

VII. CONCLUSION:

68. Therefore, in light of the discussion above, keeping the settled principles of law in mind and for the reasons given above, this Court is of the

considered view that the impugned order as well as the Arbitral Award warrant no interference under Section 37 of the A&C Act.

69. The Arbitration Appeal now having been dismissed in terms of this judgment and order, the Appellant is directed to take a decision on the proposal of the Respondent Contractor within3 weeks from the date of this judgment/order. If the claim of the Respondent Contractor is found to be in compliance of the guidelines laid down in "Vivad se Vishwas II" (contractual disputes) scheme dated 29.5.2023, then the claim shall be disbursed within 4 weeks thereafter.

70. Both the ARBA and the Writ Petition are disposed of, accordingly. No order as to costs.

71. Interim order, if any, passed earlier in any of the applications stands vacated.

(Dr. Sanjeeb K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 26th August, 2025