



2026:DHC:4113



**IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

**Judgment reserved on: 21.04.2026**  
**Judgment pronounced on: 11.05.2026**

+

O.M.P. (COMM) 261/2023

STERLITE TECHNOLOGIES LTD

.....Petitioner

Through: Mr. Amit Dhingra, Mr. Rohit Mahajan & Mr. Siddharth Agrawal, Advs.

versus

BHARAT SANCHAR NIGAM LIMITED

.....Respondent

Through: Mr. Dinesh Agnani, Sr. Adv. with Ms. Leena Tuteja & Ms. Ishita Kadyan, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE AVNEESH JHINGAN**

**J U D G M E N T**

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the arbitral award dated 09.05.2023 (for brevity 'award').

2. The facts shorn of unnecessary detail are that the respondent invited tender for procurement, supply, trenching, laying, installation, testing and maintenance of optical fiber cable (OFC), PLB duct and accessories for construction of Exclusive Optical National Long Distance (NLD) backbone and optical access routes on turnkey basis for defence network. The Notice Inviting Tender (NIT) was for seven packages. The petitioner was successful bidder for package 'A' for the State of Jammu and Kashmir of the NTP region and consisted of laying 9,495 kms of cable. The work was to be executed link-wise



2026:DHC:4113



with each link to be installed and commissioned separately.

2.1 The dispute in the present case is only with regard to 547 kms of cables laid in a common trench having multiple ducts (hereinafter referred to as 'MDC').

2.2 On a pre-bid query clarification no.160 was issued by the respondent stating that twenty-five percent of the quoted rate for services shall be paid for the cable laid through existing ducts with the permission of BSNL/PICG.

2.3 On 30.06.2014, an Advance Purchase Order (APO) was issued. Final Purchase Order (PO) dated 24.07.2014, was issued after unconditional acceptance by the petitioner on 01.07.2014. The petitioner by letter dated 10.01.2018, claimed hundred percent service cost for MDC. Vide communication dated 01.08.2018, the committee constituted by the respondent recommended that twenty five percent of the service cost portion is payable for MDC cases initially captured as per survey planned and approved.

2.4 On 16.06.2020, the petitioner issued notice under Section 21 of the Act. The arbitrator was appointed by this court. The arbitrator after considering the clauses of the contract and the clarification no. 160 rejected the claim of the petitioner for hundred percent service cost for MDC hence, the present petition.

3. Learned counsel for the petitioner argued that the arbitrator read sub-clause 28(iii) of the PO in isolation and not in conjunction with the other clauses and the conclusion arrived at is perverse. The submission is that the arbitrator erred in holding that pre-bid





2026:DHC:4113



understanding of the parties. The decisions of the Supreme Court in **Ssangyong Engineering & Construction Co. Ltd. v. NHAI**, (2019) 15 SCC 131 and **PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambaranar Port Trust**, AIR 2021 SC 4661 are relied upon to submit that unilateral addition or alteration of contractual terms cannot be foisted upon an unwilling party, nor can a party be compelled to perform a bargain not agreed to. The decision in **Rajasthan State Industrial Development & Investment Corporation v. Diamond & Gem Development Corporation Ltd.**, (2013) 5 SCC 470 is relied upon to argue that the contract is to be interpreted by giving effect to the actual meaning of the terms and the court cannot make a new contract, if the parties have not made it for themselves. Reliance is also placed on the decision of the Supreme Court in **Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum**, (2022) 4 SCC 463 and of this court in **Union of India v. Jindal Rail Infrastructure Ltd.**, (2022) SCC online Del 1540 to contend that re-writing a contract for the parties would be a breach of fundamental principles of justice and the court should interfere.

4. *Per contra*, the scope of interference under Section 34 of the Act is limited. There cannot be interference with a plausible view of the arbitrator and the evidence cannot be re-appreciated. The submission is that in a trench dug by the petitioner multiple ducts were laid and after blowing the cable for the first link the other ducts were “existing duct”. It is contended that multiple ducting was included in the contract since inception and all other bidders for the other



packages have accepted twenty-five percent payment for MDC. The emphasis is that clause 28(iii) of the PO specifically stipulated that for blowing the cables through the existing ducts twenty five percent of the quoted rate of service cost shall be paid.

5. Before proceeding further it would be relevant to reproduce the following clauses of the tender, APO, PO and the clarification no.160:

“Payment Terms

84.1 Payment for 60% of the material cost price shall be made on receipt of goods by consignee at site and after successful inspection by the concerned store-in-charges nominated by PICG. Inspection will be carried out by PICG after delivery of goods. The consignee receipt will be Issued after completion of Inspection.

84.2 Payment for 30% amount of the cost of the materials and 80% amount of the cost of the works executed shall be released after commissioning of the respective NLD link and completion of Access Networks at respective Army sites as described in clause 85 below. Reimbursement of RoW charges shall be made on commissioning of the respective NLD link/access network.

84.3 Payment for 10% amount of the cost of the materials and 20% amount of the cost of the works shall be released against PBG of equivalent amount for one year for which provisions of clause 55.2 above shall also be applicable. All the payments will be released to the bidder by BSNL after issue of requisite inspection and acceptance test certificates after successful completion of joint testing by BSNL and PICG.

84.4 The payment shall be made for actual completed route Km on the basis of quoted rate per Km.”

“96.4.4. Measurement of length of cable. The length of cables laid in trenches, through pipes and through ducts



2026:DHC:4113



shall be measured by use of OTDR. The payment for Services component shall be made as per the RODO meter readings and not as per the OTDR readings. The length should be cross-verified with the marking of lengths on the cables. The lengths shall be recorded in sheet provided in the measurement book.”

“96.4.7. Measurement of the work of cable far calculation of services portion will be taken equal of the length of the pipe/duct (as measured in the RODO meter) through which the cable has been pulled and not the total length of the cable pulled through pipe/duct.”

“130.4. Depth and Size of the trench:

130.4.1. The depth of the trench from top of the surface shall not be less than 165cms unless otherwise relaxation is granted by competent authority of BSNL and PICG under genuine circumstances. In rocky terrain, the depth of the trench may be restricted to a depth of 100 to 140cms. However, Engineer-in-charge in exceptional cases due to adverse site conditions encountered, may allow to lay HDPE/PLB pipes at a lesser depth with additional protection. In all cases, the slope of the trench shall not be less than 15 degrees with the horizontal surface. The width of the trench shall normally be 45 cms at the top & 30 cms at the bottom. In case, additional pipes (HDPE/GI/RCC Pipes) are to be laid in some stretches, the same shall be accommodated in this normal size trench.

130.4.2. If excavation is not possible to the minimum depth of 165 cms, as detailed above, full facts shall be brought to the notice of the Engineer in charge PICG and BSNL in writing giving details of location and reason for not being able to excavate that particular portion to the minimum depth. Approval shall be granted by the competent authority in writing under genuine circumstances. The decision of the competent authority shall be final and binding on the contractor.”



### “134 Cable Blowing and Joining/Splicing

134.1. Cable Blowing. Manholes shall be marked during HDPE/PLB pipe laying of approx. size of 2m x 2m x 2m shall be excavated for blowing the cables. There may be situations where additional manholes are required to be excavated, for some reasons, to facilitate smooth blowing of cable. Excavation of additional manholes will be carried out, without any extra cost. De-watering of the manholes, if required, will be carried out without any extra costs. De-watering/De-gasification of ducts, if required, will be carried out without any extra costs.”

### “Appendix J

13.4.2 Multi Duct Laying. Foreseen Duct Laying Whenever it is foreseen that in future more no of cables will required, a 110 mm PVC Duct can be laid and 4 nos. of sub duct can be pulled, which can be tighten by Anchor block at the end of PVC pipe.

13.4.2.1 In long distance network this 110 mm pipe can be buried directly in the Sand, and in the Built up areas it can be encased in the 200x200x200 MM Cement Concrete.”

### “Clause 77 of the tender

The Trenching, Ducting, laying, Installation and Maintenance of OFC routes will be exclusively carried for Defence Network. Ducts provided by Governmental agencies for laying of OFC maybe utilized along highways etc but ducts of private agencies cannot be utilized. However no third party/service provider will be allowed to lay OFC/duct through same trench.”

Ser. No.	Section	Clause No.	Pg. No.	Brief Description in the Clause	Query/Comments of Bidder	Query Response
160	I V A	77	47	The Trenching, Ducting, laying, Installation and	Since tender does not call for itemwise	25% of the quoted rate for services



				Maintenance of OFC routes will be exclusively carried for Defence Network. Ducts provided by Governmental agencies for laying of OFC may be utilized along highways etc. but ducts of private agencies cannot be utilized. However, no third party/service provider will be allowed to lay OFC/duct through same trench	rates, please clarify how bidder will be paid for the activities done by him for laying of cable in existing ducts.	shall be paid if cable is laid through existing ducts with the permission of BSNL/PICG .
--	--	--	--	---	---	--

#### “APO

27. The Trenching, Ducting, laying, Installation and Maintenance of OFC routes will be exclusively carried for Defence Network. Ducts provided by Governmental agencies for laying of OFC may be utilized along highways etc but ducts of private agencies cannot be utilized. However no third party/service provider will be allowed to lay OFC/duct through same trench.

i) Guidelines in the form of Engineering Instructions (E. Is.) on Construction Practices of Optical Fiber Cables issued by BSNL are attached at Appendix J and appendix K’ of the tender. In case of any conflict with regards to OFC route construction and laying practices then requirements/ procedures given in Section IV shall supersede those given in Appendix ‘J’ & ‘K’.

ii) In case of Bridge Crossings, where there is no space for accommodating GI pipe, bidder may be allowed to utilize the pipes laid by private agencies, with prior approval of BSNL/PICG on case to case basis, in case pipes from Govt. Agencies are not available (clarification



no.412)

iii) If the cable is laid through existing duct with the permission of BSNL/PIGC 25% of the quoted rate for services shall be paid (clarification no.160).”

“PO

#### 28. Guide lines for trenching/ductings

The Trenching, Ducting, laying, Installation and Maintenance of OFC routes will be exclusively carried for Defence Network. Ducts provided by Governmental agencies for laying of OFC may be utilized along highways etc but ducts of private agencies cannot be utilized. However, no third party/service provider will be allowed to lay OFC/duct through same trench.

i) Guidelines in the form of Engineering Instructions (E.Is.) on Construction Practices of Optical Fiber Cables Issued by BSNL are attached at Appendix J and appendix K of the tender. In case of any conflict with regards to OFC route construction and laying practices then requirements/ procedures given in Section IV shall supersede those given in Appendix ‘J’ & ‘K’.

ii) In case of Bridge Crossings, where there is no space for accommodating GI pipe, bidder may be allowed to utilize the pipes laid by private agencies, with prior approval of BSNL/PICG on case to case basis, in case pipes from Govt. Agencies are not available.

iii) If the cable is laid through existing ducts with the permission of BSNL/PIGC, 25 % of the quoted rate for services shall be paid.”

6. The procedure to be followed for laying the cables was extensively gone into by the arbitrator and is not in dispute. Initially a route survey is conducted. The contractor identifies the trenches where multiple ducting is required. The proposal by the contractor is considered and approved by the respondent and thereafter trenches are





2026:DHC:4113



bidder will be paid for the activities done by him for laying of cable in existing ducts.” In response clarification no. 160 was issued stating that “25% of the quoted rate for services shall be paid if cable is laid through existing ducts with the permission of BSNL/PICG”. The clarification was made referring to clause 77 of the tender wherein it is provided that the project is for the defence network and the ducts provided by government agencies along highways may be used for laying OFC but not those of private agencies. Further that no third party or service provider would be allowed to lay OFC or duct through the same trench. The petitioner being the lowest bidder for package ‘A’ was issued APO which was followed by the PO. Clause 27 (iii) of the APO provided that twenty-five percent of the quoted rate for service shall be paid for laying cables through existing ducts and at the end clarification no.160 was mentioned in brackets. In the PO clause 28 is similar to clause 27 of the APO but in clause 28 (iii) clarification no.160 is not mentioned.

10. The petitioner set up a case that clause 77 of the tender had no applicability to the facts of the case and the service costs for MDC cannot be reduced to twenty-five percent by relying on clarification no.160 issued under clause 77 of the tender. The arbitrator agreed that no government duct was used for laying the subsequent cables. The contention of the respondent that the return of the contractor to the same trench where the earlier cable was laid tantamounts to using a government trench was rejected and this finding is not under challenge. The arbitrator agreed with the contention of the learned



2026:DHC:4113



counsel for the petitioner that clause 77 of the tender had no application to the issue in hand but held that the clarification is to be considered independently on the basis of the query and the response thereto. The backdrop that there was an omission in the tender regarding the rate of payment in cases of MDC and the letter of the Deputy General Manager of the respondent dated 20.03.2018 forwarding the claim of the petitioner to higher authorities were taken into account. The issue as to what constitutes “existing ducts” was specifically framed and dealt with. The interpretation advanced by the petitioner that ducts laid in previously excavated trenches by any government agency and ducts laid by petitioner already carrying a cable would qualify as “existing ducts” was rejected.

11. It was held that the contractor after trenching, laying the ducts and backfilling uses one of the ducts for completing one link and upon returning to use a second duct from the same trench shall be treated as using an existing duct. It was taken into account that the petitioner in letters dated 29.01.2016, 04.07.2016, 26.12.2016 and 04.07.2017, accepted the position that for MDC twenty five percent payment as prescribed under the PO shall be made and raised grievance that the cost of additional material used for laying multiple ducts be paid in addition to the service cost. The petitioner for MDC raised invoices of twenty-five percent of the full charges. The petitioner changed the stand for the first time vide letter dated 10.01.2018 and claimed full service cost for MDC.

12. It was noted that while changing stand the petitioner



2026:DHC:4113



emphasised that retrenching was required for subsequent laying of the cable but this was factually found wrong by a committee set up by the respondent. It would be relevant to note that during the course of hearing, learned counsel for the petitioner on instructions fairly contended that there was no retrenching involved in the claim made for 547 kilometres of MDC. Even otherwise arbitrator rightly held that the very object and purpose of laying multiple ducts in a common trench to avoid difficulty of digging trenches in public places would stand defeated. The additional activities involved only for laying multiple ducts in trench were considered. The breakup of cost given by the petitioner vide letter dated 19.01.2018, was relied upon to record a factual finding that even as per the petitioner the charges for MDC were less than fifty percent of the full charges.

13. The emphasis on the non-applicability of clause 77 of the tender is not enhancing the case of the petitioner. The clause does not deal with existing ducts but with already laid government ducts and with utilization of existing government ducts. At the cost of repetition, it is held by the arbitrator that the multiple ducts laid by the contractor for this project are not government ducts. The applicability or non-applicability of clause 77 to the facts of the case has no impact on the query raised and clarification no.160 issued in response thereto. The query was for the usage of existing ducts for laying cables and not for the ducts of the government agencies and so was the response that twenty five percent of the quoted rate of services shall be paid for MCD.



2026:DHC:4113



14. It is not the case set up by either of the parties that the work allocated in package 'A' involved laying of cables only. From a reading of the NIT, APO and the PO a clear picture emerges that the work included procurement, supply, trenching, laying, installation, testing and maintenance of OFC, PLB duct and accessories for the construction of exclusive Optical National Long Distance (NLD) backbone and optical access routes for the defence network.

15. The matter needs to be considered from another angle. Clause 28 (iii) of the PO without reference to the clarification unambiguously stated that twenty-five percent of the quoted rate of service shall be paid for laying cable through the existing ducts. The clear language of Clause 28(iii) of PO render the issue of applicability of clause 77 of the tender document and reliance on clarification no.160 inconsequential. The petitioner acted in consonance of clause 28(iii) of the PO and submitted invoices in compliance therewith. The only grievance raised was that the cost of additional material used in laying multiple ducts be also paid apart from 25% of service cost. It may be hastened to add that this does not operate as an estoppel against the petitioner; however it lends support to the conclusion arrived at by the arbitrator rendering it to be a plausible view.

16. The law is well settled that interference under Section 34 of the Act is not be made for a possible alternate view. The interpretation of the clauses of the contract falls within the domain of the arbitrator, unless the interpretation is perverse no interference is called for another possible view is not a ground available under Section 34 of



the Act. Reference is made to the following decisions:

**16.1 In Punjab State Civil Supplies Corporation Limited & Anr. v. M/S Sanman Rice Mills & Ors. 2024 INSC 742** it was held as under:

“13. In paragraph 11 of *Bharat Coking Coal Ltd. v. L.K.Ahuja*, it has been observed as under:

“11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside.””

**16.2 In Prakash Atlanta (JV) v. National Highways Authority of India 2026 INSC 76** it was held as under:-

“59. (vi) If an arbitral tribunal’s view is found to be a possible and plausible one, it cannot be substituted merely because an alternate view is possible. Construction and interpretation of a contract and its terms is a matter for the arbitral tribunal to determine. Unless the same is found to be one that no fair-minded or reasonable person would arrive at, it cannot be interfered with. If there are two plausible interpretations of the terms of a contract, then no fault can be found if the arbitrator accepts one such interpretation as against the other. To be in conflict with the public policy of India, the award must contravene the fundamental policy of



Indian law, which makes it narrower in its application.”

**16.3 In Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO) 2025 INSC 1457 held as under:-**

“28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited<sup>14</sup>, this court held that an award can be set aside under Section 34 on the following grounds: “(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal.””

**16.4 In Parsa Kente Collieries Limited. v. Rajasthan Rajya Vidyut Utpadan Nigam Limited (2019) 7 SCC 236 held as under:-**

“9.1. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court had an occasion to consider in detail the jurisdiction of the Court to interfere with the award passed by the Arbitrator in exercise of powers under Section 34 of the Arbitration Act. In the aforesaid decision, this Court has



2026:DHC:4113



considered the limits of power of the Court to interfere with the arbitral award. It is observed and held that only when the award is in conflict with the public policy in India, the Court would be justified in interfering with the arbitral award. In the aforesaid decision, this Court considered different heads of “public policy in India” which, inter alia, includes patent illegality. After referring Section 28(3) of the Arbitration Act and after considering the decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , SCC paras 112-113 and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] , SCC paras 43-45, it is observed and held that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if an Arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.”

**16.5 In Consolidated Construction Consortium Limited Vs. Software Technology Parks of India (2025) 7 SCC 757 it was held**



as under:

“46. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in Sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged Under Section 34 of the Act. The court exercising powers Under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings Under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.”

**16.6 In The Supreme Court in *Seppo Electric Power Construction Corporation Vs. GMR Kamalanga Energy Ltd.* 2025 INSC 1171**

held:

“97.....Therefore, it appears that even if the arbitrator’s legal or factual reasoning is faulty, the courts ought to ideally refrain from interfering with an award until an error of law is evident from the award itself or in a document that forms an integral





2026:DHC:4113



21. The reliance of the learned counsel for the petitioner on the decisions of the Supreme Court in **Ssangyong Engineering & Construction Co. Ltd.** (supra) and **PSA SICAL Terminals Pvt. Ltd.** (supra) to contend that there cannot be a unilateral addition or alteration of contractual terms has no applicability in the present case. Clause 28(iii) of the PO was not a unilateral addition but formed part of the terms and conditions agreed between the parties.

22. The reliance of the learned counsel for the petitioner on **Rajasthan State Industrial Development & Investment Corporation** (supra), **Indian Oil Corporation Ltd.** (supra) and **Jindal Rail Infrastructure Ltd.** (supra) to contend that the court cannot make a new contract to render it reasonable, actual meaning must be given to the terms and that there cannot be a re-writing of the contract does not support the challenge to the award by the petitioner. The arbitrator has given meaning to the terms of the contract and there is no re-writing of the contract.

23. The award passed by the arbitrator suffers from no factual or legal error much less perversity, the view of arbitrator is plausible and calls for no interference under Section 34 of the Act.

24. The petition is dismissed.

**AVNEESH JHINGAN, J**

**MAY 11, 2026/‘ha’**

Reportable:- **Yes**