2025:AHC-LKO:58732-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 52 of 2023

UCM Coal Company Ltd. .....Petitioners(s)

Versus

Adani Enterprises Ltd.

.....Respondents(s)

Counsel for Petitioners(s)	:	Pritish Kumar, AAG, Vibhanshu Srivastava, Suyash Manjul
Counsel for Respondent(s)	:	Mr. Vikram Nankani (Senior Advocate) with Pranjal Krishna, Abhishek Dwivedi, Suhaib Ashraf, Brijesh Kumar, Manish Mehrotra, Utkarsh Srivastava

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Reserved
A.F.R.

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.

Per:- JASPREET SINGH, J.

1. The respondent as claimant had initiated arbitral proceedings before an Arbitral Tribunal which culminated in a unanimous award dated 20th November 2018, in favour of the respondent. The appellant preferred a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, the Act of 1996) which was dismissed by the Commercial Court-I, Lucknow vide order and judgment dated 31.03.2023 and being aggrieved

from the same, the appellant preferred this appeal before this Court under Section 37 of the Act of 1996.

Factual Matrix

2. In order to appreciate the controversy involved in the instant appeal, it will be worthwhile to take a glance at the facts, briefly.

3. The Ministry of Coal, Government of India in furtherance of Government Company Dispensation Scheme allocated Chhendipada and Chhendipada-II Coal Blocks jointly to Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd., Chhatisgarh Mineral Development Corporation and Maharashtra State Power Generation Corporation Limited who jointly ventured to explore and undertake mining operations from the allocated coal blocks.

4. The above three Government Corporations incorporated a Special Company for the purpose of development, exploration and mining of coal blocks namely UCM Coal Company Ltd. (hereinafter referred to as ‘UCM/appellant’)

5. The appellant for the purposes of development and exploration of the coal blocks as allocated, floated tenders through international competitive bidding process to select a mine developer and operator for the two Chhendipada Coal Blocks allocated to the appellant. Several bids were received and upon its examination, the bid of the respondent was found favourable and it was accepted.

6. A letter of award dated 27th October, 2010 was issued to the respondent which was followed by a formal mining contract which was signed on 05th February, 2011. In the said mining contract, the appellant was described as a 'mine owner' whereas the respondent was described as the 'mine operator'.

7. The mining contract broadly envisaged three stages; (i) approval and clearance stage (ii) development stage and (iii) operation stage.

8. The approval and clearance stage inter-alia required the respondent to prepare mining plans, seek clearances and approval required for starting mining activities, coal washery and other incidental infrastructural activities including preparing a railway siding.

9. It also required the respondent to obtain forest clearance, environmental clearance, clearances related to the drawl of power and water, license for explosives and clearance for land acquisition and resettlement as per requirement for 5 to 10 years of mining activities.

10. While, the said contract was still at the clearance stage, the coal block allocations came under the scrutiny of the Supreme Court of India in a Public Interest Litigation initiated by Shri Manohar Lal Sharma. The same came to be decided by the Supreme Court of India vide its judgment dated 25.08.2014 followed by an order dated 24.09.2014 and the coal allocations, including relating to Chhendipada and Chhendipada-II were cancelled.

11. It is in this context that disputes arose between the appellant and the respondent.

12. The matter was referred for Arbitration before an Arbitral Tribunal comprising of Hon'ble Mr. Justice K.A. Punj (Retd.), who was the party nominated Arbitrator for the respondent, Hon'ble Mr. Justice, N.K. Mehrotra (Retd.) who was the party-nominated arbitrator for the appellant and the two party-nominated arbitrators appointed Hon'ble Mr. Justice Deepak Verma, (Retd. Judge of the Apex Court) as the Presiding Arbitrator.

13. The respondent, who was the claimant before the Arbitral Tribunal, had laid its claims for recovering expenses incurred by the claimant in the process of acquisition of land in the coal block, expenses incurred towards setting up of mine infrastructure and for mobilizing movable and immovable assets, and such amount which was paid or committed as advances including for capital commitments.

14. The claims of the respondent were disputed by the appellant inter-alia taking a ground that the respondent had engaged sub-contractors without prior written consent of the appellant, which was prohibited in the mining contract. It was also contended that inflated claims had been made by the respondent which could not be substantiated.

15. Before the Tribunal, five issues were framed and after the parties were given an opportunity to lead evidence, the Tribunal after hearing the parties passed a unanimous award on 20th November, 2018 inter alia allowing the claims of the respondent to the tune of Rs. 126,63,21,44/- along with the interest at the rate of 11% per annum. The respondent was also awarded interest of 11% per annum on the amount allowed by the Tribunal through an interim award dated 31.01.2017. The Tribunal, however, deferred the payment of interest on the amount of Rs. 126 crores which was payable by the respondent to its consultant PMC, who had an award in its favour against the respondent till the decision on a petition filed by the respondent under Section 34 of the Act of 1996 challenging the award in favour of PMC Projects (India) Pvt. Ltd.

16. The appellant being aggrieved assailed the said award before the Commercial Court-I at Lucknow in a petition under Section 34 of the Act of 1996 which came to be registered as Arbitration Case no. 369 of 2019. The Commercial Court-I, Lucknow after hearing the parties dismissed the said petition by means of its judgment and order dated 31.03.2023 which is under challenge before this Court in appeal under Section 37 of the Act of 1996.

Submissions on behalf of the appellant:-

17. Mr. Pritish Kumar, learned Additional Advocate General for the State of U.P. assisted by Sri Suyash Manjul and Sri Vibhanshu Srivastava, has structured his submissions in three layers:-

(i) The Arbitral Tribunal has misconstrued the contractual clause and given an interpretation which amounts to re-writing the contract;

(ii) Certain claims have been allowed for which there was no evidence before the Tribunal; and

(iii) Claims were awarded on the basis of certain documents which could not be made the basis for granting and allowing such claims.

18. Elaborating his submissions, the learned counsel for the appellant submitted that the mining contract clearly prohibited engagement of a sub contractor without the prior written consent of the appellant. He referred to Clauses 12.2, 27.5 and 27.6 of the mining contract dated 05.02.2011.

19. It was further submitted that the respondent had engaged several entities such as PMC Projects (India) Pvt. Ltd. (in short 'PMC'), SPARC Pvt. Ltd. (in short 'SPARC'), G.V. Info-solutions Pvt. Ltd. (in short 'GVI'), Hydro Geo Survey Consultants Pvt. Ltd. (in short 'Hydro') and Vimta Labs Ltd. (in short 'Vimta') without the prior written approval, hence, there was a clear violation of the above noted provisions of the contract.

20. It was urged that the respondent had setup a claim that the entities aforesaid were not sub-contractors but were consultants, however, it was submitted that the mining contract did not envisage engagement of any consultant nor they were recognized as per the mining contract.

21. Any commitment made by the respondent to such entities who did not have the written approval of the appellant, and any amount paid or committed to be paid by the respondent to such entities could not be extended to be recoverable from the appellant.

22. It was also submitted that not only the above mentioned entities were engaged without the prior written consent of the appellant but they had been engaged much prior to the date of signing of the mining contract, hence, any obligation arising between the said entities and the respondent could not be made enforceable against the appellant.

23. Mr. Kumar submitted that primarily the major component of claims as raised by the respondent related to the payments said to have been made or committed to be paid to primarily the major sub contractors, namely the PMC and GVI, however, their engagements were never disclosed to the appellant. Even under the mining contract, the respondent was required to keep the appellant abreast with the developments and progress by submitting reports from time to time which was also not done which was a further breach made by the respondent.

24. Mr. Kumar emphasized that Clause 27.6 of the mining contract clearly indicated that there was no scope for any implied approval or consent. Thus, even if the respondent at some later point of time, in their progress reports had made a mention of such engaged entities yet the fact remains that in absence of any prior written consent, their engagement could not be ratified nor there could be a deemed approval from the side of the appellant. Thus, the engagement of such entities at the behest of the respondent stood vitiated from its inception, vis-a-vis the appellant who cannot be made, perforce to satisfy, or subrogate the contractual liability having arisen between the respondent and the said sub contracting entities.

25. It was further submitted that the mining contract had defined the relevant terminology so that no extended meaning could be ascribed to the words and expressions used in the said contract by any party. Hence, the respondent who as part of their claims had stated that the entities were not sub-contractors but were consultants and the said mining contract did not give any indication regarding engagement of any consultant and by mere usage of the word consultant, the respondent cannot camouflage the actual status of such entities who were none other than sub contractors.

27. The Arbitral Tribunal while dealing with the said issue went much ahead and ascribed its own interpretation to the scope of engagement of sub contractors in derogation of the provisions of the mining contract

and treating the said entities to be consultants by referring to the meaning given to the word 'sub contractor' and 'consultant' in a Law Lexicon but ignoring the fact that in the mining contract, the terms were given certain specific meaning and as such the Tribunal committed a grave error in effectively re-writing the contract which was a patent illegality.

28. It was further urged that since the mining contract did not envisage engagement of consultants, hence, any consultant engaged by the respondent would be at its own peril. Alternatively, it was urged that the respondent could give any name to the engagement of such entities but since the said entities worked and performed such services which were part of the mining contract in terms of the Clause 8 and admittedly there was no prior written approval, hence, the work done by them would make their status to be a sub contractor and this aspect has not been considered by the Tribunal as well as the Commercial Court I, Lucknow.

29. In support of his aforesaid submissions, Mr. Kumar has relied upon the decision of the Apex Court in **(i) PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2023) 15 SCC 781 (ii) South East Asia Marine Engg. & Constructions Ltd. (SEAMEC LTD.) v. Oil India Ltd., (2020) 5 SCC 164 (iii) State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275**.

30. Mr. Kumar further submitted that a huge sum has been awarded by the Tribunal as payments which were paid and committed to be paid by the respondent to the sub contracting entities without any evidence.

31. It was elaborated by Mr. Kumar that if any payments were made by the respondent to the said third party sub-contracting agencies, then the respondent should have brought the invoices raised by such entities on record but no such invoices were placed on record nor any corroborating evidence was placed on record of the Tribunal to substantiate the genuineness of the amount claimed and the details of

any payment made to the said third party contractors, except certain amount which was admitted by the appellant and were cleared for payment.

32. It was also pointed out that the work order which was issued by the respondent to the third party sub-contracting entity clearly indicated that the said entity would raise an invoice. It is in this context, it was urged, that in absence of any invoice raised by the entity on the respondent, the amount could not have been said to be proved nor the liability could have been said to have crystallized, which would make the appellant liable to reimburse the respondent for it.

33. It was stated that primarily, the large part of the claim of the respondent was based on the reimbursement of the expenses and in absence of adequate evidence, the Tribunal as well as the Commercial Court-I, Lucknow committed an error in overlooking this crucial aspect. Accordingly, the findings returned by the Tribunal as well as the Commercial Court-I, Lucknow is rendered perverse as it is not supported by any evidence on record.

34. Mr. Kumar further submitted that in order to dress the claim with a cloak of legitimacy, the respondent had filed certificates issued by their Chartered Accountant, however, there were glaring discrepancies in the said certificates as well. The CA certificates up to June, 2014 indicated pre-cancellation expenses as 76.94 crores, however, upon the cancellation of the coal block allocations, suddenly the expenses and project costs escalated manifold and was shown to be Rs. 494 crores. Major claims relating to coal washery and capital commitments were apparently unsupported as no invoice or appropriate documentation or entries made in the books of accounts maintained by the respondent in their usual course of business were filed and in absence of any such cogent evidence, the amount claimed by the respondent under the aforesaid, claim could not have been mechanically awarded by the Tribunal and more so this issue was raised before the Commercial Court,

however, it did not appropriately notice and deal with the said objection resulting in sheer miscarriage of justice.

35. In support of his aforesaid submissions, Mr. Kumar has relied upon a decision of the Apex Court in **DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357** to urge that if any finding or claim has been allowed without evidence then the same is liable to be set aside.

Submissions on behalf of the respondent:-

36. Mr. Vikram Nankani, learned Senior Counsel, who had joined the proceedings through video conferencing, assisted by Mr. Pranjal Krishna and Mr. Abhishek Dwivedi, learned counsel for the respondent submitted that the scope of an appeal under Section 37 of the Act of 1996 is limited to whether an order passed by the Court in proceedings under Section 34 of the Act of 1996, to set aside the award, or refusing to set aside the award, is just and appropriate keeping in mind the limited grounds as envisaged in Section 34 of the Act of 1996 itself.

37. Since the proceedings of Section 34 of the Act of 1996 is not in the nature of an appeal as understood in context with regular civil litigation and unless the grounds as set out in Section 34 of the Act of 1996 itself is made out till then this Court would not interfere under Section 37 of the Act of 1996 as the scope of the appeal is even narrower than under Section 34 of the Act of 1996.

38. It was further submitted that the scheme of the Act of 1996 is such that the Arbitral Tribunal has been recognized as the exclusive authority to deal with the matter before it. The Tribunal has the power and jurisdiction to give its finding by construing the clauses of the contract. If the Tribunal upon assessing the evidence before it has taken a view by construing the clause of contract then unless the said view ascribed by the Tribunal is found to be so preposterous, that no fair minded person can arrive at such construction or interpretation till then the view of the Tribunal is to be respected and it is binding.

39. The Tribunal has also been given the exclusive authority to examine, sift and evaluate the evidence and its finding based on such evidence cannot be re-appreciated or re-examined both in terms of quality and quantity either by the court in exercise of powers under Section 34 of the Act of 1996 or by the Appellate Court in terms of Section 37 of the Act of 1996. It is in this context that the scope of the Appellate Court is said to be even narrower and in support of his aforesaid submissions, he has relied upon the decision of the Apex Court in **(i) UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116** and **(ii) AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai, (2025) 5 SCC 321.**

40. Armed with the aforesaid decisions, Mr. Nankani further urged that no infirmity could be pointed out by the learned counsel for the appellant referable to the findings given in the order dated 31.03.2023 passed by the Commercial Court. He further argued that the Commercial Court being conscious of its limitations as prescribed by law in exercise of its powers under Section 34 of the Act of 1996 evaluated the submissions and found that the basis of the entire argument raised by learned counsel for the appellant rested on the premise relating to the interpretation of the clauses of the mining contract and the view formed by the Arbitral Tribunal thereon was based on evidence and it was well within the domain of the Tribunal to be so hence it refrained from interfering with the Award.

42. It is further urged that the Tribunal had not only noticed the submissions of the respective parties but also copiously referred to clauses of the contract and referred to the cross-examination of the witnesses to amplify the manner in which both the contracting parties understood the working of the said contract and thereupon gave its findings unanimously, which cannot be disturbed in a petition under Section 34 or in an appeal under Section 37 of the Act of 1996. Now, the attempt of the learned counsel for the appellant to suggest that the Commercial Court overstepped its jurisdiction, is nothing but to tempt

this Court to enter an arena of re-appreciating of evidence which is not for this Court to do in terms of Section 37 of the Act of 1996.

44. The learned Senior Counsel for the respondent further submitted, without prejudice to his aforesaid submissions relating to the scope of interference in proceedings under Section 34 and 37 of the Act of 1996, that the mining contract is a hugely specialized contract. It is true that the contract was divided in three stages and it is also true that the instant contract did not move ahead beyond the first stage of approvals and clearance as it was cancelled by the Apex Court in the Public Interest Litigation instituted by Shri Manohar Lal Sharma, however, even the clearances and approvals were not mere simple clearances which were required to be obtained in a routine course, from the Government Agencies.

46. The approvals and clearances related to environmental clearance, also involved acquisition of land including a resettlement of the persons displaced. Complete mine plans had to be prepared which also involved laying of railway sidings. These clearances required a detailed specialized study and only thereafter such reports are prepared which are assessed by experts and only thereafter, if it is found that there is no negative impact on the environment, would such permissions be granted.

47. It was also submitted that the contract did not require the mine operator (i.e. the respondent) to have all in-house facilities so that no outside help could be engaged. For preparation of such specialized reports, specialists and consultants are engaged and it is for the very same reason that the contract did not put an embargo for the mine operator to not engage any consultant specifically.

48. It was further urged that there is essentially a marked difference between a consultant and a sub-contractor. Though, the engagement of a sub contractor without the prior written consent of the mine owner was envisioned in the contract but it did not prohibit the engagement of a

consultant by the mine operator nor it required the prior written consent of the mine owner.

49. In the aforesaid backdrop, the respondent had clearly raised this issue before the Tribunal and led ample evidence to substantiate that the PMC, GVI, Hydro, Vimta Labs and SPRAC were consultants who were specialized entities having expertise in their respective fields and they were engaged only for the purposes of consultancy to guide the respondent in facilitating the procurement of the said clearances and approvals.

50. It was also pointed out that all such approvals and clearances were applied by the respondent as an agent of the appellant. The respondent followed the terms of the mining contract scrupulously and at each stage furnished the progress reports to the appellant to keep it well informed of the work undertaken by the respondent.

51. It was also submitted that alongwith the aforesaid progress statements, the necessary reports prepared by such expert entities were also submitted and the appellant was very well aware of the specialized work done by the aforesaid consultants and at no point of time, there was any objection or demur on the part of the appellant on this count.

52. It is only after the cancellation of the coal block allocation and upon claims raised by the respondent did this idea germinate within the appellant-corporation to create a ruse to deny the legitimate claims of the respondent.

53. Mr. Nankani, learned Senior counsel further submitted that the Tribunal has clearly drawn out the distinction between a sub contractor and a consultant and it also took note of the evidences of the respective parties and thereupon it gave its finding that the entities were consultants and not sub contractors. Accordingly, the Tribunal held that the claim of the respondent could not be refused on the ground that the entities were sub contractors and were engaged without prior consent of the appellant.

54. The learned Senior Counsel also breezed through the records to substantiate that ample evidence was filed by the respondent before the Tribunal to substantiate its claim for reimbursement relating to the money paid and committed to be paid to the third party entities. Work orders were placed on record and it was also pointed out that one of the consultants namely PMC had also instituted arbitral proceedings against the respondent and the pleadings relating to the said arbitration was also placed on record before the Arbitral Tribunal, dealing with the dispute between the appellant and the respondent.

55. It was also pointed out that as far as claims regarding the PMC made against the respondent is concerned, they related to payments which were to be made by the respondent to the PMC on milestone basis, arising out of this particular mining agreement. Moreover, the milestones were achieved which is not quite disputed, accordingly, now the appellant cannot take the plea that the claims raised by the third party, namely PMC, against the respondent appears to be collusive or inflated.

56. It was urged that the appellant had been the beneficiary of the said contract, inasmuch as, the matter relating to land acquisition and other clearances and the ancillary work done by the said third party agencies had been recognized by the appellant who relied upon the same while submitting the necessary document before the Ministry of Coal. This in itself, proved the fact that not only the appellant was aware of the working of these consultants but he was also aware of the fact that the milestones as set out had been achieved by the said third party consultant.

57. The learned Senior Counsel also submitted that certain discrepancies as sought to be pointed out by the learned counsel for the appellant, suggesting inflation in the claim amount as indicated in the certificates issued by the Chartered Accountants is not tenable. It was submitted that the respondent in its usual course of business prepared its books of account and being a company the said accounts are duly

audited and are certified by a Chartered Accountant. It is not the case of the appellant that the certificates issued by the Chartered Accountant are false and fabricated rather the objection appears to be that up to the pre-cancellation stage of the coal allocation, the expenses were shown as Rs. 76.94 crores whereas post cancellation, the said amount was shown as Rs. 494 crores.

58. Explaining the same, it was stated that upon the cancellation of the coal block allocation, it was certain that no further activity would be done in furtherance of the said mining contract, hence, all the expenses or losses had to be accounted for at that point of time. Accordingly, the submission was that this aspect was also considered both by the Tribunal and the Commercial Court and it cannot be said that the view taken is bad in the eyes of law or there was no evidence in this regard or that the findings are based on inadmissible documents.

59. It was pointed out that the Tribunal also noted the standard accounting procedures on the basis of which such certificates were issued by the Chartered Accountant which were not shown to be false or patently against the settled accounting procedures, hence, on the basis of evidence, the Tribunal arrived at findings which cannot be said to be bad in the eyes of law. Thus the said findings are not amenable to any further re-appreciation by this Court especially once the award had been accepted by the Commercial Court, who refused to set it aside in proceedings under Section 34 of the Act of 1996.

60. It was also urged that evidence was filed in several volumes before the Arbitral Tribunal which has been duly noted and thereafter a unanimous award has been passed by the Tribunal. Thus, to suggest that there was no material or evidence before the Tribunal to support the findings is absolutely incorrect. Accordingly, the decision cited by learned counsel for the appellant in Delhi Metro (supra) is clearly distinguishable on facts, and in any case it is not applicable to the present case.

61. It was also submitted that the award clearly takes note of the claims and the defence including the counter claim of the appellant. On the basis of the respective pleadings, the Tribunal framed expressive issues upon which evidence was led and after considering the submissions specific findings have been recorded which are well reasoned and such findings cannot be said to be bad. Moreover, considering the award has been affirmed by the court in proceedings under Section 34 of the Act of 1996, in such circumstances, the attempt of the appellant to persuade this Court to re-appreciate the evidence and to act as an Appellate Court, as understood in regular civil proceedings, is not appropriate, hence, for all the aforesaid reasons, the appeal deserves to be dismissed.

Discussions and Analysis

62. The Court has heard the learned counsel for the parties and also perused the material on record.

63. At the outset, it will be appropriate to notice the contours of scope and jurisdiction of this Court while dealing with an appeal under Section 37 of the Act of 1996.

64. The Apex Court in **MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163** has held as under:-

> "11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial

approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

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 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. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.

15. Having noted the above grounds for interference with an arbitral award, it must now be noted that the instant question pertains to determining whether the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. However, this question has been addressed by the courts in terms of the construction of the contract between the parties, and as such it can be safely said that a review of such a construction cannot be made in terms of reassessment of the material on record, but only in terms of the principles governing interference with an award as discussed above.

16. It is equally important to observe at this juncture that while interpreting the terms of a contract, the conduct of parties and correspondences exchanged would also be relevant factors and it is within the arbitrator's jurisdiction to consider the same. [See McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] ; Pure Helium India (P) Ltd. v. ONGC [Pure Helium India (P) Ltd. v. ONGC, (2003) 8 SCC 593] and D.D. Sharma v. Union of India [D.D. Sharma v. Union of India, (2004) 5 SCC 325] .]"

65. Similarly, the Apex Court in **UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116** has observed as under:-

"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

17. A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corpn. Ltd. [K. Sugumar v. Hindustan Petroleum Corpn. Ltd., (2020) 12 SCC 539] , wherein it has been observed as follows : (SCC p. 540, para 2)

“2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even

a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

18. It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus : (SCC p. 12, para 24)

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."

19. In Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. [Parsa Kente Collieries Ltd. v. Rajasthan

Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , adverting to the previous decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] , wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus : (Parsa Kente Collieries case [Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , SCC pp. 244-45, para 9)

"9.1. … It is further observed and held that 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. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

9.2. Similar is the view taken by this Court in NHAI v. ITD Cementation India Ltd. [NHAI v. ITD Cementation India Ltd., (2015) 14 SCC 21 : (2016) 2 SCC (Civ) 716] , SCC para 25 and SAIL v. Gupta Brother Steel Tubes Ltd. [SAIL v. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16] , SCC para 29."

(emphasis supplied)

20. In Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , the view taken above has been reiterated in the following words : (SCC p. 12, para 25)

“25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

21. An identical line of reasoning has been adopted in South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd. [South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd., (2020) 5 SCC 164 : (2020) 3 SCC (Civ) 1] and it has been held as follows : (SCC p. 172, paras 12-13)

“12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] laid down the scope of such interference. This Court observed as follows : (SCC p. 12, para 24)

‘24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an

alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.'

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] observed as under : (SCC p. 12, para 25)

'25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

66. Again, the Apex Court in **Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd., (2024) 2 SCC 375,** has held as under:-

"32. Post award interference and the extent of the second look by the courts under Section 34 of the A&C Act has been a subject-matter of perennial parley. The foundation of arbitration is party autonomy. Parties have the freedom to enter into an agreement to settle their disputes/claims by an Arbitral Tribunal, whose decision is binding on the parties. [See Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549, which examines arbitrability and non-arbitrability of subject-matters and claims, which aspect will not be examined in this case.] It is argued that the purpose of arbitration is fast and quick one-stop adjudication as an alternative to court adjudication, and therefore, post award interference by the courts is un-warranted, and an anathema that undermines the fundamental edifice of arbitration, which is consensual and voluntary departure from the right of a party

to have its claim or dispute adjudicated by the judiciary. The process is informal, and need not be legalistic [The expression "judicially", does not equate arbitration with formal/court proceedings, and would include a just and fair decision.] . Per contra, it is argued that party autonomy should not be treated as an absolute defence, as a party despite agreeing to refer the disputes/claims to a private tribunal consensually, does not barter away the constitutional and basic human right to have a fair and just resolution of the disputes. The court must exercise its powers when the award is unfair, arbitrary, perverse, or otherwise infirm in law. While arbitration is a private form of dispute resolution, the conduct of arbitral proceedings must meet the juristic requirements of due process and procedural fairness and reasonableness, to achieve a "judicially" sound and objective outcome. If these requirements, which are equally fundamental to all forms of adjudication including arbitration, are not sufficiently accommodated in the arbitral proceedings and the outcome is marred, then the award should invite intervention by the court.

33. To disentangle and balance the competing principles, the degree and scope of intervention of courts when an award is challenged by one or both parties needs to be stated. Reconciliation as a statement of law and in particular application in a particular case has not been an easy exercise. We begin by first referring to the views expressed by this Court in interpreting the width and scope of the post award interference by the courts under Section 34 of the A&C Act.

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37. Explanation to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act, as quoted above and before its substitution by Act 3 of 2016, had postulated and declared for avoidance of doubt that an award is "in conflict with the public policy of India", if the making of the award is induced or affected by fraud or corruption, or was in violation of Sections 75 or 81 of the A&C Act. Both Sections 75 and 81 of the A&C Act fall under Part III of the A&C Act, which deal with conciliation proceedings. Section 75 of the A&C Act relates to

confidentiality of the settlement proceedings and Section 81 deals with admissibility of evidence in conciliation proceedings. Suffice it is to note at this stage that while "fraud" and "corruption" are two specific grounds under "public policy", these are not the sole and only grounds on which an award can be set aside on the ground of "public policy".

38. Act 3 of 2016 with retrospective effect from 23-10-2015 has substituted the Explanation referred to above, by two new Explanations that are differently worded. [Explanations 1 and 2 to sub-clause (ii) to clause (b) of Section 34(2) of the A&C Act substituted vide Act 3 of 2016 read as under:"Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if—(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or(ii) it is in contravention with the fundamental policy of Indian law; or(iii) it is in conflict with the most basic notions of morality or justice.Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute."Sub-section (2-A) of Section 34 of the A&C Act inserted vide Act 3 of 2016 reads as under:"34. (2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence."] Sub-section (2-A) to Section 34 of the A&C Act, which was instituted by Act 3 of 2016 with retrospective effect from 23-10-2015, states that the arbitral award arising out of arbitrations other than international commercial arbitrations can be set aside by the court, if it is vitiated by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) to Section 34 of the A&C Act also states that the award shall not be set aside merely on the ground of erroneous application of law or by reappreciation of evidence. The aforesaid sub-section need not be examined in the facts of the

present case, as we are not required to interpret and apply the substituted Explanations to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act in the present case.

39. The expression "public policy" under Section 34 of the A&C Act is capable of both wide and narrow interpretation. Taking a broader interpretation, this Court in ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] (for short Saw Pipes), held that the legislative intent was not to uphold an award if it is in contravention of provisions of an enactment, since it would be contrary to the basic concept of justice. The concept of "public policy" connotes a matter which concerns public good and public interest. An award which is patently in violation of statutory provisions cannot be held to be in public interest. Thus, expanding on the scope and expanse of the jurisdiction of the court under Section 34 of the A&C Act, it was held that an award can be set aside if it is contrary to:

(a) 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.

40. Nevertheless, the decision in Saw Pipes case [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] holds that mere error of fact or law in reaching the conclusion on the disputed question will not give jurisdiction to the court to interfere. However, this will depend on three aspects:

(a) whether the reference was made in general terms for deciding the contractual dispute, in which case the award can be set aside if the award is based upon erroneous legal position;

(b) this proposition will also hold good in case of a reasoned award, which on the face of it is erroneous on the legal proposition of law and/or its application; and

(c) where a specific question of law is submitted to an arbitrator, erroneous decision on the point of law does not make the award bad, unless the court is satisfied that arbitrator had proceeded illegally.

In Saw Pipes case [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] , the Court set aside the award on the ground that the award had not taken into consideration the terms of the contract before arriving at the conclusion as to whether the party claiming the damages is entitled to the same. Reference was made to the provisions of Sections 73 and 74 of the Contract Act, which relate to liquidated damages, general damages and penalty stipulations. This view had held the field for a long time and was applied in subsequent judgments of this Court in Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] , Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd. [Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd., (2006) 11 SCC 245] , DDA v. R.S. Sharma & Co. [DDA v. R.S. Sharma & Co., (2008) 13 SCC 80] , J.G. Engineers (P) Ltd. v. Union of India [J.G. Engineers (P) Ltd. v. Union of India, (2011) 5 SCC 758 : (2011) 3 SCC (Civ) 128] , and Union of India v. L.S.N. Murthy [Union of India v. L.S.N. Murthy, (2012) 1 SCC 718 : (2012) 1 SCC (Civ) 368] .

41. In 2006, this Court in McDermott International Inc. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] despite following the ratio of Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] , made succinct observations regarding the restrictive role of courts in the post-award interference. In addition to the three grounds introduced in Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , as noticed above, an additional ground of “patent illegality” was introduced in Saw Pipes Limited, for exercise of the court's jurisdiction in setting aside an arbitral award. This Court, in McDermott International Inc. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , held that patent illegality, must be such

which goes to the root of the matter. The public policy violation should be so unfair and unreasonable as to shock the conscience of the court. Arbitrator where s/he acts contrary to or beyond the express law of contract or grants relief, such awards fall within the purview of Section 34 of the A&C Act. Further, what would constitute public policy is a matter dependent upon the nature of transaction and the statute. Pleadings of the party and material brought before the Court would be relevant to enable the Court to judge what is in public good or public interest, or what would otherwise be injurious to public good and interest at a relevant point. So, this must be distinguished from public policy of a particular government.

42. A similar view was expressed in Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] with the clarification that where a term of the contract is capable of two interpretations and the view taken by the arbitrator is a plausible one, it cannot be said that the arbitrator travelled outside the jurisdiction or the view taken the arbitrator is against the terms of the contract. The Court cannot interfere with the award and substitute its view with the award and interpretation accepted by the arbitrator, the reason being the Court does not sit in appeal over the findings and decision of the arbitrator, while deciding an application under Section 34 of the A&C Act. The arbitrator is legitimately entitled to take a view after considering the material before him/her and interpret the agreement. The judgment should be accepted as final and binding.

43. Subsequently, in ONGC Ltd. v. Western Geco International Ltd. [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] (for short Western Geco), a three-Judge Bench of this Court observed that the Court, in Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] , did not examine what would constitute “fundamental policy of Indian law”. The expression “fundamental policy of Indian law” in the opinion of this Court includes all fundamental principles providing as basis for administration of justice and enforcement of law in this country. There were three distinct

and fundamental juristic principles which form a part and parcel of “fundamental policy of Indian law”. The first and the foremost principle is that in every determination by a court or an authority that affects rights of a citizen or leads to civil consequences, the court or authority must adopt a judicial approach. Fidelity to judicial approach entails that the court or authority should not act in an arbitrary, capricious or whimsical manner. The court or authority should act in a bona fide manner and deal with the subject in a fair, reasonable and objective manner. Decision should not be actuated by extraneous considerations. Secondly, the principles of natural justice should be followed. This would include the requirement that the Arbitral Tribunal must apply its mind to the attending facts and circumstances while taking the view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best done by recording reasons in support of the decision. As noticed above, Section 31(3)(a) of the A&C Act [“31. Form and contents of arbitral award.—(1)-(2) * * *(3) The arbitral award shall state the reasons upon which it is based, unless—(a) the parties have agreed that no reasons are to be given, or(b) the award is an arbitral award on agreed terms under Section 30”] states that the arbitral award shall state the reasons on which it is based, unless the parties have agreed that no reasons are to be given. Sub-clauses (i) and (iii) to Section 34(2) also refer to different facets of natural justice. In a given case sub-clause to Section 34(2) and sub-clause (ii) to clause (b) to Section 34(2) may equally apply. Lastly, is the need to ensure that the decision is not perverse or irrational that no reasonable person would have arrived at the same or be sustained in a court of law. Perversity or irrationality of a decision is tested on the touchstone of Wednesbury principle of reasonableness [As expounded in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA).] . At the same time, it was cautioned that this Court was not attempting an exhaustive enumeration of what would constitute “fundamental policy of Indian law”, as a straightjacket definition is not possible. If on facts proved before them, the arbitrators fail to draw an inference which ought to have been drawn or if they have

drawn an inference which on the face of it, is untenable resulting in injustice, the adjudication made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards, may be challenged and set aside.

44. The decision of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] elaborately examined the question of public policy in the context of Section 34 of the A&C Act, specifically under the head "fundamental policy of Indian law". It was firstly held that the principle of judicial approach demands a decision to be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would not satisfy the said requirement.

45. Referring to the third principle in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , it was explained that the decision would be irrational and perverse if (a) it is based on no evidence; (b) if the Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or (c) ignores vital evidence in arriving at its decision. The standards prescribed in State of Haryana v. Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] (for short Gopi Nath & Sons) and Kuldeep Singh v. Delhi Police [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] should be applied and relied upon, as good working tests of perversity. In Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] it has been held that apart from the cases where a finding of fact is arrived at by ignoring or excluding relevant materials or taking into consideration irrelevant material, the finding is perverse and infirm in law when it outrageously defies logic as to suffer from vice of irrationality. Kuldeep Singh [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] clarifies that a finding is perverse when it is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it. If there is some evidence which can be acted and can be relied upon, however compendious it may be, the conclusion should not be treated as perverse. This Court in Associate Builders [Associate Builders

v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] emphasised that the public policy test to an arbitral award does not give jurisdiction to the court to act as a court of appeal and consequently errors of fact cannot be corrected. Arbitral Tribunal is the ultimate master of quality and quantity of evidence. An award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Every arbitrator need not necessarily be a person trained in law as a Judge. At times, decisions are taken acting on equity and such decisions can be just and fair should not be overturned under Section 34 of the A&C Act on the ground that the arbitrator's approach was arbitrary or capricious. Referring to the third ground of public policy, justice or morality, it is observed that these are two different concepts. An award is against justice when it shocks the conscience of the court, as in an example where the claimant has restricted his claim but the Arbitral Tribunal has awarded a higher amount without any reasonable ground of justification. Morality would necessarily cover agreements that are illegal and also those which cannot be enforced given the prevailing mores of the day. Here again interference would be only if something shocks the court's conscience. Further, “patent illegality” refers to three sub-heads : (a) contravention of substantive law of India, which must be restricted and limited such that the illegality must go to the root of the matter and should not be of a trivial nature. Reference in this regard was made to clause (a) to Section 28(1) of the A&C Act, which states that the dispute submitted to arbitration under Part I shall be in accordance with the substantive law for the time being in force. The second sub-head would be when the arbitrator gives no reasons in the award in contravention with Section 31(3) of the A&C Act. The third sub-head deals with contravention of Section 28(3) of the A&C Act which states that the Arbitral Tribunal shall decide all cases in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction. This last sub-head should be understood with a caveat that the arbitrator has the right to construe and interpret the terms of the contract in a reasonable manner. Such interpretation should not be a ground to set aside

the award, as the construction of the terms of the contract is finally for the arbitrator to decide. The award can be only set aside under this sub-head if the arbitrator construes the award in a way that no fair-minded or reasonable person would do."

67. Recently, the Apex Court in **AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai, (2025) 5 SCC 321** has held as under:-

"29. The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, para 52] The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds specified in Section 34 and the court cannot undertake an independent assessment of the merits of the award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the Arbitral Tribunal. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14; Konkan Railway Corpn. Ltd. v. Chenab Bridge Project, (2023) 9 SCC 85, para 25] The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceeding its scope. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14 : ; Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218, para 26.]

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31. The term “public policy” in Section 34(2)(b)(ii) has been interpreted by this Court as meaning (a) the fundamental policy of Indian law, or (b) the interest of India, or (c) justice or morality. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644, para 66] In ONGC v. Saw Pipes Ltd. [ONGC v. Saw Pipes, (2003) 5 SCC 705] , this Court further held that an arbitral award can be set aside as being contrary to public policy if it is patently illegal. The illegality must go to the root of the matter and must be so unfair and unreasonable that it shocks the court's conscience;

> it cannot be of a trivial nature. [Id, para 31; McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, para 59.] Such patent illegality includes a situation where the award is in contravention with substantive law. [ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705, para 54; Associate Builders v. DDA, (2015) 3 SCC 49, para 42.1]
>
> 32. Further, an award can be set aside as being opposed to the "fundamental policy of India" if it is perverse, [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263, para 39] i.e. the finding is not based on evidence, or the Arbitral Tribunal takes something irrelevant into account, or ignores vital evidence. [Associate Builders v. DDA, (2015) 3 SCC 49, para 31] However, an award is not perverse if the finding of fact is a possible view that is based on some reliable evidence. [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10, para 10 : as cited in Associate Builders v. DDA, (2015) 3 SCC 49, paras 32-33 : (2015) 2 SCC (Civ) 204.]"

68. Taking note of the perimeter set out by the Apex Court in the aforesaid decisions, it will now be apposite to consider the submissions of the respective parties.

69. The primary contention of the learned counsel for the appellant revolved around construction of clauses, rights and obligation flowing from the contract to submit that the third parties were sub contractors who had been engaged without the prior written consent of the appellant and not consultants. Hence, their engagement was de hors the contract. Consequently, any amount payable by the respondent to the said third parties were at the peril of the respondent and could not be extended or fastened on the appellant.

70. In order to appreciate the aforesaid contention, it will be apposite to reproduce Clauses 12.2, 27.5 and 27.6 of the mining contract and the same reads as under:-

> "12.2 Subcontracting and Assignment

(a) The Mine Operator may, with the prior written approval of the Mine Owner's Representative, enter into subcontracts for the execution of any part of the Mining Services, which shall not be unreasonably withheld. However, subcontracting of "Overall Mine supervision and management" would not be allowed.

(b) The Mine Operator shall at all times remain solely responsible and ilable for all acts, omissions, and other failures of any of its employees, personnel, or other persons that it subcontracts any of its obligations hereunder and any actions on the part of such person shall be attributable to the Mine Operator. The Mine Owner shall interact only with the Mine Operator for all matters related to the performance of this Agreement.

(c) The Mine Operator shall at all times ensure that its subcontractors comply with all Applicable Laws including those related to industrial relations, sofety and environment. For the voidance of doubt, it is clarified that any and all subcontracting activities shall be in compliance with the Contract Labour (Regulation and Abolition) Act, 1970. It is expressly clarified that for the purposes of the Contract Labour (Regulation and Abolition) Act, 1970, the "principal employer" shall be deemed to be the Mine Manager and not the Mine Owner. In this regard, the Mine Operator agrees to indemnify and hold harmless the Mine Owner against any claims, costs, expenses, damages and charges levied or incurred by the Mine Owner in relation to any non-compliance by the Mine Manager, the Mine Operator or any of its subcontractors, of any provision of the Contract Labour (Regulation and Abolition) Act, 1970.

(d) In the event that the Mine Operator appoints a subcontractor with the approval of the Mine Owner, the Mine Operator shall continue to be solely responsible for all its obligations. The Mine Owner shall interact only with the Mine Operator for all matters related to the performance of this Agreement. The Mine Owner, if the situation so warrants, under emergency conditions, and in the event the Mine Owner, acting reasonably, belleves that any act or omission is a or potentially may result in (a) the commission of an illegal act; (b) safely or environmental issues

relating to the Project; may interact, Instruct and direct the sub-contractors and the Mine Operator shall ensure that the sub-contractors are required to follow all such directions of the Mine Owner. The Mine Owner shall at all times keep the Mine Operator informed of any such direct interactions with the sub-contractors. It is clarified that such direct interactions will not absolve the Mine Operator from its responsibilities and obligations specified in the Agreement. Further any direction, instruction given to the sub-contractor shall be complied by the Mine Operator as if directly given to the Mine. Operator

(e) The Mine Operator shall, in the event of any industrial disputes, labour unresis etc involving the Mine Operator's workforce on the Site (but not the Mine Owner's employees), ensure that the Mine Operator is able to meet its delivery obligation in regard to the Monthly Contracted Quantity (MCQ). Further, under this clause the Mine Operator shall be responsible to maintain the MCQ only for those scenarios where the Industrial dispute, labour unrest has arisen on account of reasons attributable to the Mine Operator. For the purpose of this clause where the Mine Operator fails to maintain and achieve delivery obligations of MCQ leading to shortfall in delivery then the provisions for penally on account of shortfall in delivery shall be applicable.

The Mine Operator shall not, without the express prior written consent of the Mine Owner, assign to any third party, except in favour of Lenders for financing the Project, the Agreement or any part thereof, or any right, benefit, obligation or interest therein or thereunder.

Further, the Mine Owner shall also not assign any part of the scope of work which forms part of this agreement to any third party without the express consent of the Mine Operator.

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27.5 Approval or Consent requirements

Unless otherwise expressly provided in this Agreement, where a Party's approval or consent to any act or matter is required under this Agreement:

(a) the approval or consent shall be in writing;

(b) the approval or consent shall be obtained prior to the act or matter to which it relates;

(c) the approval or consent may be refused, given unconditionally, or given subject to conditions in the discretion of the Party giving it; and

(d) the Parties shall not be unreasonable in refusing, delaying or Imposing conditions on its approval or consent.

27.6 No Implied approval by the Mine Owner

The Mine Operator acknowledges that no comment, review, representation, vatting, inspection. testing or approval by the Mine Owner or the Mine Owner's Representative in respect of the Mine Operator's obligations under this Agreement shall lessen or otherwise affect the Mine Operator's obligations under this Agreement."

(emphasis supplied)

71. As far as the aforesaid clauses are concerned, it leaves no doubt that in order to engage or employ a sub contractor, the respondent was required to take a prior written consent of the appellant.

72. It is also not in dispute that the contract did not envisage any system of deemed or implied consent rather it stipulated that the consent had to be expressed in writing.

73. The record would further indicate that the Tribunal had clearly delineated the differences between a 'contractor' in contradistinction, to a 'consultant'. It could not be disputed that the clearances which were required to be procured under the mining contract, entailed specialized and expert studies, preparation of complex reports, monitoring handling and execution of development work which inter alia required environmental impact studies and such specialized work could not be done by a sub-contractor as usually understood but could be done by specialized consultants who are domain experts.

74. It also could not be disputed that though the contract prohibited engagement of a sub-contractor but it did not create any embargo on hiring a consultant. It was a consistent case of the respondent that it did not engage any sub contractor rather it engaged consultants for carrying out specialized studies which were necessary to obtain the required approvals and clearances and only thereafter the development of the mine could commence.

75. The respondent during the evidence stage before the Arbitral proceedings had examined their witness who was cross-examined by the appellant and the said witness clearly stated that the third party agencies were consultants and not sub contractors.

76. The record would also indicate that the appellant had also sent a letter to the Ministry of Coal dated 04.02.2015 wherein it had referred to the progress made by the appellant with the aid of the respondent mine operator. The said letter clearly referred to the studies which had been made and submitted by M/s Vimta, M/s Hydro and PMC.

77. The witness who appeared on behalf of the appellant before the Arbitral Tribunal clearly admitted the fact that the claimants were aware of the reports submitted by the experts. The said witness also admitted the fact that even though the studies submitted by the Specialized Agencies were available with the appellant and were submitted by the respondent but at no point of time, the appellant objected to the same or flagged the issue with the respondent regarding engagement of these agencies (sub contractors as alleged by the appellant) without prior written consent of the appellant.

78. This Court finds that the Tribunal has referred to the oral as well as documentary evidence copiously to arrive at a finding that the contract did not prohibit the engagement of a consultant. It also recorded a finding that the third party entities were consultants and not sub-contractors and that the appellant was aware of their engagement and the work done by them which was filed and submitted by the respondent

while submitting its progress report with the appellant, and the appellant did forward the said progress reports and studies to the Ministry of Coal.

79. In light of the said overwhelming evidence indicating the manner in which the contract was understood and acted upon by the parties, a view has been subscribed by the Tribunal which cannot be said to be without supporting evidence or it is a view which cannot be culled out from the terms of the contract by any prudent person.

80. Merely because another view may be possible it will not persuade this Court to overstep its jurisdiction to enter into the arena of re-appraisal and re-appreciation of evidence and interfere with a pure finding of fact, which relates to the construction of a contract entered between the parties, moreso when the oral evidence and the cross-examination of the witnesses clearly amplified the manner in which both the contracting parties understood and proceeded with the contract.

81. In the instant case, the Tribunal has taken note of the rival submissions, the material on record as well as the evidence to give a cogent construction to the terms of the contract which cannot be said to be perverse. For the said reasons, the decisions cited by learned counsel for the appellant in PSA, Sical Terminals Pvt. Ltd. (supra), SEAMAC Limited (supra) and Sal Udyog Pvt. Ltd. does not help the appellant in any manner.

82. In light of the aforesaid discussions, this Court does not find much credence in the submission of the learned counsel for the appellant that the Tribunal has re-written the contract ignoring the import of Clauses 12.2, 27.5 to 27.6 of the mining contract. The plea does not impress this Court, hence, it is turned down.

83. The next ground of attack made by the learned counsel for the appellant is based on the premise that there was no evidence at all worth its name before the Tribunal which could justify the grant of claims and thus the award suffers from the vice of being arbitrary and perverse.

84. In this regard, it will be significant to note that the respondent had filed a copy of an award dated 20th July, 2017 which was passed by a sole Arbitrator, relating to arbitral proceedings deciding the disputes between PMC against the respondent herein.

85. In terms of the said award, the said Arbitral Tribunal had awarded a sum of Rs. 125 crores in favour of PMC against the respondent. At the time when the instant award was made by then, the respondent had challenged the award in favour of the PMC before the Competent Court in Ahmedabad and it is for the said reason that in the instant proceedings, the Tribunal though awarded the reimbursement of a sum of Rs. 125 crores which was a liability crystallized in the arbitral proceedings between PMC and the respondent but since that was under challenge in proceedings under Section 34, at the behest of the respondent, accordingly, the payment of interest thereon was deferred while making the award, which is under challenge before this Court.

86. It will also be relevant to point out that even though the said award was placed on record of the instant arbitral proceedings and the respective parties had led their evidence while the respondent had connected the said award in their evidence through their witness, and it was noticed that the payment was to be made by the respondent to PMC, based on milestone achieved and the same has been considered by the Arbitral Tribunal in paragraphs 7.81 to 7.84 of the award dated 20th November, 2018.

87. The record also indicates that the respondent inter-alia had filed the work order given to PMC dated 04.11.2010 marked as Exbt. C-86, coupled with the fact that it was not the case of the appellant that PMC had not done the work rather the record would reflect that the appellant was very well aware of the work done by PMC and once the award passed in favour of the PMC was brought on record of the instant arbitral proceedings, this being a judicial determination was a credible piece of evidence to establish the liability of the respondent especially when there was no contrary evidence against it. Moreover, it could not be

demonstrated as to how the said arbitral award would not be admissible or the findings recorded therein would not bind the respondent i.e. A.E.L.

88. The record clearly reflects that the respondent before the Arbitral Tribunal had filed the copy of the work order issued to PMC, several letters exchanged between PMC and A.E.L. The copy of the award was also produced on record bearing Exbt-C-92. Along with the award, the respondent had filed a copy of the statement of claim filed by PMC including the supporting documents filed by PMC in the arbitral proceedings. A copy of the affidavit of the Authorized Signatory of A.E.L which was filed in evidence in the arbitral proceedings between PMC and A.E.L. was also filed.

89. In light of the aforesaid documentary evidence, there was ample material before the Arbitral Tribunal which has been considered and it is not the case of the appellant that the aforesaid documents were not connected by the respondent in their evidence. It is also not the case of the appellant that they were not permitted to cross-examine the respondent-witness. Thus, in case if the opportunity was granted which was not availed or even if availed, nothing substantial could be elicited which could cast a doubt over the said documents, in such circumstances, it cannot be said that it is a case of no evidence.

90. An Arbitral Award, which is placed on record of another arbitral proceedings, can be a highly important piece of evidence. Though, its evidentiary value and weight given to such evidence may differ from case to case but the fact remains that it is not as if the said document does not have any evidentiary value at all. The said award passed in favour of the PMC against A.E.L., is relevant evidence and has presumption of its correctness unless it can be shown by a party to be false or incorrect.

91. As noted above, nothing could be demonstrated on behalf of the appellant to indicate that the findings recorded in the said award between

PMC and A.E.L. suffered from any error in the sense that in light of the pleadings and evidence (which was filed by A.E.L. in the current arbitral proceedings including the statement of claims and other evidence as mentioned above) and moreover an award which has the backing of a statute and unless challenged attains a status of a decree, hence, becomes admissible and unless shown to be incorrect, the same would have high probative value.

92. In the aforesaid background this Court finds that the Arbitral Tribunal is vested with the power and discretion to deal with the evidence and it has been exercised correctly. The Arbitral Tribunal is not bound by strict rules of procedure or evidence, hence, by taking note of the aforesaid material, it has returned findings which per se are supported by the evidence and it cannot be said to be perverse.

93. It is also an undisputed fact that though the respondent had challenged the award passed in favour of PMC before the Commercial Court at Ahmedabad, however, the said petition filed by the respondent was dismissed by means of order dated 04.05.2023 and the same has attained finality.

94**.** In this backdrop, merely because the work order issued by the respondent to PMC indicated that the payments would be made against the invoices but the invoices were not placed on record it would not be sufficient to defeat the claim of the respondent especially when the award passed in the arbitral proceedings between PMC and the respondent was placed on record and this very basis was also used by the appellant to submit the claims before the Ministry of Coal and it clearly delineated that the payment to be made by respondent to PMC was based on milestones. Accordingly, it cannot be said that there was no evidence on record to support the findings returned by the Tribunal or that this aspect has been overlooked by the Commercial Court. It is one thing to say that the finding may not be supported by any evidence and it is

another thing to urge that on the basis of the evidence, the inference drawn by the Tribunal is erroneous.

95. In light of the aforesaid, the submissions of the learned counsel for the appellant appears to be unsustainable as the thrust of the submission to attack the grant of claims was on the premise that there was no evidence on record whereas from the perusal of the record and the award it would reveal that the respondent had led sufficient evidence to support their claims.

96. Accordingly, the decision, cited by the learned counsel for the appellant, of Delhi Metro (supra) is not applicable as it is not a case where the finding of the Tribunal is based on no evidence or that the Tribunal has referred and based its findings on irrelevant material or that vital evidence has been omitted, thus, for the said reason, the aforesaid submissions does not find favour with this Court.

97. The last submission of learned counsel for the appellant relating to the discrepancies in the CA certificates may not detain this Court for long for the reason that the certificates issued by the Chartered Accountant was considered by the Arbitral Tribunal in paragraphs 7.90 of the award and having referred to the Exbt. C-50 filed with the statement of claims by the respondent. The reference to the oral evidence and cross-examination of the witness explaining the entries as well as the accounting standards in pursuance whereof the entries were made in the certificates also indicating that the rise in the amount was based on account of due cancellation of the allocation of the Chhendipada Coal Block by the Apex Court and the deposits made to the entities as security had turned bad and they had to be accounted for in the books of account and they were reflected in the CA certificates.

98. The record reflects that the respondent had supported its claims by furnishing CA certificates. The said CA certificates certified that they have been issued after verification of the relevant documents and books of accounts. The Tribunal has accepted the same and merely because the

author of the said certificates may not have been examined it will not per se render the said CA certificates to be inadmissible especially when the same were not challenged nor an objection relating to the said CA certificates was raised and further the appellant could not demonstrate as to any discrepancy or incorrectness in the said certificates either during the cross-examination of the witness or otherwise.

99. Since, the Arbitral Tribunal is not bound by strict rules of evidence, it has the discretion to rely upon the said documents which has been done and there is nothing on record to show that the appellant ever objected to its admissibility or to its probative value. The genuineness of the CA certificate was not under cloud and it was also not demonstrated that the said certificates were not issued in context with standard accounting practice.

100. Thus it cannot be said that the Tribunal incorrectly relied upon the CA certificate and for the said reason, the findings of the Tribunal are perverse. Hence, this Court is not inclined to interfere with the award on this ground as well.

Conclusions:-

101. For the aforesaid detailed discussions, this Court is of the clear opinion that the award passed by the Tribunal dated 20.11.2018 and the order passed by the Commercial Court-I, Lucknow dated 31.03.2023 does not fall foul of the patent illegality or being against the public policy test, hence, the appeal is dismissed. There shall be no order as to costs.

(Jaspreet Singh, J) ***(Arun Bhansali, CJ)***

Order Date :-23.09.2025
Asheesh/