IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

COMMERCIAL ARBITRATION APPEAL NO. 1 OF 2019

M/s. Shinde & Sons,
Through Its Partner
Mr. Satish S/o Budhajirao Shinde,
Age : 52 Years, Occu : Business,
R/o Opp. Bhairavnath Patsanstha,
Nagar-Pune Road, Kedgaon Devi,
Ahmednagar. ... APPELLANT

...VERSUS...

1. Godawari Marathwada
Irrigation Development
Corporation, Through Its
Executive Engineer,
Majalgaon Canal Division,
Gangakhed, Dist. Parbhani.

2. Mr. B. B. Jadhav,
Wanshri Elegance
Survey No. 80/2, Plot No. 14,
Baner Road, Aundh, Pune. ... RESPONDENTS

- Mr. G. K. Naik Thigle, Advocate for the Petitioner
- Mr. P. R. Katneshwarkar, Senior Advocate i/b. Mr. S. G. Bhalerao, Advocate for Respondent No. 1

CORAM : ARUN R. PEDNEKER AND
VAISHALI PATIL-JADHAV, JJ.

RESERVED ON : 27.02.2026

PRONOUNCED ON : 15.04.2026

J U D G M E N T [Per Vaishali Patil-Jadhav, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. By the present Commercial Arbitration Appeal, filed under Section 37 of the Arbitration and Conciliation Act, 1996, the appellant-contractor has challenged the Judgment and Order dated 11.09.2018 passed by the learned District Judge-1, Beed, in Miscellaneous Civil Application (ARB) No. 242 of 2015, whereby the application filed by respondent no. 1 - GMIDC under Section 34 of the Arbitration and Conciliation Act,1996 came to be allowed and the arbitral award dated 27.01.2015 passed by the sole arbitrator was set aside.

3. The facts of the appeal, in brief, are as follows:

Pursuant to tender notice No. JPC/LCB/53 of 1990-91, tenders were invited by the Government of Maharashtra, Irrigation Department for the work of construction of Earth Work, Structures, Lining and Selective Lining of Kothala Branch Canal, KM No. 7 to 9, Distributory D-12 and D-13 of Kothala Branch Canal on Majalgaon Right Bank Canal. The estimated cost of the work was Rs. 1,15,98,000/-. The appellant, being the successful tenderer, was allotted the work accordingly. An

agreement came to be executed between the parties. As per the terms of the contract, the stipulated period for completion of work was 30 Calendar months from the date of issuance of notice to proceed with the work.

4. The work was required to be completed on or before 13.08.1993. It is the case of the appellant that due to non-fulfilment of reciprocal obligations by the respondent no. 1 and various extensions granted from time to time, the scope of the work underwent a sea change both in terms of quantity and financial implications. The work came to be completed on 21.06.2006 and the final bill was drawn thereafter on 11.07.2006.

5. Being aggrieved by the imposition of penalty and termination of contract, the appellant instituted RCS No. 258 of 1994 seeking an injunction restraining the respondent no. 1 from assigning the remaining work to a third agency. The respondent no. 1 also instituted proceedings being RCS No. 221 of 1995 seeking a declaration that the unilateral appointment of Sole Arbitrator by the appellant as illegal and for an injunction restraining the arbitrator from acting as a Sole Arbitrator. Both the suits were subsequently compromised. The appellant waived the right regarding revision of rates and it was agreed that the parties will not resort to arbitration. The termination order was revoked and the contract was revived.

6. The work was completed on 21.06.2006 and the final bill was drawn/paid on 11.07.2006. It is the case of appellant that due to abnormal increase in the quantity of work and various breaches of the contract that occurred during execution of the work, the appellant had raised various claims. As the claims raised were not settled and disputes arose between the parties, notice under Clause 52 of the General Conditions of Contract for settlement of disputes was issued, in the meantime, by the appellant on 11.05.2006. On 29.07.2006, the respondent no. 1 gave option for the appointment of an Arbitrator which was exercised by the appellant on 05.08.2006.

7. Initially, one Mr. S.D.Chate was appointed as Sole Arbitrator on 14.08.2006, who later showed his inability to work as an arbitrator and withdrew from the proceedings. Thereafter, Mr. E.B.Jogdand was appointed as Sole Arbitrator, who also, showed his inability to work and withdrew from the proceedings in 2012. Subsequently, by communication dated 14.02.2014, the appellant requested the Chief Engineer for appointment of an Arbitrator. The respondent no. 1, by communication dated 13.03.2014, suggested a list of names of Mr. A.R.Kamble, Mr. V.D.Nemade and Mr. B.B.Jadhav for appointment as Arbitrator. Vide letter dated 15.03.2014, appellant selected the name of Mr. B.B.Jadhav for appointment as a Sole Arbitrator. However, it is the case of respondent that Mr. A.R. Kamble was appointed as the sole

Arbitrator in exercise of powers conferred under clause 52 of the contract by the Chief Engineer.

8. Appellant, by letter dated 15.07.2014 requested the Arbitrator Mr. B.B. Jadhav to commence the arbitration proceedings. The learned Arbitrator accordingly, communicated the parties about the preliminary meeting scheduled on 03.08.2014. However, in the meantime, respondent no. 1, vide letter dated 01.08.2014, informed Mr. B.B.Jadhav that in view of their objection regarding the appointment of Mr. B.B.Jadhav as sole arbitrator, and in view of the order dated 14.07.2014 passed by the Assistant Chief Administrator, GMIDC, Mr.A.R.Kamble is appointed as a sole arbitrator for settlement of disputes and claims regarding the work and as such, it is not advisable for him to attend the meeting scheduled on 03.08.2014. The respondent no. 1 also had approached this Court by way of Arbitration Application No. 12 of 2014 seeking cancellation of appointment of Mr.B.B.Jadhav as a Sole Arbitrator on the ground that he is not eligible for being appointed as he was a retired officer and was not holding charge of the post of Superintending Engineer and by relying on Clause 53 of the General Conditions of Contract, it is submitted that Mr. B.B. Jadhav was incompetent to act as an arbitrator. The said application came to be dismissed by this Court by order dated 18.11.2014, with liberty to raise

objections before the arbitrator in accordance with law within a period of 45 days.

9. Thereafter, against the judgment and order dated 18.11.2014 of this Court, the respondent no. 1 approached the Hon'ble Supreme Court by filing SLP No. 5274 of 2015.

10. During the pendency of the proceedings filed before this Court and the Hon'ble Supreme Court, the learned Arbitrator proceeded with the matter. In all, seven meetings were conducted from 03.08.2014 to 30.11.2014 including a site inspection on 29.11.2014. However, the respondent no. 1 never caused appearance before the learned Arbitrator. Ex-parte award was passed by the learned Arbitrator on 27.01.2015, directing payment of an amount of Rs. 1,02,45,34,130/- with interest at the rate of 18% per annum.

11. Thereafter, the SLP No. 5274/2015 was disposed of by the Hon'ble Supreme Court by order dated 09.03.2015, granting liberty to the respondent no. 1 to put forth its challenges as permissible in law, while assailing the validity of the award.

12. The respondent no. 1 challenged the said award dated 27.01.2025 by filing an application under Section 34 of the Arbitration and Conciliation Act, 1966. The learned District Court allowed the

application and set aside the arbitral award dated 27.01.2025. Hence, the present appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996.

13. The learned counsel Mr. Girish Thigle for the appellant would submit that the impugned judgment and order passed by the learned District Judge suffers from jurisdictional error. He would submit that the well-reasoned arbitral award is set aside mainly on the ground that it is an ex-parte award, without referring to or considering any of the clauses under Section 34 of the Arbitration & Conciliation Act, 1996.

14. Mr. Thigle would further submit that the learned District Judge has, in paragraph 26 of the impugned order, considered the issue regarding the appointment and qualification of the learned Arbitrator, though no such objection was raised before the arbitral tribunal as required under Section 13 of the Arbitration and Conciliation Act, 1996. It is contended that, in the absence of any such challenge at the appropriate stage, the said objection could not have been entertained while exercising jurisdiction under Section 34 of the Act.

15. He would further submit that the impugned judgment and order is passed without jurisdiction. He placed reliance on the decision of the Hon'ble Supreme Court in **Indus Mobile Development Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd.** reported in ***(2017) 7 SCC 618*** to

contend the same. He would submit that application under Section 34 could only have been filed in a Court where the arbitral proceedings were held. It was submitted that the learned arbitrator conducted the proceedings/sittings at Pune and Aurangabad and no sittings were conducted at Beed. Therefore, the Commercial Court at Beed had no territorial jurisdiction to entertain the application.

16. By placing reliance on the decision of the Hon'ble Supreme Court in Gayatri Balasamy vs. Novosoft, the learned counsel would submit that, setting aside an award has serious consequences and every attempt should be made to save an award. He would also submit that the award could not be set aside unless it was contrary to the substantive provision of law, any provision of the Arbitration and Conciliation Act, 1996, or the terms of the agreement.

It was lastly submitted that the impugned order is unsustainable and liable to be set aside, and the arbitral award dated 27.01.2015 deserves to be restored.

In support of his submissions, learned counsel for the appellant relied on *Quippo Construction Equipment Limited Vs. Janardan Nirman Private Limited; [(2020) 18 Supreme Court Cases 277], Gayatri Balasamy Vs. ISG Novasoft Technologies Limited; [(2025) 7 SCC 1], UHL Power Company Limited Vs. State of Himachal Pradesh; [(2022) 4*

SCC 116], Eminent Colonizers Private Limited Vs. Rajasthan Housing Board and Others; [2026 SCC OnLine SC 148], Jan De Nul Dredging India Pvt. Ltd. Vs. Tuticorn Port Trust; [2026 SCC OnLine SC 33], Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and Others; [(2017) 7 SCC 678], BBR (India) Private Limited Vs. S.P.Singla Constructions Private Limited; [(2023) 1 SCC 693], Atul R. Shah Vs. M/S V. Vrijlal Lalloobhai and Co. and another; [1999 (1) Mh.L.J. 629], and Reliance Infrastructure Limited Vs. State of Goa; [(2024) 1 SCC 479].

17. Per contra, learned senior counsel Mr. P.R. Katneshwarkar i/b Mr.S.G. Bhalerao for respondent no. 1, supported the impugned judgment and order and would submit that the same is passed after due consideration of the material on record and does not warrant any interference in the present appeal. He would submit that, at the outset, the very foundation of the appellant's case is misconceived and contrary to the terms of the contract. The appellant had accepted the tender with specific terms and conditions in which, time was the essence of the contract. However, he failed to complete the work within the stipulated period i.e., on or before 13.08.1993, despite repeated extensions granted by the respondent no. 1. The delay being solely attributable to the appellant, penalty under the relevant clauses of the agreement was

rightly imposed and the contract was terminated in accordance with law.

18. It is the case of the respondent no. 1 that as the work was not completed within the stipulated period, the appellant committed a breach of the contract and therefore, a penalty of Rs. 5,800/- per day was imposed by the Executive Engineer, by communication dated 21.12.1993. Thereafter, an order of termination of contract was issued on 31.01.1994.

19. The learned senior counsel would submit that the appellant had committed various breaches of the terms and conditions of the contract. The civil proceedings between the parties were admittedly compromised. The appellant had given specific undertaking including waiver of claims relating to revision of rates, and agreed not to pursue disputes further. In view of such binding undertakings, no subsisting dispute survived between the parties and the invocation of arbitration is untenable. It is further submitted that the arbitration proceedings themselves were not maintainable as there was no “live claim” in existence.

20. He would submit that despite specific objections raised by the respondent to the appointment of the arbitrator, the same were not

taken into consideration and the arbitrator proceeded with undue haste. The respondent had, in fact, appointed a competent arbitrator in terms of the contract, namely Shri A. R. Kamble; however, the appellant deliberately proceeded with an ineligible arbitrator Mr. B.B. Jadhav and conducted proceedings unilaterally.

21. The learned senior counsel would further submit that the ex-parte award is passed in violation of principles of natural justice. The arbitrator proceeded with the matter despite being aware of the pending challenge to his appointment before the Hon'ble High Court and thereafter before the Hon'ble Supreme Court. The undue haste in proceeding with the matter and passing an ex-parte award demonstrates bias and procedural impropriety.

22. It is submitted that the award is perverse and contrary to public policy. The claims allowed by the arbitrator are not supported by any cogent evidence and are based on assumptions, conjectures and surmises. The amounts awarded are excessive, fictitious and beyond the scope of the contract, thereby rendering the award liable to be set aside.

23. Learned senior counsel would submit that the learned District Judge has rightly exercised jurisdiction under Section 34 of the Act. The findings recorded are within the permissible scope of interference, particularly in view of the illegality in the constitution of the arbitral

tribunal, absence of a live claim, bar of limitation and violation of principles of natural justice.

It is lastly submitted that the learned District Judge has rightly set aside the arbitral award. The present appeal, being devoid of merits, deserves to be dismissed with costs.

In support of his submissions, learned counsel for the respondent relied on *Kotak Mahindra Bank Ltd. Vs. Narendra Kumar Prajapat; [2023 SCC OnLine Del 3148], Bharat Broadband Network Limited Vs. United Telecoms Limited; [(2019) 5 SCC 755], S.P. Singla Constructions Private Limited Vs. State of Himachal Pradesh and Another; [(2019) 2 SCC 488], Kinnari Mullick and Another Vs. Ghanshyam Das Damani; [(2018) 11 SCC 328], Atul R. Shah Vs. M/s. V. Vrijlal Lalloobhai and Co. and another; [AIR 1999 Bombay 67]* and *The Godavari Marathwada Irrigation Development Corporation, Aurangabad Vs. M/s. R.B. Kurhade and Company and other; [Arbitration Appeal No. 20/2018 with connected matter].*

24. Heard Mr. Girish K. Naik-Thigale, learned counsel for the Appellants and Mr. P. R. Katneshwarkar, learned senior counsel for Respondent No.1. Perused the impugned judgment and order and relevant documents.

25. The facts which are not in dispute, as emerging from the record are that, pursuant to Tender Notice, the work of construction of earthwork, structures, lining and selective lining of Kothala Branch Canal, having an estimated cost of Rs. 1,15,98,000/-, came to be allotted to the appellant, and an agreement was accordingly executed between the parties. The stipulated period for completion of the said work was 30 calendar months, i.e., on or before 13.08.1993; however, the work ultimately came to be completed on 21.06.2006, after grant of extensions from time to time. In the interregnum, disputes arose between the parties, leading to institution of civil suits, being RCS No. 258 of 1994 and RCS No. 221 of 1995, which were subsequently compromised, resulting in revival of the contract. Thereafter, upon completion of the work, the final bill came to be drawn on 11.07.2006. As, disputes with regard to claims persisted, the arbitration clause was invoked, followed by further correspondence resulting in initiation of arbitral proceedings. Initially, Mr. S.D. Chate was appointed as the Sole Arbitrator on 14.08.2006, who withdrew, followed by appointment of Mr. E.B. Jogdand, who also withdrew, and subsequently, Mr. B.B. Jadhav came to be appointed as the Sole Arbitrator pursuant to communication dated 15.03.2014. The arbitral proceedings were thereafter conducted, and an ex parte arbitral award of Rs. 1,02,45,34,130/- with interest was passed on 27.01.2015.

26. From the submissions and the facts noted above, following questions arise for our consideration.

(1) Whether the arbitrator Mr. B.B. Jadhav is appointed in terms of clause 52 and 53 of the agreement between the parties ?

(2) Whether the application under section 34 of the Arbitration and Conciliation Act is filed before the appropriate court having jurisdiction to entertain the same ?

(3) Whether the award by the arbitrator is patently illegal and is amenable for interference under section 34 of the Arbitration and Conciliation Act.

CONSIDERATION

27. As regards the issue, whether the arbitrator is appointed in terms of clause 52 and 53 of the agreement is concerned, The relevant clauses 52 and 53 of the agreement, which govern the arbitration mechanism between the parties read as under :

"52. SETTLEMENT OF DISPUTES:

If the contractor considers any work demanded of him to be outside the requirements of the contract, or considers any drawings record of ruling of the Engineer-in-charge on any matter in connection with or arising out of the contract or the carrying out of work to be unacceptable, he shall promptly ask the Engineer-in-charge in writing for written instructions or

decision. Thereupon the Engineer-in-charge shall give his written instructions or decision within a period of twenty days of such request.

Upon receipt of the written instructions or decision the contractor shall promptly proceed without delay to comply with such instructions or decision.

If the Engineer-in-charge fails to give his instructions or decision in writing within a period of twenty days after being requested, or if the contractor is dissatisfied with the instructions or decision of the Engineer-in-charge, the contractor may within twenty days after receiving the instructions or decision appeal to be Superintending Engineer, who shall afford an opportunity to the contractor to be heard and to offer evidence in support of his appeal, to the requirement of department. The Superintending Engineer shall give a decision within a period of twenty days after the contractor has given the said evidence in support of his appeal.

If the contractor is dissatisfied with the decision of the Superintending Engineer the contractor may within twenty days after receiving the decision, appeal to the Chief Engineer, who shall afford an opportunity to the contractor to be heard and to offer evidence in support of his appeal. The Chief Engineer shall give decision within a period of twenty days after the contractor has given evidence in support of his appeal.

If the contractor is dissatisfied with this decision, the contractor within a period of twenty days from receipt of decision shall indicate his intention to refer the dispute to Arbitration, failing which the said decision shall be final and conclusive.

53. ARBITRATION :

All dispute of differences in respect of which the decision is not final and conclusive, shall be referred for arbitration to a sole arbitrator appointed as follows.

Within thirty days of receipt of notice from the contractor of his intention to refer the dispute to arbitration the Chief Engineer shall send to the contractor a list three offers of the rank of Superintending Engineer or higher, who have not been connected with the work under this contract. The contractor shall within fifteen days of receipt of this list selected and communicate to the Chief Engineer the name of one officer from the list who shall then be appointed as the Sole arbitrator. If contractor fails to communicate his selection of name, within the stipulated period, the Chief Engineer shall without delay select one officer from the list and appoint him as the sole arbitrator. If the Chief Engineer fails to send such a list within thirty days as stipulated the contractor shall send a similar list to the Chief Engineer within fifteen days; the Chief Engineer shall then select one officer from the lit of appoint him as a sole arbitrator within fifteen days. If the Chief Engineer fails to do so the contractor shall communicate to the Chief Engineer the name of one officer from the list, who shall then be the sole arbitrator.

The arbitrator shall be conducted in accordance within the provisions of the Indian Arbitration Act, 1940, or any statutory modification thereof. The decision of the sole arbitrator shall not final and binding on the parties thereto. The arbitrator shall determine the amount of costs of arbitration to be awarded to either parties.

Performance under the contract shall continue during the arbitration proceedings and payment due to the contractor by the Department shall not be withheld, unless they are the subject matter of the arbitration proceedings.

All awards shall be in writing and in case of awards amounting to Rs. 1.00 lakhs & above, such awards shall state reasons for the amounts awarded.

Neither party is entitled to bring claim to arbitration if the Arbitrator has not been appointed before the expiration of thirty days after defect liability period.

28. Clause 53 of the contract provides that within thirty days of receipt of notice from the contractor, of his intention to refer the dispute to arbitration the Chief Engineer shall send to the contractor a list of three officers of the rank of Superintending Engineer or higher who have not been connected with the work under this contract. The contractor shall within fifteen days of receipt of this list select and communicate to the Chief Engineer the name of one officer from the list, who shall then be appointed as the sole arbitrator, within stipulated time then the Chief Engineer shall select, the officer from the list and appoint him as sole arbitrator.

29. In the instant case, on receipt of notice from the contractor to refer the dispute to the arbitrator, three names were suggested by the Chief Engineer from which one person was selected by the appellant. Accordingly, in terms of clause 53 of the agreement, the arbitrator was appointed. The appointment of arbitrator is in terms of clause 53 of the contract. The District Court while deciding the application under section 34 has rightly observed that the arbitrator was correctly appointed and the objection raised that only a serving officer has to be appointed, has been rejected. No error can be found with the impugned order of the District Court on the issue of appointment of arbitrator is concerned.

30. Coming to the next question, whether the application under section 34 of the Arbitration and Conciliation Act is filed before the

appropriate court having jurisdiction to entertain the same, we need to see section 34 of the Arbitration and Conciliation Act, which is as under :-

> "**34. Application for setting aside arbitral award.**—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
>
> (2) An arbitral award may be set aside by the Court only if—
>
> (a) the party making the application 1 establishes on the basis of the record of the arbitral tribunal that —
> (i) a party was under some incapacity, or
> (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
> (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
> (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
>
> Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
>
> (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the

agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
(ii) the arbitral award is in conflict with the public policy of India.

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.

(2A) 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.

> (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:
>
> Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.
>
> (4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.
>
> (5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.
>
> (6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party."

31. Section 34 uses the words that recourse to a **court** against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

The word 'Court' has been defined under section 2(e), as under :-

> "(e) "Court" means—
>
> (i) in the case of an arbitration other than international commercial arbitration, the principal
> Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
>
> (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;"

32. Section 20 of the Arbitration and Conciliation Act is relevant and provides for place of arbitration, which is reproduced below :-

> "**20. Place of arbitration.—**(1) The parties are free to agree on the place of arbitration.
>
> (2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

> (3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at anyplace it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property."

33. The Supreme Court in the case of **BGS SGS Soma JV Vs. NHPC Limited, reported in (2020) 4 SCC 234** has held that where it is found on the facts of a particular case that either no 'seat' is designated by agreement, or has not been so determined by the arbitral tribunal, or the so-called 'seat' is only a convenient 'venue' then there may be several courts where a part of the cause of action arises, that may have jurisdiction over the arbitration. The relevant portion is as under :-

> "46. This Court in *Indus Mobile Distribution Private Limited* (supra), after referring to Sections 2(1)(e) and 20 of the Arbitration Act, 1996, and various judgments distinguishing between the "seat" of an arbitral proceeding and "venue" of such proceeding, referred to the Law Commission Report, 2014 and the recommendations made therein as follows:
>
> > "17. In amendments to be made to the Act, the Law Commission recommended the following:
> >
> > *'Amendment of Section 20'*
> >
> > 12. In Section 20, delete the word "Place" and add the words "Seat and Venue" before the words "of arbitration".
> > (i) In Sub-section (1), after the words "agree on the" deletethe word "place" and add words "seat and venue".

(ii) In Sub-section (3), after the words "meet at any" delete the word "place" and add word "venue". [NOTE: The departure from the existing phrase "place" of arbitration is proposed to make the wording of the Act consistent with the international usage of the concept of a "seat" of arbitration, to denote the legal home of the arbitration. The amendment further legislatively distinguishes between the "[legal] seat" from a "[mere] venue" of arbitration.]

Amendment of Section 31

17. In Section 31

(i) In Sub-section (4), after the words "its date and the" delete the word "place" and add the word "seat".

18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the BALCO judgment in no uncertain terms has referred to "place" as "juridical seat" for the purpose of Section 2(2) of the Act. It further made it clear that Section 20(1) and 20(2) where the word "place" is used, refers to "juridical seat", whereas in Section 20(3), the word "place" is equivalent to "venue". This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the

> parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction-that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the Code of Civil Procedure be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.
>
> 20. It is well settled that where more than one court has jurisdiction, it is open for parties to exclude all other courts. For an exhaustive analysis of the case law, see *Swastik Gases Private Limited v. Indian Oil Corporation Limited* This was followed in a recent judgment in *B.E. Simoese Von Staraburg Niedenthal and Anr. v. Chhattisgarh Investment Limited."*

34. In the present case, neither seat nor venue is mentioned in agreement (GCC) between the parties and the arbitrator has chosen venue at Pune and Aurangabad at his own convenience. The venue chosen is not the exclusive seat of arbitration. Thus, in the present case, the part of the cause of action arise within the jurisdiction of District Court of Beed, which is the principal civil court of original jurisdiction to deal with the application under section 34. Considering the law laid down in the case of **BGS SGS Soma JV Vs. NHPC Limited,** cited supra, and considering the provisions of the Arbitration Act, the District Court, where the part of cause of action arises and where the subject suit could

have been filed, has jurisdiction to entertain the application under section 34.

35. Considering the law laid down as above and having considered the agreement between the parties and since there is no exclusive seat or venue as mentioned in the agreement, the principal civil court of original jurisdiction at Beed i.e. the District Court has jurisdiction in the matter as part of the cause of action has arisen within the jurisdiction of Beed. Interestingly this objection was not taken before the District Court.

36. The next question that arises for our consideration is whether the impugned award passed by the arbitrator is patently illegal and is amenable for interference under section 34 of the Arbitration and Conciliation Act. It is required to be noted that scope of interference in the arbitral award is extremely limited.

37. The power of the 'Court' to interfere with arbitral award under Section 34 and of this Court under Section 37 of the Arbitration Act needs to be noted before considering the above submissions on merits of arbitral award. The Supreme Court in the case of **PSA Sical Terminals Private Limited Vs. Board of Trustees of V.O. Chidambaranar Port Trust**

Tuticorn and Anr. reported in (2023) 15 SCC 781 has observed that it is a settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, re-appreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

38. The Hon'ble Supreme Court in **PSA Sical Terminals Private Limited** (supra) has further observed that a decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, 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.

39. To appreciate the test of perversity, the Hon'ble Supreme Court in **PSA Sical Terminals Private Limited** (supra) in para 42 has further held as under :-

> "42. To understand the test of perversity, it will also be appropriate to refer to paragraph 31 and 32 from the judgment of this Court in Associate Builders (supra), which read thus:
> 31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:
> (i) a finding is based on no evidence, or
> (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
> (iii) ignores vital evidence in arriving at its decision,
> such decision would necessarily be perverse.
>
> 32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], it was held:
>
> > "7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In Kuldeep Singh v. Commr. of Police (1999) 2 SCC 10, it was held:

> "10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

40. Now, adverting to the facts of the present appeal, letter dated 21.7.2014 was issued to the parties by the sole arbitrator, Mr. B. B. Jadhav, wherein it is stated that he is appointed as a sole arbitrator for settlement of claims arising out of the execution of the work by the appellant, and he has decided to convene the first preliminary meeting in the matter on 03.08.2014 at 11:00 a.m. at Hotel Kohinoor, Pune. It is further noted in the letter that the said meeting is scheduled for submission of written pleadings such as statement of claims, written statement, rejoinder and other documents of both the parties. The said letter was addressed to the Executive Engineer and to the appellant herein.

41. On 01.08.2014, a letter was returned by the Executive Engineer to Mr. B. B. Jadhav, informing him that Mr. A. R. Kamble, Superintending Engineer, Irrigation Circle, Aurangabad, is appointed as the sole arbitrator for settlement of disputes and claims relating to the

work of the claimants, and therefore, it is not advisable to attend the meeting scheduled on 03.08.2014. The arbitrator was thus put to notice that the respondent-Executive Engineer had appointed Mr. A. R. Kamble as the sole arbitrator in terms of the contract.

42. Thereafter, on 01.09.2014, the Executive Engineer issued another letter to the appellant, intimating him to remain present in the chamber of the Executive Engineer on 09.09.2014 for a meeting organized in respect of the subject matter of the arbitration. In the minutes of the meeting held by Mr. A. R. Kamble on 09.09.2014 at Aurangabad it can be seen that the Executive Engineer, Deputy Engineer, Junior Engineer and Section Engineer were present. The arbitrator waited for half an hour and thereafter proceeded with the meeting and directed the respondent to submit certain documents. On 01.10.2014, the documents were filed before the arbitrator. The Executive Engineer filed pleadings before Mr. A. R. Kamble as regards the maintainability of the arbitral dispute, raising certain objections. The claimant did not participate before the said arbitrator.

43. It is pertinent to note that, in parallel proceedings, the arbitrator, Mr. B. B. Jadhav, on 24.07.2014, issued a letter to the earlier arbitrator, Mr. E. B. Jogdand, for handing over the record of the arbitral

proceedings along with documents submitted before him by both the parties.

44. First Meeting :- On 03.08.2014, the first meeting of the arbitrator, Mr. B. B. Jadhav, was held at Hotel Kohinoor, Pune wherein it is recorded that the claimants were present, whereas, no representative of the GMIDC, Aurangabad, was present. The arbitrator waited for one and half hours and thereafter commenced the meeting. Thereafter, on 11.08.2014, the proceedings before the arbitrator Mr. B. B. Jadhav were held and the parties were intimated about the next meeting scheduled on 24.08.2014.

45. Second Meeting :- The second meeting before the arbitrator, Mr. B. B. Jadhav, was held on 24.08.2014, wherein it is noted that none appeared on behalf of the respondent, while the claimants were present. The arbitrator fixed costs, meeting charges and other charges and observed that in terms of Section 38(1) and (2) the fees shall be payable in equal shares by the parties. The third meeting was scheduled on 05.10.2014 at Hotel Kohinoor, Gymkhana, Pune. It is recorded that the copies of the proceedings were submitted to both the parties.

46. Third Meeting :- The third meeting was held on 05.10.2014 by Mr. B. B. Jadhav, wherein it was noted that none appeared on behalf of either the appellant or the respondent. The sole arbitrator decided to

hold the next meeting on 19.10.2014 and called upon the parties to make payment of fees. The record indicates that the copies of order were posted to all the parties.

47. Fourth Meeting :- The fourth meeting was conducted on 19.10. 2014 by Mr. B. B. Jadhav. The claimants were present, whereas the respondents were not present. It was noted by the arbitrator that despite specific notice on 03.08.2014, 24.08.2014, 05.10.2014, the respondents had not caused their appearance. The arbitrator, therefore, proceeded under Section 25 of the Arbitration and Conciliation Act, 1996. It is further recorded that the counsel for the claimants invited attention to various claims and that the claimant had briefly introduced the claim statement.

48. Fifth Meeting :- The fifth meeting was held by Mr. B. B. Jadhav on 26.10.2014, at Pune, wherein documents were produced by the claimants and submissions were advanced. The matter was thereafter posted for further consideration on 04.11.2014.

49. Sixth Meeting :- The sixth meeting was held by Mr. B. B. Jadhav on 23.11.2014, wherein only the claimants were present and the respondents were not present. The counsel for the claimants advanced submissions claim-wise, which were taken on record.

50. Seventh Meeting :- The seventh meeting was held on 29.11.2014. The claimants were present, whereas the respondents were absent. The arbitrator instructed the claimants, and the claimants continued with their submissions. Thereafter, the matter was reserved for passing of the final award.

51. On 27.01.2015 at 12:30 PM, Mr. B. B. Jadhav declared the final award. It is noted that though the parties were directed to deposit the costs of arbitral proceedings and the same was not deposited by the respondents, a copy of the award was not supplied to the parties. The parties were informed that they would be entitled to a copy of the award upon payment of costs by the respondent.

52. The above procedure followed by the arbitrator reveals two fundamental issues. Firstly, there existed a dispute regarding the appointment of Mr. B. B. Jadhav. The respondents had filed an application under Section 11 before the High Court for appointment of an arbitrator. When the matter was taken up for consideration by this Court, this Court by order dated 18.11.2024 granted liberty to the respondents to raise within 45 days all grievances before the arbitrator under Section 13(2) of the Arbitration Act. The respondents thereafter challenged the order of the High Court dated 18.11.2014 before the Hon'ble Supreme Court. Despite the arbitrator and the parties having

knowledge that the respondent had applied before the High Court under Section 11 for appointment of arbitrator, the arbitrator Mr. B. B. Jadhav proceeded with the arbitration ex-parte and in hasty manner. When the matter came up before Supreme Court, it was noted by the respondent that the arbitrator, Mr. B. B. Jadhav, had already passed an ex-parte award. In the absence of the respondent, the arbitrator had proceeded hurriedly with the matter.

53. Unlike civil suits where the claim can be deemed to be admitted in absence of written statement, in arbitration proceedings, the arbitrator is expected to decide the claim on merits even though it is an ex-parte proceeding. Section 25 particularly deals with this aspect, which is noted below :-

> 25. DEFAULT OF A PARTY :
>
> Unless otherwise agreed by the parties, where, without showing sufficient cause,—
>
> (a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
>
> (b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant 3[and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited].

> (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it."

54. It was necessary for the arbitrator to follow the procedure under Section 25 of the Arbitration Act. Although reference is made to Section 25 of the Act in the award, the evidence in support of the claims appears to be lacking and the claims cannot be said to be established. A perusal of the proceedings before the arbitrator indicates that the submission of the claimants are made on two dates and the same is accepted by the tribunal. No evidence is laid as regards the expansion of work and performance of additional work. It is not known how the R.A. bills were submitted to the respondents and for what claims and the same were rejected by the respondents on which grounds. No affidavit in evidence of technical person is before the tribunal. Work shown to the arbitrator at alleged site visit is not known whether the said work was executed by the appellant. Lengthy award is passed citing long list of case laws, but is completely bereft of evidence and the conduct of the arbitrator also appears to be biased. The process, to say the least, appears to be biased and against the respondents. The arbitrator's award is thus patently illegal and also shocks the conscience of the court and the award is in conflict with basic notions of justice.

55. The procedure as contemplated under Section 25 of the Arbitration Act does not appear to have been properly followed. There are various issues those arise for consideration before the arbitrator Mr. B. B. Jadhav. Independently, an application under Section 11 was filed. In such circumstances, the arbitrator, Mr. B. B. Jadhav ought to have waited for some time. However, in absence of the respondent, Mr. B. B. Jadhav felt it appropriate to proceed with the matter in a hurried manner.

56. The arbitrator ought to have examined the impact of the decree of the Civil Court which has a prima facie bearing on the arbitration proceedings, at least to the extent of the compromise recorded before the Civil Court. Also, the delay in execution of the work also prima facie rested on the claimant, for which suit and arbitral proceedings were filed and later compromised. The arbitrator appears to have willingly brushed aside the orders of civil court and without considering the impact of the decree on the arbitration proceedings.

57. Thus, the District Court, while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, has set aside the award passed by the arbitrator. We are in agreement with the order passed under Section 34 and find no reason to interfere with the same. However, it is clarified that the parties are at liberty to agree upon an

arbitrator for adjudication of the dispute, failing which the applicant is at liberty to approach this court for appointment of arbitrator. If such an application is filed all contentions are kept open.

58. Accordingly, the Commercial Arbitration Appeal stands dismissed.

[VAISHALI PATIL-JADHAV, J.] [ARUN R. PEDNEKER, J.]