IN THE HIGH COURT AT CALCUTTA

COMMERCIAL APPELLATE JURISDICTION

ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

AO-COM/6/2025

MINTECH GLOBAL PVT LTD

VS

ULTRA TECH CEMENT LIMITED

WITH

AO-COM/7/2025

ULTRA TECH CEMENT LIMITED

VS

MINTECH GLOBAL PRIVATE LIMITED

For Mintech Global Pvt. Ltd.	:	Mr. Jishnu Saha, Sr. Adv. Mr. Rizu Ghoshal, Sr. Adv. Mr. Sirsanya Bandyopadhyay, Adv. Mr. Soham Kr. Roy, Adv. Mr. Rahul Kr. Singh, Adv.
For Ultra Tech Cement Ltd.	:	Mr. S. N. Mookherjee, Sr. Adv. Mr. Mainak Bose, Sr. Adv. Mr. Debjyoti Saha, Adv. Mr. Shubrojyoti Mookherjee,Adv. Mr. Anirudh Goyal, Adv.
Hearing Concluded on	:	February 13, 2026
Judgement on	:	March 16, 2026

DEBANGSU BASAK, J.:-

1. Two appeals have been heard analogously as they emanate out of the same impugned judgement and order dated November

8, 2024 passed by the learned Single Judge under Section 34 of the Arbitration and Conciliation Act, 1996.

2. For the sake of convenience, the parties in the two appeals, are referred to as claimant and respondent as they were before the Arbitral Tribunal.

3. By the impugned judgement and order, learned Single Judge has partly set aside and modified the arbitral award dated March 20, 2023. Learned Single Judge has set aside the claim from Commitment Charges of the claimant being claim No. A3 and modified the rate of interest on repayment of mobilisation advance from 9% to 14.5%.

4. Learned senior advocate appearing for the claimant has submitted that, the parties entered into a contract dated January 27, 2016. He has contended that, the objective of the contract was setting up of a captive manufacturing unit for cement end products with such manufacturing units being set up solely at the instance and for the captive consumption of the respondent. He has pointed out that the total project investment was of Rs. 65.74 crores, out of which, respondent paid Rs. 31.98 crores as mobilization advance being 50% of the total project investment cost which was repayable by the claimant in 96 equated monthly

installments at the rate of 14.5% interest on reducing balance principals. He has pointed out that, the lock in period was for 10 years and extendable by 6 years. The respondent was liable to utilise 100% of the capacity of the plant.

5. Learned senior advocate appearing for the claimant has contended that, clause 1.10 A of the contract has to be read along with clause 1.7 which provides for Minimum Assured Production (MAP) and Annexure-I which provides for pricing mechanism and for compensation payable to the claimant even in case of zero production. He has contended that, commitment charges were accordingly claimed and awarded on such basis for the balance period of ten years after the respondent stopped supply. According to him, Arbitral Tribunal has correctly held that the payment of commitment charges was the contractual obligation of the respondent.

6. Learned senior advocate appearing for the claimant has contended that, the contract contained an exit clause being clause 1.11 which has to be read with Annexure-III of the contract. He has contended that, exit was permitted only upon six months' written notice coupled with full indemnification and compensation. According to him, exit clause being clause 1.11 did

not override clause 1.10 (A). In any event, the exit clause did not become applicable as the Arbitral Tribunal has correctly held that the contract was not validly terminated.

7. Learned senior advocate appearing for the claimant has submitted that, in terms of the contract, the manufacturing units were set up. Production was underway and the products were being sold to the respondent. However, by two emails dated March 7, 2017 and March 8, 2017, the respondent had asked the claimant to stop procurement of raw materials till further instructions. He has pointed out that, there was no reference to clause 1.11 in the emails. Neither of the emails had constituted a six month's notice. In fact, even after the emails, the respondent had revised the commitment charges in May 2017 and acknowledged liability to pay them. The respondent had continued paying commitment charges till June 2017 but later claimed that they had terminated the contract in March 2017.

8. Learned senior advocate appearing for the claimant has contended that, the respondent had acted in breach of the contract by prematurely exiting the contract before the expiry of the lock in period. The contract contained an arbitration clause, which the claimant had invoked.

9. Learned senior advocate appearing for the claimant has referred to the proceedings and findings of the Arbitral Tribunal. He has referred to the claims raised by the claimant and the counterclaim of the respondent. He has referred to the fact that, the manufacturing plant was operating during the arbitration.

10. Referring to the findings in the impugned judgement and order, learned senior advocate appearing for the claimant has submitted that, the learned Single Judge misread the contract between the parties. He has submitted that, learned Single Judge failed to harmonise the lock in period under clause 1.10 A with the exit clause 1.11. He has contended that, the learned Single Judge has read the exit clause being clause 1.11 in isolation and therefore, rendered the lock in period regulatory and useless surplusage. He has contended that, the learned Single Judge has effectively rewritten the contract between the parties which it cannot do.

11. Learned senior advocate appearing for the claimant has contended that, the learned Single Judge has misread and misapplied the ratio of ***1991 Volume 1 Supreme Court Cases 533 (Indian Oil Corporation Ltd. vs. Amritsar Gas Service and others)***. He has contended that, although the contract

between the parties provided for the contract to be determined at will upon service of a prior 30 days notice, and although compensation payable was limited to the notice period of 3 months, there was no lock in period in the case of ***Amirtsar Gas Service (supra)***.

12. Learned senior advocate appearing for the claimant has contended that, the learned Single Judge interfered with the arbitral award excessively. He has contended, since the findings and the reasoning of the Arbitral Tribunal is plausible, learned Single Judge has erred in substituting the findings of the Arbitral Tribunal, which is impermissible in law.

13. Learned senior advocate appearing for the claimant has contended that, respondent never pleaded mitigation before the Arbitral Tribunal or even in its application under Section 34 of the Act of 1996. The respondent had never led any evidence in support of such mitigation and did not dispute the operation of the plant. He has contended that the plea of mitigation was raised for the first time by the respondent by the written submission before the learned Single Judge. He has contended that mitigation being a question of fact cannot be argued without pleadings. He has referred to the records of the Arbitral Tribunal. He has

contended that the claimant had run the plant under orders of the Arbitral Tribunal dated April 16, 2018. Claimant had filed monthly accounts showing continuous losses. He has contended that, the learned Single Judge introduced the concept of mitigation on the basis of oral submissions of the claimant which violated the rules of pleadings and caused serious prejudice to the respondent.

14. Learned senior advocate appearing for the claimant has contended that, reduction of interest on mobilisation advance by the Arbitral Tribunal was reasonable and justified and therefore did not call for any interference. He has contended that, the mobilisation advance was repayable under the contract in 96 monthly installments. In view of the respondent's refusal to accept deliveries under the contract, leading to the breach of the contract, Arbitral Tribunal had directed refund of the entire mobilisation advance at a time and accordingly considered it prudent to reduce the interest payable thereon from 14.5% to 9%. He has contended that, the Arbitral Tribunal can take a middle ground for a fair resolution.

15. Learned senior advocate appearing for the claimant has contended that, the appellant invoked the arbitration for

contractual breach and premature exit by the respondent, before the expiry of the lock in period

16. Learned senior advocate appearing for the claimant has contended that, Arbitral Tribunal is the final authority on the interpretation of the contract. He has contended that, liquidated damages do not require proof of actual loss. Damages are assessed on the date of the breach. Judicial review under Section 34 of the Act of 1996 is supervisory and not appellate. In support of such contentions, he has relied upon ***2024 Volume 1 Supreme Court Cases 479 (Reliance Infrastructure Limited vs. State of Goa)***, ***2025 Volume 2 Supreme Court Cases 417 (OPG Power Generation Private Limited vs. Enexio Power Cooling Solutions India Private Limited and Another)*** and ***2025 SCC Online Cal 10191 (Ashiana, represented by its proprietor Ashoke Kumar Shaw vs. Biva Dutta Roy and Others)***.

17. Relying upon ***2024 Volume 6 Supreme Court Cases 357 (Delhi Metro Rail Corporation Limited vs. Delhi Airport Metro Express Private Limited)***, learned senior advocate appearing for the respondent has contended that, every part and parcel of a contract must be read to gather the true intent of the parties.

18. Learned senior advocate appearing for the claimant has contended that, neither the Arbitral Tribunal nor the Court can make out a new contract for the parties. He has relied upon ***2023 Volume 15 Supreme Court Cases 781 (PSA Sical Terminals Private Limited vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others)***, and ***2006 Volume 2 Supreme Court Cases 628 (Shin Satellite Public Co. Ltd. vs. Jain Studios Ltd.) in this regard***.

19. On the proposition of the effect of lock in period in contracts, learned senior advocate appearing for the claimant has relied upon ***2004 Volume 2 Supreme Court Cases 712 (Food Corporation of India and Others. vs. Babulal Agrawal)***, ***2014 SCC Online Bom 4768 (Indiabulls Properties (P) Ltd. vs. Treasure World Developers (P) Ltd.)*** and ***2012 SCC Online Cal 2941 (Laxmi Pat Surana vs. Pantaloon Retail India Ltd. & Ors.)***, ***2009 SCC Online Del 706 (Satya Narain Sharma-Huf vs. Ashwani Sarees Pvt. Ltd.***) and ***2021 SCC Online Del 4167 (Zoom Communications Private Limited vs. Brij Mohan Punj)***.

20. On the issue that, mitigation of losses is a mixed question of fact and law and has to be proved by adducing evidence, learned

senior advocate appearing for the claimant has relied upon ***2009 SCC Online Del 2143 (MMTC Limited vs M/s. H.J. Baker & Bros. INC..)*** and ***2023 Volume 9 Supreme Court Cases 424 (H.J. Baker and Brothers INC.. vs. Minerals and Metals Trade Corporation Ltd. (MMTC))***.

21. On the proposition that, a plea not taken before the Arbitral Tribunal cannot be raised for the first time before the court of law under Section 34 of the Act of 1996, learned senior advocate appearing for the claimant has relied upon ***2009 Volume 17 Supreme Court Cases 796 (Fiza Developers & Inter-Trade Private Limited vs. AMCI (India) Private Limited & Another)***, ***2003 5 Bom CR 146 (Oil & Natural Gas Corporation Ltd vs. Comex Services S.A.)***, ***All India Reporter 1956 Calcutta 321 (Shah and Co. vs. Ishar Singh Kripal Singh and Co.)*** and ***2015 Volume 3 Bom CR 15 (Harinarayan Bajaj vs. Madhukar Sheth).***

22. On the proposition that, reduction of interest by the Arbitral Tribunal was reasonable and justified and therefore did not call for any interference, learned senior advocate appearing for the claimant has relied upon ***2025 SCC Online AP 4458 (Sunrise &***

Engineering Industries Rep. by its Managing Partner Sri. Myneni Veerababu vs. Hindustan Shipyard Limited, rep. by its Additional General Manager (Law) and Another).

23. Learned senior advocate appearing for the respondent has contended that, the scope of Section 37 of the Act of 1996 is to ascertain whether the learned Single Judge in adjudicating the matter acted within the scope of Section 34 of the Act of 1996 or not. In support of such contention, he has relied upon ***2024 SCC Online SC 2632 (Punjab State Civil Supplies Corporation Limited and Another vs. Sanman Rice Mills and Others)***, ***2024 Volume 1 Supreme Court Cases 479 (Reliance Infrastructure Limited vs. State of Goa)*** and ***2025 SCC Online SC 2088 (Sepco Electric Power Construction Corporation vs. Gmr Kamalanga Energy Limited)***. He has contended that, the claimant has not alleged or established any transgression of jurisdiction by the learned Single Judge.

24. Learned senior advocate appearing for the respondent has contended that, the finding of the Arbitral Tribunal that there was no termination of the contract dated January 27, 2016 is perverse. He has contended that, respondent relied upon email dated March 7, 2017, March 8, 2017, April 24, 2017 and May 10,

2017 to contend that the parties had by agreement terminated the contract and that, the claimant would retain the plant. He has contended that, Arbitral Tribunal restricted its analysis to the emails dated March 7, 2017 and March 8, 2017 ignoring the emails dated April 24, 2017 and May 10, 2017. According to him, such conduct has vitiated the award on the ground of perversity which is a patented illegality. He has relied upon ***2019 Volume 15 Supreme Court Cases 131 (Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI))*** in support of his contention.

25. Learned senior advocate appearing for the respondent has contended that, even if there was no termination of the agreement as held by the Arbitral Tribunal, then also the award towards future commitment charges is liable to be set aside. He has contended that, there was no evidence in support of the loss allowed by the Arbitral Tribunal in this regard. He has contended that, the claimant relied upon a chart annexed to the statement of claim to compute future commitment charges. Future commitment charges have been done from January 16, 2018 for a period of 10 years from the alleged respective plant

commencement dates for the 3 plants. No other evidence has been produced.

26. Relying upon ***2009 Volume 12 Supreme Court Cases 1 (State of Rajasthan and Another vs. Ferro Concrete Construction Private Limited)*** and ***2019 Volume 15 Supreme Court Cases 131 (Ssangyong Engineering & Construction Company Limited v. National Highways Authority of India (NHAI))***, learned senior advocate appearing for the respondent has contended that, mere reliance on a chart in the statement of claim is not proof. No reasons have been given in support of the award for future commitment charges. The commitment charges could not have exceeded a period of 6 months as the contract is determinable. Without proof of actual loss having been suffered, there cannot be an award for damages. The award is therefore contrary to binding decisions of Superior Courts and therefore is in violation of fundamental policy of Indian law. In this regard, he has relied upon Section 34 (2) (b) (ii) Explanation I(ii) of the Act of 1996, ***2015 Volume 3 Supreme Court Cases 49 (Associate Builders vs. Delhi Development Authority)*** and ***2019 Volume 15 Supreme Court Cases 131 (Ssangyong Engineering & Construction Company Limited vs. National Highways***

Authority of India (NHAI)). He has also relied upon Sections 73 and 74 of the Indian Contract Act, 1872 as well as ***2015 Volume 4 Supreme Court Cases 136 (Kailash Nath Associates v. DDA and Another)***, ***2019 Volume 5 Supreme Court Cases 341 (Mahanagar Telephone Nigam Limited vs. Tata Communications Limited)***, ***2023 SCC Online SC 1366 (Unibros Versus All India Radio)*** in this regard.

27. Learned senior advocate appearing for the respondent has contended that, the contract was entered into on January 27, 2016. Arbitral Tribunal however has awarded commitment charges for a period of ten years from the date of the commencement of production of the plants i.e. on August 29, 2016, November 02, 2016 and March 29, 2017. Therefore, Arbitral Tribunal has in effect granted commitment charges for a period beyond the expiry of the contract. The award has thus violated Section 34 (2A) of the Act of 1996.

28. Learned senior advocate appearing for the respondent has contended that, the obligation of the respondent to commitment charges is dependent upon the ability of the claimant to manufacture and perform its obligation. He has pointed out that, Minimum Assured Production was never reached by the claimant.

Therefore, the view taken by the Arbitral Tribunal is not plausible. In this regard he has relied upon ***2023 Volume 15 Supreme Court Cases 781 (PSA Sical Terminals Private Limited vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others)***, ***2022 Volume 4 Supreme Court Cases 463 (Indian Oil Corporation Limited vs. Shree Ganesh Petroleum Rajgurunagar)***, ***2020 Volume 5 Supreme Court Cases 164 (South East Asia Marine Engineering and Constructions Limited (Seamec Limited) vs. Oil India Limited.)***.

29. Learned senior advocate appearing for the respondent has contended that, even the investment of the claimant of approximately Rs. 33 crores, award of Rs. 171.36 crores with interest should shock the conscience of the Court. He has pointed out that, by an order dated April 17, 2018, claimant was relieved of his obligation under the contract. The effect of the order dated April 16, 2018 has not been considered by the Arbitral Tribunal.

30. Learned senior advocate appearing for the respondent has contended that, Arbitral Tribunal did not answer issue no. 2 framed in the arbitration proceedings. He has contended that, issue no. 2 related to the obligation of the claimant to complete the Ready Mix Motor Plant (EMM Plant). Unless such an issue is

answered, the liability of the respective parties cannot be decided appropriately.

31. Learned senior advocate appearing for the respondent has referred to Section 73 of the Contract Act, 1872 and submitted that, such provision inherently includes the issue of mitigation of damages which has a bearing on quantification of damages. He has relied upon ***1961 SCC Online SC 100 (Murlidhar Chiranjilal vs. Harishchandra Dwarkadas and Another)*** in this regard. He has contended that, the award does not deal with the issue of mitigation at all and therefore, is contrary to the fundamental policy of Indian Law. He has relied upon ***2015 Volume 3 Supreme Court Cases 49 (Associate Builders vs. Delhi Development Authority)*** and ***(2019) Volume 15 Supreme Court Cases 131 (Ssangyong Engineering & Construction Company Limited vs. National Highways Authority of India (NHAI))*** in this regard.

32. Learned senior advocate appearing for the respondent has contended that, although, the issue of damages was not proved before the Tribunal, the same was not dealt within the award. The application under Section 34 of the Act of 1996 filed on behalf of

the respondent had contained grounds with regard to violations of Sections 73 and 74 of the Contract Act, 1872.

33. Learned senior advocate appearing for the respondent has contended that, the contract provided for interest on mobilization advance at the rate of 14.5%. He has pointed out to the body of the award where, Arbitral Tribunal held that the respondent was entitled to interest at the rate of 14.5% per annum on the refund of mobilization award from March, 2017 till repayment. However, the award ultimately had awarded interest at the rate of 9% per annum which is contrary to the recording in the award. According to him, the award contains a manifest error. Relying upon ***2025 Volume 7 Supreme Court Cases 1 (Gayatri Balasamy v. ISG Novasoft Technologies Limited)***, he has contended that, Court under Section 34 of the Act of 1996 has the power to modify such errors. In any event, award of interest at the rate of 9% per annum is different from the rate prescribed being 14.5% and is therefore in violation of Section 31 (7) (a) of the Act of 1996. He has relied upon ***2015 Volume 9 Supreme Court Cases 695 (Union of India v. Bright Power Projects (India) Private Limited)***, ***2022 Volume 9 Supreme Court Cases 286 (Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail***

Corporation) and ***2025 SCC Online SC 2473 (Sri Lakshmi Hotel Pvt. Limited and Another vs. Sriram City Union Finance Ltd. and Another)*** in this regard.

34. Learned senior advocate appearing for the respondent has contended that, claim A.4 made in the statement of claim was disallowed and challenged to the same by the claimant was dismissed by the learned Trial Judge. He has contended that, in the appeal, no ground was taken and that, such claim was abandoned by the claimant.

35. Parties had entered into a contract dated January 27, 2016 for the setting up of captive manufacturing unit for cement and products, namely fly ash bricks, AAC blocks, and ready mix mortar for the captive consumption of the respondent.

36. Under the contract, the respondent had agreed to pay 50% of the total project investment cost. Respondent had therefore paid ₹ 31.98 crores being 50% of the total project investment cost of ₹ 65.74 crores to the appellant. Under the contract, the appellant had to repay such advance of Rs. 31.98 crores in 96 equated monthly instalments at the rate of 14.5% interest calculated on reducing balance of principal.

37. Under the contract, the claimant had set up manufacturing unit for fly ash bricks was set up on August 29, 2016, AAC blocks on November 2, 2016 and ready mix mortar on March 29, 2017.

38. By two emails dated March 7, 2017 March 8, 2017, respondent had asked the claimant to stop procurement of raw materials until further instructions.

39. Disputes and differences had arisen between the parties for which, the claimant had invoked the arbitration clause contained in the contract.

40. Arbitral Tribunal had entered into reference on the disputes to refer to it. Appellant had filed a statement of the claims containing 8 number of claims. Respondent had filed a statement of defence and counterclaim containing number 5 of counterclaims. Claimant had filed a rejoinder to which the respondent had filed a sur rejoinder.

41. Claimant had filed an application under Section 17 of the Act of 1996 before the Arbitral Tribunal on which an order dated April 16, 2018 was passed by the Arbitral Tribunal. Claimant had filed another application under Section 17 of the Act of 1996.

42. Before the Arbitral Tribunal, the parties had examined two witnesses each. Arbitral Tribunal had made and published its award dated March 20, 2023.

43. Respondent had challenged the award dated March 20, 2023 under Section 34 of the Act of 1996 by way of AP (COM) No. 334 of 2024 while the application under Section 34 of the Act of 1996 of the claimant was registered as AP(COM) 335 of 2024.

44. Claimant had put the award into execution by way of EC No. 55 of 2023.

45. By the impugned judgement and order, the learned Single Judge has disposed of all the three applications under Section 34 of the Act of 1996. Parties have preferred two separate appeals under Section 37 of the Act of 1996.

46. Parties have referred to various authorities on the scope and ambit of Sections 34 and 37 of the Act of 1996. Essentially, the authorities cited at the Bar dwelt on provisions of Sections 34(2)(b), 34 (2-A) and 37 of the Act of 1996.

47. ***Punjab State Civil Supplies Corporation Ltd (supra)*** has held that, the scope of Section 37 of the Act of 1996 is much more summary in nature and not like an ordinary civil appeal given the fact that, proceedings under Section 34 of the Act of 1996 is

summary in nature and not like a full-fledged regular civil suit. It has held that, the scope of 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 of 1996. The appellate power under Section 37 of the Act of 1996 is limited within the domain of Section 34 of the Act of 1996 and is exercisable only to find out if the Court, exercising power under Section 34 of the Act of 1996 has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the powers. 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 the evidences as if it were sitting in an ordinary Court of Appeal.

48. ***Sepco Electricity Power Construction Corporation (supra)*** has held that, the scope under Section 37 of the Act of 1996 is inherently limited and narrower. It is governed by the mandate of parameters under Section 34 (2) of the Act of 1996. It has also held that, while the initial probe is initiated during a recourse under Section 34 of the Act of 1996, and if the Section

34 Court affirms the award, a Court exercising the mandate of Section 37 of the Act of 1996 ought to employ caution and reluctance to alter the concurrent findings.

49. ***Reliance Infrastructure Ltd (Supra)*** has held that, a Court exercising power under Section 34 of the Act of 1996 is not expected to act as an appellate Court and reappreciate the evidence. Scope of interference would be limited to ground provided under Section 34 of the Act. Interference under Section 37 of the Act of 1996 cannot travel beyond the restrictions laid down under Section 34 of the Act of 1996 i.e. the Court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of powers under Section 34 has not exceeded the scope of such provision.

50. ***OPG Power Generation Private Ltd (supra)*** has explained, Explanation 2 to Section 34(2)(b)(ii) of the Act of 1996. It has held that, to bring the contravention with the fundamental policy of Indian law, into play, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country. As by way of illustration, it has stated that violation of the principles of natural justice, disregarding orders of superior

courts in India or the binding effect of the judgment of a superior court and violating laws of India linked to public good or public interest, are to be considered contravention of the fundamental policy of Indian law. However, while assessing any contravention of the fundamental policy of Indian law, extent of judicial scrutiny must not exceed the limits as set out in Explanation 2 to Section 34(2)(b)(ii).

51. ***OPG Power Generation Private Ltd (supra)*** has explained what would be construed as patent illegality appearing on the face of the award in terms of Section 34(2-A) of the Act of 1996. It has noticed various authorities on the subject. It has quoted paragraph 39 from ***2024 Volume 6 Supreme Court Cases 357*** **(*Delhi Metro Rail Corporation Limited vs. Delhi Airport Metro Express Private Limited*).**

52. A Coordinate Bench in ***Ashiana (Supra)*** has noticed another Coordinate Bench on the issue of scope and ambit of Section 34 of the Act of 1996.

53. ***Ssangyong Engineering & Construction Company Limited (supra)*** has held that, non consideration of vital evidence in the reasoning of the Arbitral Tribunal vitiates the award due to perversity i.e patent illegality appearing on the face of the award.

54. ***Associate Builders (Supra)*** has held that, binding effect of the judgment of a superior court being disregarded would be violative of the fundamental policies of Indian law within the meaning of Section 34 of the Act of 1996.

55. ***South East Asia Marine Engineer and Constructions Limited (supra)*** has held that, if the interpretation of the contract by the Arbitral Tribunal is perverse and not a possible interpretation, award passed is liable to be set aside.

56. ***Shree Ganesh Petroleum (Supra)*** has held that, an award ignoring the terms of the contract would not be in public interest after noticing ***Associate Builders (Supra).***

57. The scheme of the Act of 1996 requires minimal intervention of a Court in arbitration proceeding including the Arbitral Award. The awards passed by the Arbitral Tribunal are not to be interfered with alone set aside on any trivial ground. Award passed by the Arbitral Tribunal are not required to be scrutinised by the Court under Section 34 of the Act of 1996 as a Court of appeal, reappreciate the evidence and substitute its finding, where, two views are possible. However, an award passed by a Arbitral Tribunal under provision of the Act of 1996 is not immune from challenge.

58. Section 37 of the Act of 1996 does not required the Court to reapprise the subject matter of the lis as a regular appeal Court, substitute its findings with that of the Section 34 Court or the award on a reappreciation of the evidence. What it mandates, however, is to evaluate the decision of the Section 34 Court in order to assess whether or not such Court acted within the parameters of Section 34 of the Act of 1996 or not.

59. Scope of interference under Section 37 of the Act of 1996 is limited to the grounds provided under Section 34 of the Act of 1996 and that too, to assess as to whether, the recourse under Section 34 of the Act of 1996 was correct or not. While scope of interference with an arbitral award is narrow under Section 34 of the Act of 1996 it is narrower under Section 37 thereof.

60. Under Section 34 of the Act of 1996, amongst other grounds, an award can be set aside when there is patent illegality appearing on the face of the award and when, the award is in contravention of the fundamental policy of India. An arbitral award can be successfully challenged if it is established that it was passed in violation of the principles of natural justice, or is in disregard to orders of superior courts in India or the binding effect of the judgment of a superior court or violates law of India

linked to public good or public interest, on the ground that it contravenes the fundamental policy of Indian law.

61. An award can be said to be vitiated by reason of patent illegality, if the decision of the arbitrator is perverse or so irrational that no reasonable person would have arrived at it or the construction of the contract is such that no fair or reasonable person would take or that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or ignorance of vital evidence would also attract the ground of patent illegality. An award without reasons would suffer from patent illegality. An award without reason or a decision on a subject not referred to arbitration would also attract the ground of patent illegality.

62. A plausible view taken by an arbitrator, a construction of contract which can be had on the basis of the materials placed before the Arbitral Tribunal, erroneous application of law or wrong appreciation of evidence are not grounds to set aside an award under Section 34 of the Act of 1996.

63. In accordance with the remit under Section 37 of the Act of 1996, we have to evaluate as to whether or not, the impugned judgment and order under Section 34 of the Act of 1996, falls foul of the parameters of Section 34.

64. By the impugned judgment and order, learned Single Judge has, set aside the award to the extent of claim (iii) to the tune of Rs. 127,12,64,892/- towards future commitment charges. The learned Single Judge has also modified the award to the extent of counter claim no. (ii) inasmuch as the interest payable on the mobilization advanced from March, 2017 till the date of the award is to be calculated at the rate of 14.50 % per annum instead of 9% per annum. Save as aforesaid learned Single Judge has refused to interfere with award under any other score.

65. Before the Learned Single Judge, the parties had raised the issues of future commitment charges and reductions of interest. Both such issues concerned interpretation of the contract. Interpretation of the contract is within the domain of the arbitrator. A plausible interpretation of the subject by the arbitrator is not open to interference by a Court under Sections 34 or 37 of the Act of 1996. However, if the award is based on no evidence or passed ignoring the terms of the contract or the interpretation of the terms of the contract is perverse, then the award is to be set aside. Care and caution needs to be exercised if the Court decides to interfere with the award. If the award is

severable then such portions of the award which requires interference should be altered leaving the balance.

66. Learned Single Judge has taken clause 1.11 of the contract which permits both the parties to withdraw from the contract and Annexure III thereof into consideration for the purpose of future commitment charges has noticed that, clause 1.11 of the contract subjects such exit to the conditions stipulated in Annexure-III of the Contract and that Annexure III provides two separate situations, where, the parties to the contract choose to exit. Learned Single Judge has considered whether the termination was valid or not.

67. As has been noticed by the learned Single Judge, the respondent in the arbitration choose to exit the contract. Therefore, learned Single Judge has rightly held that, clause 2 of Annexure III applied which provided that, if the claimant agreed to retain the manufacturing facility, claimant will have to return the balance mobilization advance along with any pending interest within one month from the end of the notice period.

68. Learned Single Judge has noticed that, although, the contract prescribed an exit notice of six months, such notice was not issued. However, the respondent had proceeded on the

premise that the communication dated March 7, 2017 asking the claimant to stop production was a termination notice.

69. Learned Single Judge, has held that, although a termination notice of six months was not given, nonetheless, the conduct of the parties have established that, the parties treated the contract to be terminated. In such factual matrix, the learned Single Judge has held that, the termination of the contract therefore, cannot be said to be invalid to such extent.

70. Learned Single Judge has applied the ratio of ***Amritsar Gas (Supra)*** in arriving at the decision that, the future commitment charges should be limited to six months. The learned Single Judge has taken March, 2017 being the date when, production was directed to be stopped, as the date of commencement of the six months' notice period and hence, held that, future commitment charges as awarded by the award was patently illegal.

71. We have to arrive at a finding that, the interpretation given by the Arbitral Tribunal in the award with regard to the termination, is a plausible explanation and therefore, does not call for any interference under Section 34 of the Act of 1996,

since, the learned Single Judge has interfered with such portion of the award.

72. The agreement between the parties contains a lock in period of ten years extendable for another six years on mutual agreement as has been stipulated in Clause 1.10(A). It also has an exit clause at Clause 1.11. Clause 1.11 being the exit clause has provided that whichever party withdraws from its respective contractual agreement under the agreement within the lock in period, such party shall fully indemnify the other as per the consideration set out in Annexure III. Annexure III of the agreement has provided for the eventualities of either of the parties exiting the agreement. It has provided for situations where, either the claimant or the respondent had decided to exit the agreement. Parties had therefore contemplated and provided for exit from the agreement.

73. ***Amritsar Gas Service and Others (supra)*** has considered a distributorship agreement for sale of Liquidified Petroleum Gas which was revoked by Indian Oil Corporation. Such distributorship agreement had provisions for termination. In the facts of that case, Supreme Court had modified the award to

grant relief for compensation of loss of the earning for the period of the notice and not the restoration of the distributorship.

74. The various provisions of the agreement relating to termination has to be considered in the given facts and circumstances of each case in order to evaluate the quantum of compensation that may be granted to a party who has suffered the breach. In the facts and circumstances of the present case, learned Single Judge has rightly modified such portion of the award.

75. Arbitral Tribunal has proceeded on the basis that, there was no termination notice. Therefore, Arbitral Tribunal, proceeded to grant future commitment charges for ten years from the date of commencement of production.

76. It is trite law that, Arbitral Tribunal cannot rewrite the contract between the parties. Contract between the parties prescribed payment of commitment charges in the event of an exit.

77. Interpretation given by the Arbitral Tribunal with regard to the commitment charges, in respect of claim (iii) is not plausible. Arbitral Tribunal had taken the date of the commencement of production of the three plants and 10 years therefrom to direct

payment of commitment charges. Arbitral Tribunal had overlooked the fact that, the payment of commitment charges was under the contract limited to ten years from the date of the contract. Arbitral Tribunal had therefore erred in taking a different date for the purpose of calculating 10 years for the payment of commitment charges.

78. Arbitral Tribunal had failed to take into consideration the orders passed under Section 17 of the Act of 1996. Stoppage of production as communicated by the email dated March 7, 2017 has to be read and understood in the context of the conduct of the parties subsequent thereto. Neither the respondent had asked the claimant nor did the claimant resume production subsequent to March 7, 2017. This has established that the contract stood terminated on March 7, 2017. Claimant had obtained interim order from the Arbitral Tribunal under Section 17 of the Act of 1996 relieving the parties.

79. Therefore, for all practical purposes, parties had acted on the basis that, respondent had exited the contract with effect from March 7, 2017. Any other interpretation is not a plausible one.

80. With regard to the rate of interest, Arbitral Tribunal after holding that, the claimant was liable to return the mobilization advance with interest at the rate of 14.50 % on reducing balance on principal, ultimately directed refund with interest at the rate of 9%.

81. Arbitral Tribunal had acted beyond the express terms of the contract in reducing the rate of interests. It is not a case that no rate of interest was prescribed under the contract.

82. Learned Single Judge has therefore rightly held that, the Arbitral Tribunal acted contrary to the contract in reducing the rate of interest.

83. We have not found that the exercise of jurisdiction by the learned Single Judge under Section 34 of the Act of 1996, stands vitiated.

84. In such circumstances, **AO-COM/6/2025** and **AO-COM/7/2025** are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

85. I agree.

[MD. SHABBAR RASHIDI, J.]