2026:CHC-OS:81-DB

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)
ORIGINAL SIDE

Present:
The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

APOT No. 298 of 2025

GA-COM/1/2025

GA-COM/2/2025

ITD-ITD CEM Joint Venture

Vs.

Kolkata Metro Rail Corporation Limited

For the appellant	:	Mr. Jishnu Saha, Sr. Adv. Mr. Anal Kumar Ghosh, Adv. Ms. Hashnuhana Chakraborty, Adv. Ms. Neelina Chatterjee, Adv. Ms. Ahana Bhattacharya, Adv.
For the respondent	:	Mr. Jishnu Chowdhury, Sr. Adv. Ms. Sreya Basu Mallick, Adv. Mr. Chayan Gupta, Adv. Mr. Ankit Dey, Adv. Mr. Atri Mandal, Adv. Mr. Subhrojit Mookherjee, Adv.
Hearing concluded on	:	12.02.2026
Judgment on	:	12.03.2026

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Md. Shabbar Rashidi, J.:-

1. The instant appeal under Section 37 of Arbitration and Conciliation Act, 1996 is in assailment of judgment and order dated October 31, 2025 passed in AP-COM No. 381 of 2024.

2. By the impugned judgment and order, the learned Single Judge allowed the challenge to the Arbitral Award at the behest of respondent herein, under Section 34 of the Act of 1996, setting aside the arbitral award dated August 6, 2023, impugned therein.

3. In course of hearing, the learned Senior Advocate for the appellant submitted that the impugned order suffers from patent illegality, perversity and is liable to be set aside. The learned Single Judge erred in holding that the award of the Arbitral Tribunal was perverse, contrary to evidence on record and patently against the public policy. In fact, the learned Single Judge failed to appreciate the evidence on record in its true perspective.

4. Learned Senior Advocate further argued that while deciding the application under Section 34 of the Act of 1996, learned Single Judge proceeded on erroneous and irrelevant considerations and failed to exercise the jurisdiction vested in it. The learned Single Judge did not apply the settled position of law on the subject with reference to the jurisdiction under Section 34 of the Act. It was also contended that the impugned judgment and order was passed merely on the basis of submissions made on the part of the respondents herein

whereas, the submissions advanced by the appellants herein were completely ignored by the learned Single Judge. The learned Single Judge came to an erroneous conclusion that the impugned award did militate against Section 34 (2) (b), Explanation-I Sub-clause (ii) and (iii) of the Arbitration and Conciliation Act, 1996.

5. Learned Senior Advocate further submitted that the learned Single Judge erroneously held that a judge cannot impute his personal knowledge into the adjudicatory process. Merely the members having an experience in general civil engineering and one of the members of the Arbitral Tribunal being an alumnus of IIT, Delhi could not enjoy any special status as a member of the tribunal insofar as the disputes involved in the arbitration was concerned. In support of such contention, learned Senior Advocate relied upon ***(2012)1 Supreme Court Cases 594 (P.R. Shah Shares and Stock Brokers Private Limited Vs. B.H.H. Securities Private Limited and Others)***.

6. Learned Senior Advocate for the appellants also submitted that the learned Single Judge did not take into consideration the settled position of law that construction of the contract by an Arbitral Tribunal was not liable to be interfered with. It was also submitted that the learned Single Judge failed to take into consideration that the findings of Arbitral Tribunal on issues of facts could not have been really apprised. The findings of an Arbitral Tribunal if based on plausible view cannot be interfered with, unless the tribunal is found

to have ignored the evidence on material facts. The learned Single Judge was not justified in substituting its own views otherwise than arrived at by the arbitral tribunal. The impugned award was based on plausible reasoning and was in consonance with the settled proposition of law and was not liable to be set aside in exercise of jurisdiction under section 34 of the Act of 1996.

7. Learned Senior Advocate for the appellant further submitted that the learned Single Judge failed to appreciate that the incident occurred on August 31, 2019 and immediately thereafter the appellants engaged expert agencies for analyzing the causes of such incident whereas the respondents engaged IIT Madras for the said purpose after about 900 days of the incident i.e. when the Tunnel Boring Machine (TBM) which was stuck in the mud was retrieved after cutting into pieces. The learned Single Judge was also not justified in discarding the expert report on the ground that such reports were prepared subsequent to the commencement of the arbitral proceeding, after a considerable delay of the happening of the incident.

8. Learned Senior Advocate for the appellant further submitted that the learned Single Judge erroneously accepted the report prepared by IIT Madras regarding the analysis of the causes of the incident in so far as the IIT Madras had no expertise and it engaged a foreign expert Dr. G. J. Page. The said tunnel expert Dr. G. J. Page did not did not furnish any report on his own. According to learned Senior

Advocate for the appellant, the learned Single Judge did not take into consideration that IIT Madras did not visit the TBM or the place of incident and submitted its report solely based on the materials supplied by the respondent including the photographs of the tail seal brushes taken by Dr. Lee Blade. It was contended that learned Single Judge did not appreciate that the Arbitral Tribunal considered the entirety of the report prepared by IIT Madras and found the same to be without basis or justification and was contrary to the observations made in the report with regard to the poor quality of the photographs on which the report proceeded. Since the findings of the Arbitral Tribunal was based on meticulous consideration of all the reports filed on behalf of the respondent, the learned Single Judge was not justified in discarding such report which, in turn, was reappraisal of evidence and was surely beyond the scope of Section 34 of the Act of 1996.

9. Learned Senior Advocate for the appellant further submitted that the learned Single Judge was not justified in holding that there was seizure in adequacy of greasing on the part of the appellants' personnel who were engaged in operating the TBM. The learned Single Judge did not appreciate the entire report given by Surbana Jurong and relied upon a truncated portion of such report. It was also contended that the learned Single Judge did not appreciate that the appellants engaged experts to analyze the causes of the incident immediately after the incident whereas the respondent approached IIT

Madras for a report which was intended to be used in the arbitral proceeding as a defense, much after the incident. The reports filed on behalf of the appellant were unjustifiably discarded by learned Single Judge. Learned Senior Advocate for the appellant also contended that the learned Single Judge overlooked vital evidence to the detriment of the appellants.

10. The learned Senior Advocate also argued that the learned Single Judge was not justified in holding that the Arbitral Tribunal misapplied the provisions of Section 18 of the Act of 1996. The learned Single Judge erroneously held that the Arbitral Tribunal did not take into consideration the report which exhibited that the incident occurred due to erroneous handling of TBM both on account of improper maneuverability and inadequate greasing of tail skin brushes. Reappraisal of evidence was not within the jurisdiction of the learned Single Judge within the realm of Section 34. The findings of the Arbitral Tribunal were based on plausible reasoning which could not have been interfered in the jurisdiction under Section 34 of the Act of 1996. Similarly, learned Single Judge erred in holding that rejection of reports was to be looked at on the parameters of validity in law and rationality. Such findings were beyond the scope of challenge under Section 34 of the Act of 1996.

11. It was further contended by learned Senior Advocate for the appellant that the learned Single Judge wrongly held in the impugned

judgment and order that the Arbitral Tribunal overlooked the terms and conditions of the GCC and SCC entered into between the parties. Referring to clause 4.23 of the GCC, learned Senior Advocate for the appellant submitted that the learned Single Judge erroneously came to a conclusion that the said provision of the GCC does not absorb the burden of liability of the appellant contractor even in case of an unforeseen physical condition. It was contended that the findings of learned Single Judge in respect of the liability of the appellant borne out of clause 4.23 of the GCC were self-contradictory. It was also contended that the learned Single Judge took into consideration the terms and conditions of the GCC to the effect that no acts or omissions of the engineer shall relieve the contractor of its contractual duties but at the same time overlooked the condition that the contractor was under obligation to abide by the instructions of the engineer in accordance with the contract.

12. The learned Senior Advocate for the appellant further contended that the learned Single Judge erroneously set aside the arbitral award on the ground that post of retrieval expert reports were not considered by the tribunal and that contractual clauses more specifically clause 4.23 were not considered by it. The arbitral award was also set aside by the learned Single Judge on the ground that it was based on the personal knowledge of London members of the tribunal.

13. The learned Senior Advocate for the appellant, in support of his contentions, also relied upon the authority of ***(2019) 15 Supreme Court Cases 131 (Ssangyong Engineering and Construction Company Limited Vs. National Highways Suthority of India)***, ***2025 SCC OnLine SC 2857 (Ramesh Kumar Jain Vs. Bharat Aluminum Company Limited)***, ***(2025) 2 Supreme Court Cases 417 (OPG Power Generation Pvt. Ltd. Vs. Enexio Power Cooling Solutions India Pvt. Ltd. And Another)***, ***2026 SCC OnLine SCC 33 (Jan De Nul Dredging India Pvt. Ltd. Vs. Tuticorin Port Trust)***, ***(2023) 9 Supreme Court Cases 825 (Konkan Railway Corporation Limited Vs. Chenab Bridge Project Undertaking)***, ***2024 SCC OnLine SC 2632 (Punjab State Civil Supplies Corporation Limited & Anr. Vs. Sanman Rice Mills & Ors.)***, ***(2009) 10 SCC 259 (Som Datt Builders Ltd. v. State of Kerala)*** and ***(2019) 20 SCC 1 (Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.)***.

14. On the other hand, learned Senior Advocate for the respondent submitted that the Arbitral Tribunal accepted the pre-retrieval reports. The post retrieval reports submitted on behalf of the respondents as an evidence in the arbitral proceeding were not considered and were brushed aside without assigning any reason. Learned Senior Advocate for the respondent referred to clause 14.5 and clause 14.9 of the GCC. It was submitted by learned Senior Advocate for the respondent that the impugned arbitral award

suffered from manifest perversity and learned Single Judge was quite justified in setting aside the impugned arbitral award. The learned Senior Advocate for the respondent cited the authorities of ***2024 SCC OnLine SC 2632 (Punjab State Civil Supplies Corporation Limited & Anr. Vs. Sanman Rice Mills & Ors.)***, ***(2024) 7 Supreme Court Cases 219 (Bombay Slum Redevelopment Corporation Private Limited Vs. Samir Narain Bhojwani)*** and an unreported decision of this Court in ***AP (Com) No. 231 of 2024 (Damodar Valley Corporation Vs. BLA Projects Private Limited)***.

15. Kolkata Metro Rail Corporation Ltd. issued a tender for design and construction of underground section of Metro Railways from Central Station to Subash Sarobar. The appellant ITD – ITD CEM joint venture participated in such tender and was declared successful. Following this, Metrorail and ITD entered into a contract for underground tunnelling. Two tunnel boring machines (TBM) were deployed by ITD for undertaking the contracted project; one TBM was operating East – West and the other in the reverse direction. On August 31, 2019 there was an incident of water ingress in the tunnels where ITD was carrying on the project. Due to such incident, serious damages to the properties above the surface where the tunnels were running occurred leading to the claims being made by the victims of such accident. Several litigations including public interest litigation (PIL) were initiated and various directions were passed in such

litigations by the Court. On the basis of such directions, an expert body was constituted to analyze the causes of such incident in order to fix the liability. Such body of experts submitted its report.

16. In view of the disputes arising between the parties with regard to the liabilities for such accident, ITD initiated an arbitration proceeding against Metro Railways. A three member Arbitral Tribunal was constituted. Such arbitral tribunal, upon considering the evidence produced by the rival parties, passed an award on August 6, 2023. Such award was challenged by Metro Railways under Section 34 of the Arbitration and Conciliation Act, 1996 by way of AP – COM No. 381 of 2024 which resulted in the impugned judgment and order.

17. A perusal of the impugned judgment and order demonstrates that the learned Single Judge while disposing of AP – COM No. 381 of 2024, observed the following:

> *"**56.** In Paragraph 121 of the impugned award, the AT observed that it was there to judge the issues from the "engineering point of view". While admitting that engineering is not a pure science but an applied science with a lot depending on design constants and coefficients based on past experience, the AT held that it is possible that after the present incident also, some of the coefficients and constants could stand modified like the additional modifications in carrying out the work after the incident. The AT further observed that those are preponderances of probabilities with improvements to cover any further unforeseeable physical condition. It admitted in Paragraph 121 of the award that these improvements have no end and no one can be sure if*

these could have contributed to the safe passage of TBM-2 (the other TBM deployed from the reverse end) or were just superfluous additional safeguards. However, thereafter it held that none of the theories could put a definite blame on the claimant's conduct on the date of accident. While discarding the IIT, Madras report, in sub-clause (ag) of Paragraph 112 of the impugned award, the AT observed that since all the three Arbitrators are civil engineers with more than 40 years of experience and one of them has a post-graduate degree in geo-technical engineering from IIT, Delhi, such "professional knowledge" made them differ with the report as SPT values can be misleading and in case of saturated silty soils, even when the soil is weak, SPT values obtained can be quite high and should not be relied upon in isolation unless corroborated with other tests. It was suggested that internal erosion cannot be ruled out.

57. *The premise of the said consideration is entirely de hors the fundamental policy of Indian Law. It is well-settled that a Judge cannot impute his personal knowledge into the adjudicatory process. The moment personal knowledge comes in and replaces material evidence presented by the parties, the objective consideration of the body of evidence, irrespective of the biases and prejudices of the Judge (read 'AT' in the present context), are excluded.*

58. *Merely having experience in general civil engineering and/or one of the AT members being an alumnus of the IIT, Delhi did not confer any special status on the AT members insofar as the dispute involved in this particular arbitration proceeding is concerned. In their capacity as members of the AT, which is a quasi-judicial body, the individual expertise of the AT members cannot supplant tangible evidence produced by the parties. It might very well be that the technical qualifications of the AT members earned them a spot in the*

Tribunal in the first place, but once the members assumed the role of Arbitrators, they were statutorily duty-bound to undertake a quasi-judicial exercise and could not hold any individual opinion or pre-conceived notion but were duty-bound in law to adjudicate solely on the basis of the materials produced by both parties and the terms of the contract between them.

59. *The moment the personal opinions, professional or otherwise, of the Judge or Tribunal comes into play, one of the fundamental policies of Indian Law is hit, being that one cannot be the Judge in his own cause. The "cause", in the present case, is the opinion of the AT members as professionals, the authenticity, relevance and worth of which was decided by the AT members themselves while deciding the contentious issues before them. Such approach on the part of the AT was clearly against the fundamental policy of Indian Law as well as contrary to basic principles of justice and judicial morality, thereby bringing the award within the fold of Section 34(2)(b)(ii), Explanation I, sub-clauses (ii) and (iii)."*

18. In the impugned order, as it transpires, personal knowledge of the members of the Arbitral Tribunal was imputed to discard an evidence adduced on the part of respondent herein i.e. the report submitted by IIT, Madras regarding the possible cause of the incident. Professional knowledge of the members of the AT made them differ with the report as SPT values could be misleading and in case of saturated silty soils, even when the soil is weak, SPT values obtained can be quite high and should not be relied upon in isolation unless corroborated with other tests. It was suggested that internal erosion

cannot be ruled out. Such opinion was expressed by the members of AT which was solely based on their alleged personal expertise in the field and was not at all based on any definite scientific reasoning. Moreover, such reasoning ought to have been based on definite imputation saying 'should not be relied upon' instead of 'must not be relied'. In such view of the facts, we are not in a position to say that the findings arrived at by learned Single Judge was perverse or not based on plausible reasoning.

19. The other objection that was raised by the respondent, in its challenge under Section 34 of the Act of 1996 and accepted by the learned Single Judge was that the parties were not treated equally. The evidence in the form of reports submitted by the appellant herein whereas that produced on behalf of the respondent was discarded merely on the ground that such reports were prepared during the continuance of arbitral proceeding prepared for the purpose of putting up a defense. The learned Single Judge analyzed the issue in the following terms:

> *"61. There is not an iota of pleading or proof assailing the integrity, independence and expertise of the authors of the reports produced by either party, nor did the AT come to any such finding. The primary premise of discarding the expert reports produced by the Metro Railways was that those were prepared subsequent to the commencement of the arbitration proceeding, much after the fateful incident, for the purpose of preparing the defence of Metro Railways.*

> *62. However, none of the said premises are valid in law. The obvious reason for the delay in issuance of the said reports, about nine hundred days after the incident, was that the experts who authored those waited for the retrieval of the concerned TBM, which had to be cut into pieces over a long period of time spanning almost three years and recovered from underground, along with soil samples. Even in the report authored by Subarna Jurong, which was relied on by ITD itself, it was clearly stated that the actual cause of accident could be ascertained only after the retrieval of the TBM, thus lending justification to the waiting period for retrieval of the TBM."*

20. The respondent Metro Railways came up with a definite case that the TBM was operated unprofessionally and incorrectly, as well as that there was severe inadequacy of greasing on the part of the ITD personnel. Such allegations were elaborately discussed in the reports submitted on behalf of the respondent and the experts came to conclude that the huge quantity of grease consumed at the relevant juncture, coupled with the erroneous alignment of rings laid by TBM in its route of boring, which deviated about eighty-eight per cent from the correct alignment as per the said reports, were sufficient proof that the TBM was not being manoeuvred properly and there was excessive wear and tear on the tail skin brushes aligning the TBM, which stood between the unwarranted influx of soil, grout, etc. into the machine from outside. A comparative study of the other TBM deployed at the sight was produced as evidence by the respondent Metro Railway to

establish that excessive requirement of grease and frequent change of tail brushes indicated that the tail brushes were worn off much more frequently than the normal. Such evidence, according to the respondent, established that the particular TBM was not being operated with due care as was required. The personnel of the appellant overlooked and ignored the indications. Therefore, the reports established that the appellant did not handle the TBM with proper care and caution resulting in the mishap.

21. The learned Single Judge also held that there was in fact, no delay in producing the report. Such report was prepared immediately after the retrieval of the TBM. Moreover, the reason for discarding the expert report by the Arbitral Tribunal was shown to be based on unreliable photographic evidence. However, learned Single Judge found the reports submitted by IIT, Madras and IIEST Shibpur to be prepared on the basis of physical examination of recovered parts of the TBM as well as its report together with the soil conditions. The learned Single Judge also took note that even Dr. Lee Blade who had stated that the photographic evidence was unreliable; himself was present at the site of recovery of the TBM and did not rely solely on the photographic evidence to form his opinion. The learned Single Judge thus observed that,

> *"68. These aspects of the matter were not gone into by the AT at all, which discarded the entire body of expert evidence filed by Metro Railways at the stroke of a pen, holding that such*

reports were not independent reports, since they were prepared subsequent to the commencement of the case for the purpose of defending the case and also that those were belated. As observed earlier, the delay in furnishing the reports corresponded with the delay in retrieval of the TBM and those were filed at the earliest thereafter. The TBM was completely recovered only after commencement of the arbitration proceeding, which was the reason for belated submission of the post-retrieval reports.

69. The logic that the said post-retrieval reports were prepared at the behest of the respondent/petitioner-Metro Railways for preparing their defence equally applies to the reports furnished by the claimant/ITD. It is quite obvious that both parties filed reports in support of their respective cases for the obvious reason that expert reports would be the best evidence to resolve the dispute. However, the integrity, independence and professional acumen of none of the experts/expert bodies who/which authored the reports was even challenged, let alone being tarnished by evidence. Thus, the said logic could not have been a valid or rational ground for discarding the post-retrieval reports filed by the Metro Railways altogether while accepting the pre-retrieval reports produced by the claimant/ITD.

70. It has be borne in mind that the reports were all authored by experts in their field, which view was even reiterated by the AT in different places of the award. However, the AT proceeded to junk Metro Railways' reports on frivolous grounds while accepted those of the claimant/ITD, by applying different parameters, hence depriving one of the parties of level playing ground."

71.Thus, the application of double standards attracts the violation of Section 18 of the 1996 Act and tantamounts to perversity, which, according to Associate Builders (supra)6,

comes within the purview of "patent illegality" as introduced under sub-section (2-A) of Section 34 of the 1996 Act by the 2015 Amendment, which is applicable to the present lis."

22. In ***P.R. Shah, Shares & Stock Brokers (P) Ltd.*** (supra), the Hon'ble Supreme Court noted that,

> *"22. The appellant contends that the Arbitral Tribunal had used personal knowledge to decide the matter. Attention was drawn to the following observation in the award by the majority:*
>
> > *"Also, it is known fact which is known to the arbitrators that as per the market practice such kind of transactions of one broker takes place with another broker either in their own name or in their firm's name or in the name of different entity which is also owned by the member. Same way these transactions are done by Respondent 2 (the appellant herein) in the name of Respondent 1 (the second respondent herein)."*
>
> *23. An Arbitral Tribunal cannot of course make use of its personal knowledge of the facts of the dispute, which is not a part of the record, to decide the dispute. But an Arbitral Tribunal can certainly use its expert or technical knowledge or the general knowledge about the particular trade in deciding a matter. In fact, that is why in many arbitrations, persons with technical knowledge, are appointed as they will be well-versed with the practices and customs in the respective fields. All that the arbitrators have referred to is the market practice. That cannot be considered as using some personal knowledge of facts of a transaction to decide a dispute."*

23. In the case at hand, we have noted that the arbitral tribunal, while deciding the issues, imputed its personal expertise in civil engineering and concluded that the report submitted by IIT, Madras may not be conclusive and it was dependent upon several other factors. However, such findings were not based on any concrete evidence rather, it was mere assumption based on the personal knowledge and experience of the tribunal and the same was used to discard positive evidence adduced by the respondent.

24. The learned Single Judge observed that the Arbitral Tribunal discarded the report submitted on behalf of Metro Railways holding that such reports were not independent reports, since they were prepared subsequent to the commencement of the case for the purpose of defending the case and also that those were belated. As noted above, the delay in furnishing the reports corresponded with the delay in retrieval of the TBM and those were filed at the earliest after such retrieval. It also held that if the report submitted by the respondent Metro Railways was liable to be cast-off on the ground of delay then same logic applied to the report submitted on behalf of the appellant ITD.

25. In that view of the facts, we are of the opinion that the finding of learned Single Judge to the effect that the reports produced on behalf of the respondent Metro Railway were unreasonably discarded,

cannot be said to be perverse or beyond the scope of Section 34 of the Act of 1996.

26. Another issue raised by the appellant that the learned Single Judge, erroneously held that the Arbitral Tribunal turned the contract on its head. The learned Single Judge noted various provisions of the contract between the appellant ITD and the respondent Metro Railways. The impugned judgment and order noted Clause 4.23 of the GCC with regard to liability in unforeseen physical condition. Learned Single Judge noted that no report in writing, in terms of such clause, was brought on record by the appellant. It further noted that even if such unforeseen physical condition had been reported by the appellant, it would not have absolved its liability towards third party risk**.** It also noted that as per Clause 4.9 of the GCC and Clause 5 (first paragraph) of the SCC, the Contractor was to carry out soil investigation and it would be deemed that it was satisfied of the same, before putting in the tender itself. The learned Single Judge noted that in the present case, a GIR was prepared by Subarna Jurong on the basis of Constell's report, which was preceded by a soil investigation at the instance of the Contractor through its agents. Thus, the presumption was, as per the contract between the parties, the Contractor was duly satisfied with the soil condition before entering into the Contract.

27. The impugned judgment and order also noted the relevant clauses of the contract towards third party liability in the following terms, that's to say: -

> *"**83.** The next important condition of the contract between the parties is encapsulated in Clause 3.4 of the GCC, in the third paragraph of which it is provided that no acts/omission of the Engineer (GC) shall relieve the Contractor of its contractual duties, responsibilities, obligations and liabilities.*
>
> ***84.** Clause 4.1 of the GCC, in its fourth and fifth paragraphs, casts full responsibility and risk on the Contractor for the adequacy, stability, safety of site operations, works, irrespective of approval or consent of the Engineer (emphasis supplied).*
>
> ***85.** The second paragraph of Clause 4.1 of the GCC provides that it is the Contractor which is to design, manufacture and execute the work.*
>
> ***86.** Thus, the very premise of the impugned award, to the effect that Metro Railways did not prove that the GC's instructions were not followed by the Contractor, is an entirely irrelevant and extraneous consideration for deciding the present dispute.*
>
> ***87.** It is clear from the above clauses that, irrespective of any act or omission of the Engineer, the Contractor has the contractual obligation to bear the liabilities for any damage caused to third parties during the project, irrespective of approval or consent of the Engineer. Since the dispute relates to stability and safety of the site operations and the works, the contract casts complete responsibility on the Contractor, which is admittedly a known commercial entity specialized in the field of work involved in the project-in-question and, thus, obviously entered into the contract with its eyes open, taking calculated commercial risks.*

> ***88.*** *The commercial nature of the transaction itself shows that the Contractor took a commercial risk upon assessing and taking into account the soil conditions and other aspects involved and cannot now resile from such position.*
>
> ***89.*** *On the other hand, the role of the GC (the Employer-appointed Engineer) in the project is merely supervisory in nature. Clause 3.2 of the GCC and Clause 2 of the SCC provide that the GC is merely to watch and inspect the works. Clause 15.3 of the GCC stipulates insurance in respect of third-party damages. Clause 14.5 of the GCC is clear in that the Contractor is liable for all risks other than the employer's risks, as enumerated in Clause 14.3 (which are not attracted in the present case).”*

28. After noting the aforesaid clauses of the contract, the learned Single Judge observed that such provisions were completely overlooked by the Arbitral Tribunal which rendered the arbitral award patently perverse. The Arbitral Tribunal was obliged to give due weightage to the terms of the contract and the trade usages prevalent to the nature of the contract. However, the tribunal completely ignored the terms of the contract and turned the entire liability upon the respondent, Metro Railway against the explicit terms of the contract.

29. As discussed, the appellant failed to bring on record any communication made by it in writing with regard to unforeseen physical condition. Moreover, the clauses of the contract specifically affixed any third party liability upon the contractor i.e. the appellant. Nevertheless, by the arbitral award, the respondent was held

responsible for the third party risk upon the respondent Metro Railway, inspite of the specific clauses of the contract. There is absolutely no reason assigned in the award for such shift of liability. In such circumstances, we find no reason to hold that the findings of learned Single Judge are perverse.

30. In ***Ssangyong Engineering & Construction Company Limited*** (supra) Supreme Court noted that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Similarly, in ***Ramesh Kumar Jain*** (supra), the Hon'ble Supreme Court observed that,

> *"35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts. A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference.* ***However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some***

> ***evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence.***"
>
> [Emphasis supplied]

31. As noted above, the Arbitral Tribunal not only overlooked the terms of the contract but also ignored the evidence led by the respondent, and that too, according to the learned Single Judge, with a single stroke of pen without assigning any reason, would surely invite the application of the principle of patent illegality.

32. ***OPG Power Generation (P) Ltd.*** (supra) noted that

> *"84. An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an Arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not intefere. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference."*

33. We have noted hereinbefore that the contract between the parties required the contractor to report in writing, any unforeseen physical condition to the employer. No evidence of such report has been brought on record. Moreover, inspite of such report, according to the contract, the contractor accepted the liability of any third party risk. Nevertheless, the Arbitral Tribunal went beyond the contract and affixed such liability upon the employer i.e. the respondent Metro Railway, apparently without any reason assigned in this regard which rendered the award patently illegal and liable to be set aside.

34. In ***Jan De Nul Dredging Indian Pvt. Ltd.*** (supra) the Hon'ble Supreme Court observed on the jurisdiction under Section 37 of the Act of 1996 in the following terms: -

> *"36. The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view."*

35. Similar ratio was laid down in the case of ***Konkan Railway Corpn. Ltd.*** (supra). The Hon'ble Supreme Court noted the principles

regarding of scope of Section 34 and 37 of the Arbitration and Conciliation Act in following terms: -

> *"18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd. is akin to the jurisdiction of the court under Section 34 of the Act. Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.*
>
> *19. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. , this Court held : (Dyna Technologies case [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , SCC p. 12, paras 24-25)*
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>> *"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.*
>
> *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."*

36. The Hon'ble Supreme Court defined the latitude of Section 37 of the Act of 1996. It laid down that the scope of the intervention of the Court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the Court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to find

out as to whether the decision of the Arbitral Tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary Court of appeal. It is only where the Court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the Appellate Court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in Civil Courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the Appellate Court.

37. In the case at hand, the learned Single Judge was not confronted with a situation that two views were possible and it altered the view accepted by the arbitral tribunal. Rather, the learned Single Judge found that the award was passed completely overlooking the terms of the contract between the parties as well as upon discarding the evidence produced by the respondent without assigning any reason for such rejection. According to learned Single Judge, the reasoning provided by the tribunal in arriving at the conclusion were manifestly against the public policy as well as principles of natural justice and were patently perverse. Nothing has been demonstrated

that in passing the impugned judgment and order, the learned Single Judge exceeded its jurisdiction vested in it under Section 34.

38. In ***Som Datt Builders Ltd.*** (supra) it was held that where the arbitrator has referred to facts of the case and has noticed some reasoning which in view of the arbitrator was sufficient to arrive at a conclusion for granting relief, award cannot be stated to be unreasoned. The arbitrator is not expected to write an elaborate judgment and where the arbitrator has noticed contentions of the counsel, it cannot be said that the arbitrator failed in stating reasons for the award.

39. Similar views were laid down in ***Dyna Technologies (P) Ltd.*** (supra) which noted that the mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

40. In ***Bombay Slum Redevelopment Corpn. (P) Ltd.*** (supra), the Hon'ble Supreme Court laid down that,

> *"26. The jurisdiction of the appellate court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of*

> *the Court dealing with a petition under Section 34. It is the duty of the appellate court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the appellate court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the appellate court can exercise the same power and jurisdiction that Section 34 Court possesses with the same constraints."*

41. Similarly in ***Damodar Valley Corporation*** (supra) it was noted by this Court that while exercising powers under Section 37 of the Act of 1996 we are required to find out whether the Court exercising powers under Section 34 of the Act 1996 acted within its limits as prescribed there under or exceeded or failed to exercise the power so conferred.

42. In the instant case, however, the learned Single Judge proceeded to set aside the arbitral award ostensibly on the ground that the evidence produced by the respondent Metro Railway was discarded without assigning any reason, merely on the ground that it was a stale report prepared belated, after the initiation of the arbitral proceeding. The delay in the retrieval of the parts of TBM was absolutely not taken into consideration by the arbitral tribunal.

43. In the light of discussions made hereinbefore, we are of the opinion that the learned Single Judge did not exceed its jurisdiction or fail to exercise its jurisdiction vested in it under the provisions of

Section 34 of the Act of 1996. Therefore, we find no reason to interfere with the impugned judgment and order.

44. Consequently, the instant appeal being APOT No. 298 of 2025 is hereby dismissed however, without any order as to costs. With the disposal of main case, connected applications, if any, shall also stand disposed of accordingly.

45. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

46. I agree.

[DEBANGSU BASAK, J.]