

**HIGH COURT OF TRIPURA  
AGARTALA**

**Commercial Appeal No.03 of 2024**

Sri Debashish Das, son of Lt. Nirmal Bikash Das, resident of village-Joynagar, Middle Road, P.O.-Agartala, P.S.-West Agartala, Sub-Division-Sadar, District-West Tripura, PIN-799002, Age-58 years.

..... Appellant(s).

V E R S U S

1. The State of Tripura, represented by the Secretary-cum-Commissioner, Public Works Department(R & B), New Secretariat Building, P.O.-Kunjaban, Agartala, West Tripura.

2. The State of Tripura, represented by the Executive Engineer, PWD(R & B), Kailashahar Division, Unokoti Tripura.

..... Respondent(s).

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For Appellant(s) : Mr. Somik Deb, Sr. Advocate,  
Mr. Haradhan Sarkar, Advocate,  
Mr. Jishan Samed, Advocate,  
Ms. Adwitiya Chakraborty, Advocate.

For Respondent(s) : Mr. Kohinoor Narayan Bhattacharyya, G.A.

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**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO  
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Date of hearing : **26.02.2026.**

Date of judgment : **01.04.2026.**

Whether fit for reporting : **YES.**

**JUDGMENT & ORDER**

*(M.S. Ramachandra Rao, C.J.)*

Heard Mr. Somik Deb, learned Senior counsel assisted by Mr. Haradhan Sarkar, counsel for the appellant, and Sri Kohinoor N Bhattacharyya, Government Advocate for the respondent.

2. This appeal has been filed under Section 13(1A) of the Commercial Courts Act, 2015 read with Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 ( for short 'the Act') challenging the judgment

dt.31.08.2024 of the Commercial Court, Unakoti Judicial District, Kailashahar in case No.T.S.(ARB) 04 of 2020.

**The Background facts:**

3. A Notice Inviting Tender dt.27.12.2013 was issued by the Public Works Department of the Government of Tripura for executing the work of "*Construction of Kailashahar District Jail at Kailashahar, Unakoti District*".

4. The appellant participated in the said tender and became the successful bidder, and in 2014, an agreement was executed between the appellant and the respondents for execution of the said works contract.

5. On 28.05.2019, disputes arose between the parties in connection with the said agreement. The appellant then made a request to respondents for appointment of an Arbitrator, and a Sole Arbitrator was appointed.

6. On 18.06.2019 the Sole Arbitrator entered into the reference, and registered it as ARB/SRB/2019(2).

7. The appellant then filed his claim statement and the respondents also filed their counter statement/written objection.

8. In 2019-2020, on various dates, proceedings took place before the Sole Arbitrator in connection with the above case.

**The award of the arbitrator:**

9. On 17.06.2020, by an elaborate Arbitral Award, the Arbitrator decided the dispute partly in favour of the appellant, i.e. claims under Head Nos.1, 5, 6, 6(a), partly under Head Nos.7 and 7(a), 8, partly under Head Nos.9, 11 and 12 were allowed in favour of the appellant, and claims under the other remaining Heads were held against the appellant.

**The application under Section 34 of the Act by the respondents:**

10. The respondents, on 24.09.2020, filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Unakoti Judicial District, Kailashahar (for short 'the Commercial Court'), which was numbered as Title Suit 04 (Arbitration) of 2020 challenging the Arbitral Award dt.17.06.2020.

11. The appellant on 11.11.2021 filed his objection thereto refuting the pleas advanced by the respondents.

**The judgment dt.16.3.2022 of the Commercial Court in the Section 34 petition:**

12. The Commercial Court on 16.03.2022 dismissed T.S. 04(Arbitration) of 2020 filed by the respondents.

**Arbitration Appeal No.07 of 2022 filed by respondents in this Court:**

13. Challenging the same, the respondents filed an appeal, being Arbitration Appeal No.07 of 2022 under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 before this Court.

**The Judgment dt.31.1.2024 by this court in Arbitration Appeal No.07 of 2022 and remand of the matter back to the Commercial Court:**

14. On 31.01.2024, the said Arbitration Appeal No.07 of 2022 was allowed by the Division Bench of this Court and the matter was remitted to the Commercial Court with the observation that the Commercial Court had not made any reference to the grounds of challenge relating to price escalation and applicability of Clause 44 and 44.1 of the agreement; that the Commercial Court as well as the Sole Arbitrator had failed to consider whether the appellant herein was entitled to get payment relating to issue No.2 as the payment relating to issue No.2 has already been paid to him. It was further observed that there was complete non-consideration of several grounds urged

by the respondents herein in the application under Section 34 filed by them in the Commercial Court.

15. The Division Bench also stated that the Commercial Court had failed to test the correctness of the award within the contours of the grounds available under Section 34(2) and 34(2-A) of the Act; and that it had without referring to the relevant Clauses of the agreement and without consideration of any of the grounds raised under Section 34 of the Act, passed judgment; and so it makes the judgment of the Commercial Court an unreasoned one and so unsustainable.

16. The Division Bench then stated as under:

*"12. In view of the discussions made here-in-above, we are of the view that the matter be remitted to the learned District Court, Unakoti District to decide the grounds urged by the appellant and also as to the applicability of Clause 44 of the agreement and as regards to the expected loss of profit or adjustment in accordance with law within a reasonable time preferably 12(twelve) weeks from the date of receipt of the copy of this order since the Arbitration proceeding was initiated way back in the year 2019. Since the matter is remanded to the learned Commercial Court only on the grounds that the impugned Judgment shows complete non application of mind and non consideration of the grounds urged in the Section 34 application, we have consciously refrained from observing any opinion on the grounds urged by the parties in the question of sustainability of the Award rewarded by the Arbitrator at this stage.*

*The appeal is disposed of in the manner and to the extent as indicated above."*

17. Thus, the matter was remitted back to the Commercial Court for reconsideration as indicated above.

**The judgment dt.31.8.2024 of the Commercial Court after remand by High Court:**

18. Thereafter, the learned Commercial Court again heard the matter and by judgment dt.31.08.2024 set aside the Arbitral Award in its entirety.

**The instant Arbitration Appeal:**

19. Challenging the same, appellant has preferred the instant appeal.

**Scope of interference with an Arbitral award under Section 34 and by the Appellate Court under Section 37 of the Act with a judgment under Section 34 of the Act:**

20. Before we consider the Appeal, we shall briefly discuss the legal position regarding scope of interference by the Court (Commercial Court here) with an Arbitral award under Section 34 of the Act and by the Appellate Court under Section 37 of the Act while considering a judgment under Section 34 of the Act.

21. The legal position on this aspect has been discussed by the Supreme Court in *Somdatt Builders-NCC-NEC (JV) v. NHAI*<sup>1</sup>.

In that case, the Supreme Court relied on its previous judgments and emphasized that as far as Section 34 is concerned, the position is well settled that:

(a) the Court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India.

(b) Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the Court is shocked or when the illegality is not trivial but goes to the root of the matter.

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<sup>1</sup> (2025) 6 SCC 757, at page 778

(c) An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts.

(d) As far as interference with an order made under Section 34 by the Court under Section 37 is concerned, it has been held that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. (*Reliance Infrastructure Ltd v. State of Goa*<sup>2</sup>)

(e) The scope of interference under Section 37 is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 Act. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow. Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34, either setting aside or refusing to set aside an arbitral award, is all the more circumscribed. (*UHL Power Co. Ltd v. State of HP*<sup>3</sup>)

22. It also relied on its judgment in *Ssangyong Engg. & Construction v. NHAI*<sup>4</sup> to reiterate what public policy of India is and explained that it means the fundamental policy of Indian law. Violation of Indian statutes linked to public policy or public interest and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. It would also mean that the arbitral award is against basic notions of justice or morality. An arbitral award can be set aside

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<sup>2</sup> (2024) 1 SCC 479

<sup>3</sup> (2022) 4 SCC 116

<sup>4</sup> (2019) 15 SCC 131

on the ground of patent illegality i.e. where the illegality goes to the root of the matter but re-appreciation of evidence cannot be permitted under the ground of patent illegality.

**Consideration by this Court:**

23. We shall now discuss the correctness or otherwise of the judgment of the Commercial Court under Section 34 of the Act in the impugned judgment.

24. After extracting the pleadings, the written submissions and the judgments dealing with the scope of Section 34 of the Act, the Commercial Court, in the impugned judgment, considered the issues framed by the Arbitrator.

**Re: Issue No.1:**

25. Issue No.(1) framed by the Arbitrator was "*Whether the claim petition of the claimant contractor is maintainable?*"

This issue was held in favour of the appellant by the arbitrator and the Commercial Court .

**Re: Issue No.2:**

26. Then the Commercial Court considered issue No.(2) framed by the Arbitrator.

The said Issue No.(2) was "*Whether the claimant is entitled to balance outstanding payment against work executed up to 03.01.2017, but not measured-Rs.50,00,000/-?*"

27. On this issue, the Arbitrator had not granted any relief to the appellant.

28. But the Commercial Court went into the said issue and found that on the face of the record, the award of the Arbitrator goes against the notions

of justice and was in contravention with the fundamental policy of Indian law. It also stated that this matter is required to be dealt with and considered by the Arbitrator.

29. We cannot approve this view of the Commercial Court. When the Arbitrator had not granted any relief to the appellant on this issue, there was no necessity for the Commercial Court, while dealing with the application of the respondents under Section 34 of the Act, to take up this issue at all.

30. When the Arbitrator had not granted any relief to the appellant on this issue and the appellant had not challenged it by filing an application under Section 34 before the Commercial Court, and the respondents had succeeded before the Arbitrator on this ground, it is shocking that the Commercial Court went into this issue which was wholly unnecessary for it to go into, and held against the respondents. This is a clear error in its judgment and warrants interference with it.

**Re: Issue Nos. 3 and 4:**

31. Then the Commercial Court considered issue Nos.(3) and (4), which are as under:

*"Issue Nos.3 and 4- Whether the claimant is entitled to get the balance outstanding payment against the extra/deviated item for additional lift, but not measured-Rs.1,31,44,169/-? and Whether the claimant is entitled to get the balance outstanding payment against the work executed as extra item for additional lead, but not measured-Rs.1,03,95,679/-?"*

32. The Arbitrator had not granted any relief to the appellant on both these issues.

33. But the Commercial Court held that the Arbitrator's decision on these issues goes against the notions of justice and was in contravention with fundamental policy of Indian law.

34. We are of the view that in the application filed under Section 34 of the Act by the respondents, it was again wholly unnecessary for the Commercial Court to go into these issues and interfere with the Arbitrator's decision.

35. It was wholly unnecessary, in our opinion, for the Commercial Court to reverse the view of the Arbitrator, which was adverse to the appellant and which the appellant had not chosen to challenge by filing an application under Section 34 of the Act. Thus this is another clear error in his judgment warranting interference with it.

**Re: Issue No.5:**

36. Then the Commercial Court took up issue No.(5), which states as under:

*"Issue No.5-Whether the claimant is entitled to get the balance outstanding payment against the work executed and measured, but not paid Rs.28,01,334/-?"*

37. The Commercial Court stated as under:

*"On the aforesaid fact, this court finds that while deciding issue No.5 the Sole Arbitrator stated it is the claim against execution of work which have been measured and entered in MB, according to which the 1<sup>st</sup> R.A- 6<sup>th</sup> R.A Bills have been prepared and paid and 7th R.A and Final bill has been prepared, but not paid. Hence, the question of entitlement of payment remaining outstanding. The claim of the contractor in this issue is Rs.28,01,334/- which has been recorded in the claim statement but during hearing a written application has*

been submitted by claimants lawyer claiming an amount of Rs.39,66,805/- on the plea that the said outstanding amount has been admitted as balance payment to be made to the claimant (Respondent) (Annexure-2) and showed the same in Tabular form along with interest to be paid by the Petitioner to the Respondent.

This court finds that the Sole Arbitrator has mentioned that the Petitioner has accepted an amount of Rs.39,66,805/- as balanced outstanding payment and the said outstanding amount being an admitted fact by the Petitioner, the Sole Arbitrator allowed the claim of the Contractor-Respondent but whether the payments claimed to be made by the petitioner to the Respondent- Contractor in dispute Nos.2 and 3 has been adjusted or not has not been discussed and decided as Respondent is not entitled to such amount as opined by the Arbitrator in Issue Nos.2, 3 and 4 but, in fact, paid by the petitioner. Further, Annexure- R-2 as mentioned by the Arbitrator in Issue No.5 has neither been submitted by the Petitioner at present nor it is with the re-constructed record. The said fact of the admission by the petitioner, thus, being beyond record and the findings arrived by Sole Arbitrator, appears to be, beyond record and in contravention with the fundamental policy of Indian law."

38. No doubt, the appellant had claimed under this issue only Rs.28,01,334/- in the claim statement, but during the hearing before the Arbitrator, he had filed a written application claiming Rs.39,66,805/- contending that this outstanding amount had been admitted as balance payment to be made to him as per Annexure-R/2, and he had showed the same to the Arbitrator in a tabular form along with interest to be paid by the respondents to the appellant.

39. The Commercial Court in its judgment states that this Annexure-R/2 [as mentioned by the Arbitrator in issue No.(5)] was not submitted by the respondents nor it was with reconstructed record. It therefore, states that the fact of admission by the respondents is beyond the record and so the findings on this issue by the Arbitrator were beyond the record and in contravention with the fundamental policy of Indian law.

40. From this statement in the judgment of the Commercial Court and also as per contentions of the parties, it is clear that the documents including Annexure-R/2, which had been filed before the Arbitrator by the respondents, had not come before the Commercial Court when the Section 34 application was before it. There was only a reconstructed record before the Commercial Court.

41. But admittedly Annexure-R/2 was available when the Arbitrator considered the matter and pronounced the award on 17.06.2020 and he had perused the said document, accepted the same, and granted relief to the appellant.

42. Merely because the respondents did not submit the said Annexure-R/2 before the Commercial Court or merely because it was not found in the reconstructed record, it is not permissible for the Commercial Court to interfere with the relief granted by the Arbitrator to the appellant.

43. As held by Justice A.P. Misra (as His Lordship then was) in ***Ram Khelwan v. Dy. Director of Consolidation, Allahabad***<sup>5</sup>, the principle of reconstruction of document whether it is lost, burnt or misplaced not on account of fault of either parties is clearly covered under the Court's inherent power under section 151 CPC. However, this power has to be exercised with

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<sup>5</sup> 1988 All LJ 68 : 1987 (2) All WC 1255

great care and circumspection to see that in reconstruction of file, no party is getting favorable gains from the position what it was prior to the reconstruction.

44. So the loss of the Annexure R-2 filed before the Arbitrator by respondents either when it was in the custody of the Arbitrator, or after they had been submitted by the Arbitrator to the District Court, cannot be to the prejudice of the appellant, because neither party can be blamed for the loss of the said document. Its loss cannot put the respondents in a better position than they were in prior to the reconstruction of the record when its original was available before the Arbitrator.

45. In fact copy of the said Annexure R-2 was produced before us by counsel for the appellant and its contents were not disputed by counsel for the respondents. It supports the stand taken by the appellants that in the said document there was an admission of liability by respondents to the tune of Rs.39,66,805/-. So the arbitrator cannot be said to have committed any error which warranted interference by the Commercial Court under section 34 of the Act.

46. Secondly, the Commercial Court stated that payments claimed to be made by the respondents herein to the appellant in dispute Nos.2 and 3 had been adjusted or not, had not been discussed and decided by the Arbitrator.

47. When the appellant had been denied relief by the Arbitrator on issues (2), (3) and (4), it would be perverse for the Commercial Court to say that claims made under those issues should be verified as to their adjustment against the claim of the appellant referred to in issue No.(5).

48. Therefore, we find that the Commercial Court had erred in interfering with the award of the Arbitrator, which was based on evidence

adduced before the Arbitrator and that the grounds of interference by it do not fall within Section 34 of the Act in any manner. There is also no contravention with any fundamental policy of Indian law as regards this particular finding of the Arbitrator is concerned.

**Re: Issue No.8:**

49. The Commercial Court then considered issue No.(8), which is as under:

*"Issue No.8-Whether the rescission of contract by the respondent is lawful or not?"*

50. Admittedly, the commencement of the original contract was 20.06.2014 and it fixed the date of completion of the work as 19.6.2016. There is also no dispute that its validity was extended by respondents up to 30.09.2018. It was rescinded on 31.1.2019 by respondents.

51. This issue is linked with the question as to who is responsible for delay in execution of the work order.

52. The stand of the respondents in their written objection filed before the arbitrator was as under:

*"Para-1(9)*

*The reason of Hindrances up to 30<sup>th</sup> April'2016 for a period of 165 days has been considered by the Competent Authority (The Superintending Engineer, 1<sup>st</sup> Circle, Kumarghat) without levy of compensation.*

*Para-1(10).*

*The payment for clearing of Jungles i/c uprooting of Sank Vegetation, Brush Wood, Trees etc. has been measured and paid as extra item for an area of 29,356.20 sqm. @Rs.2.70/sqm. totaling a sum of Rs.79,262.00.*

Para-1(11)

*The Claimant Contractor could visit the site-of-work before submission of tender as provided vide clause of the Draft N.I.T.*

Para-1(12). *Payment for Earth work as Alleged have been made in terms of item No.1 N and 2 and nothing extra is entertainable.*

Para-1(13)

*The design and Drawing delivered to the Claimant Contractor from time to time. Statement showing the details of Design and Drawing handed over to the Claimant Contractor showing the dates is appended for kind appraisal of the Ld. Advocate.*

Para-1(14) *Reply submitted against para-1(13).*

Para-1(15) *There was some delay for a total period of 165 days in finalization of working drawing and hindrance for 165 days approved by the Competent Authority without levy of compensation.*

Para-1(17) *Provision extension of time sanctioned up to 31-01-2019 to keep the contract alive in accordance with the terms of the Agreement.*

Para-1(18) *Provisional extension of time granted up to 31-01-2019 for completion of work."*

53. The arbitrator held in his Award, after appreciation of evidence on record, as under:

(i) The Hindrance register filed by the parties shows that for period up to 30-4-2016, 165 days delay was attributable to the respondents;

(ii) Correspondence between the parties further reveals that no clear site was available for executing the contracted work straightaway from beginning as per the work order and that the work started on 14.8.2014 instead of 20.6.2014. This delay of 54 days is also attributable to the respondents;

(iii) changes in design and drawings by respondents on several occasions and non-supply of design and drawings in time also caused considerable delay in execution of work and that this was also not denied by the respondents;

(iv) the contract was extended by the respondents *suo motu* up to 30.9.2018, but thereafter there was no extension of contract and that on 31.1.2019, the respondents all of a sudden decided to terminate a non-existent contract, without extending the validity of the contract upto the date of rescission;

(v) that most of delays are attributable to the respondents (80%); and

(vi) a non-existent contract cannot be terminated legally.

54. These findings are based on appreciation of record and cannot be termed as perverse or contrary to law.

55. If there was a valid extension of the contract only up to 30.09.2018 and there was no extension of the contract up to 31.01.2019, by efflux of time the contract stood rescinded on 30.09.2018 itself. This is also the view taken by the Commercial Court. To that extent it is correct.

56. However, the Commercial Court, in the impugned judgment, held that this opinion of the Arbitrator that respondents were responsible for delay in execution of the work, was beyond record and unjustified and goes against the notions of public policy and was in contravention with the fundamental policy of Indian law.

57. While giving these findings, again the Commercial Court says that :

(i) copy of Hindrance Register, which was marked as an annexure before the Arbitrator, was not found with the reconstructed record;

(ii) certain correspondence indicating that no clear site was available, was also not found with the record; and

(iii) that certain documents marked before the Arbitrator as annexures showing that there were changes in design and drawing on several occasions and there was non-supply of design and drawing in time, were also not there in the reconstructed record etc.

58. But admittedly there is no dispute that the Arbitrator had seen these documents and had referred to them in his award.

59. As stated above, merely because they were not found in the reconstructed record, the award of the Arbitrator cannot be interfered with by the Commercial Court because such loss of original record cannot be put by the respondents as a point in their favour to doubt the Arbitrator's integrity and question the very existence of such material at all. Such material has to be believed to exist and also to have been considered by the Arbitrator, though it might have got lost subsequently.

60. So, the findings of the Arbitrator on issue No.(8) could not have been interfered by the Commercial Court as it had done and it erred in holding that respondents were not responsible for delay in execution of the work.

**Re: Issue Nos.7 and 13:**

61. Next the Commercial Court considered issue Nos.(7) and (13), which are as under:

*"Issue No.7-Whether price escalation bill up to 6<sup>th</sup> R.A. Bill?-  
Rs.1,37,99,630/- and*

*Issue No.13-Whether any interference is called for, when the Ld. Sole Arbitrator has considered the effect of Clause 44 of the Agreement?"*

62. The High Court in its judgment dt.31.01.2024 in Arbitration Appeal No.07 of 2022 filed by the respondents, while remitting the matter to the Commercial Court, had asked it to consider the effect of Clause 44 of the agreement.

63. This Clause dealt with price escalation and the Arbitrator had opined that the original contract period was for 24 months only, and the respondents were mostly responsible for delay of execution of work and so, the appellant was entitled to price escalation.

64. But since on issue No.(8), the Commercial Court had held against the appellant and held that respondents cannot be held liable for the delay in execution of work, the Commercial Court relied on it to set aside the Arbitrator's award in favor of the appellant on issue Nos.(7) and (13).

65. We have already held that the Commercial Court's decision on issue No.(8) is erroneous and that merely because the reconstructed record did not contain the documents which the Arbitrator had seen, the finding of the Arbitrator cannot be interfered with.

66. Also, when the respondents themselves have admitted in black and white in their very pleading before the arbitrator that there were hindrances because of which extensions had been granted to the appellant for execution of the work, and the Arbitrator had also relied on the documentary evidence produced before him to come to the same conclusion as indicated in his discussion on issue No.(8), the Commercial Court could not have interfered with finding of Arbitrator.

67. Since the Arbitrator's view cannot be said to be perverse or contrary to law on this aspect, we hold that the findings of the Commercial Court on issue Nos.(7) and (13) are also bad in law, and cannot be sustained.

**Re: Issue No.9:**

68. The Commercial Court then considered issue No.(9), which stated as under:

*"Issue No.9-Whether the claimant is entitled to get loss of expected profit @ 15% on the balance work remaining unexecuted?-Rs.34,24,048/-"*

69. While dealing with this issue, the Commercial Court again relied on its finding on issue No.(8), and based on that finding, interfered with the award of the Arbitrator, who had granted relief on this issue to the appellant.

70. Since we have held that the finding of the Commercial Court on issue No.(8) cannot be sustained, we hold that the Arbitrator did not err in granting relief to the appellant on this issue as well and the Commercial Court erred in interfering with it.

**Conclusion:**

71. For all the aforesaid reasons, the judgment dt.31.08.2024 of the Commercial Court, Unakoti District, Kailashahar is set aside, the award dt.17.6.2020 of the Arbitrator is upheld, and the Appeal is allowed with costs.

Pending application(s), if any, also stands disposed of.

**(BISWAJIT PALIT, J)**

**(M.S. RAMACHANDRA RAO, CJ)**