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

% **Judgment reserved on: 12.05.2026**
Judgment pronounced on: 20.05.2026

\+ O.M.P. (COMM) 414/2023

PANDROL RAHEE TECHNOLOGIES PVT LTD THROUGH AUTHORIZED REPRESENTATIV VARUN BHOJAK .....Petitioner

Through: Mr. Naveen R. Nath, Sr. Adv with Mr. Nishant Das, Mr. Atul Kumar, Ms. Disha Gupta, Ms. Aatrayi Das, Ms. Sakshi Nand, Ms. Jyoti Jha and Mr. Aditya Rana, Advs.

versus

IRCON INTERNATIONAL LTD THROUGH ITS CHAIRMAN MR SUNIL KUMAR CHAUDHURY .....Respondent

Through: Mr. Suman K. Doval, Mr. Ramesh Wangnoo & Mr. Lakshay Chaudhary, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. The present petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the arbitral award dated 15.05.2023 (for brevity 'the award').

2. The facts shorn of unnecessary detail are that the respondent on 21.04.2015, issued Notice Inviting Tender (for short 'NIT') for design, manufacture, supply, transportation and delivery of Ballastless

Track Fastening for standard gauge railway track (1435 mm) with 60 kg 1080 grade rail for installation of ballastless track in elevated and underground sections of Mukundpur–Lajpat Nagar (excluding Line-7) of Delhi MRTS Project Phase-III.

2.1 The petitioner was the successful bidder and the Letter of Acceptance (LOA) dated 21.05.2015 was issued. On 09.10.2015, the parties executed Contract CT-1A (for brevity 'the contract'). The respondent by communication dated 04.08.2016 (hereinafter referred to as 'variation order') varied the quantity of the ballastless track fastening sets (for short 'sets') to be supplied under each of the categories and the total quantity increased from 1,86,500 sets to 1,98,715 sets. The details of the change in quantities of sets pursuant to the variation order are tabulated below:

Item No	**Description of Item**	**Unit**	**BOQ Qty.**	**Variation Qty.**	**Total Qty. after variation**	**Percentage Change %**
1	**Supply of BLT fittings**					
1.1	Supply track & curve track up to 1750m	Sets	1,60,000	(-) 56,751	1,03,249	(-) 35.46%
1.2	**For curved track**					
a	Radius 1750-1000m	Sets	1,500	(+) 13,522	15,022	(+) 901.46%
b	Radius 1000m-500m	Sets	4,500	(+) 20,558	25,058	(+) 456.84%
c	Radius 500-300m	Sets	19,000	(+) 28,804	47,804	(+) 151.60%

d	Radius <300m	Sets	1500	(+) 6,082	7,582	(+) 405.46%
	Total		**1,86,500**		**1,98,715**	

2.2 The dispute arose as according to the petitioner, the revised quantities required supply of a 4-bolt fastening system in place of the 2-bolt fastening system for curved tracks above 500 metres. The petitioner had to procure and supply additional components including anchor, nut bolts, eccentric bush, collared washer and compression springs for varied order and thereby the cost of execution increased.

2.3 The petitioner completed the supplies and completion certificate dated 11.05.2017 was issued. The payment for the sets supplied was released by the respondent. The claim of the petitioner for payment over and above agreed price towards the additional components supplied was denied by the respondent.

2.4 The petitioner on 23.08.2019, invoked arbitration by issuing notice under Section 21 of the Act. Vide court order dated 25.10.2021, the sole arbitrator was appointed and the proceedings culminated in the impugned award dated 15.05.2023. The claims of the petitioner were rejected and hence, the present petition.

3. Learned senior counsel for the petitioner submits that the sets were accepted by the respondent and the contract was fully executed. The petitioner had to supply 4-bolt system instead of the 2-bolt system for the curved tracks above 500 metres. The contention is that the arbitrator failed to appreciate that the cost of supplies increased due to the variation order.

3.1 Reliance is on the decisions of the Supreme Court in ***Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd.***, (2020) 7 SCC 167, ***Associate Builders v. Delhi Development Authority***, (2015) 3 SCC 49, ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.***, (2019) 20 SCC 1 and ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India***, (2019) 15 SCC 131 to contend that interpretation of a contract in a manner which no reasonable person would have arrived at, constitutes patent illegality. An arbitrator must consider the evidence on record and take a plausible view.

3.2 The submission is that the findings of the arbitrator are perverse and are beyond the terms of the contract. It is contended that the award is contrary to the evidence on record and is liable to be set aside.

3.3 The argument is that the contract is not a fixed value contract and under Clause 27 of the General Conditions of Contract (for short 'GCC') the quantities under the Bill of Quantities (for short 'BOQ') were subject to variation and in the event the variation of individual items exceeding twenty-five percent, fresh rates were to be negotiated.

3.4 It is emphasised that Clause 2.8 of the LOA does not deal with payment for supply of additional components. The interpretation of Clause 2.8 of the LOA by the arbitrator is not plausible and warrants interference under Section 34 of the Act.

4. *Per contra*, the terms of the contract obligated that before commencement of supplies the petitioner had to obtain approval of the

design of sets from Delhi Metro Rail Corporation (for short 'DMRC') but the petitioner made supplies before getting the approval. Reliance is on Clause 27 of GCC, Clauses 2.5 and 2.8 of the LOA and Stipulation No. 6 of the Technical Specifications (for short 'TS') to argue that only agreed price is to be paid for additional supplies.

4.1 The argument is that on 07.04.2017 the final bill was paid as per the rates agreed between the parties. The petitioner accepted the payment without any protest and now cannot raise further bills on account of additional costs incurred.

4.2 It is submitted that Clause 27 of the GCC permits negotiation of fresh rates for increased quantities only when variation in individual items exceeds (+) or (-) 25% and in the present case the variation of sets is (+) 6.55% and only the agreed price is to be paid. Further, Clause 2.8 of the LOA stipulates that Clause 27 of the GCC is not applicable to the variation of individual items. Submission is that as per Clause 1 of the Special Conditions of Contract (for short 'SCC') the LOA is at priority over the GCC.

4.3 Lastly, it is argued that 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 interpretation of the clauses of the contract falls within the domain of the arbitrator and unless the interpretation is perverse no interference is to be made on the ground that another view is possible.

5. Heard learned counsel for the parties at length. No other arguments apart from those noted above were pressed.

6. Before proceeding further, it would be apposite to quote Clause 27 of the GCC, Clauses 2.5 and 2.8 of the LOA, Clause 1 of the SCC and Stipulation No. 6 of the TS.

6.1 Clause 27 of the GCC:

> "**27.0 VARIATION IN QUANTITY OF ITEMS COVERED BY THE BILL OF QUANTITIES**
>
> 27.1 The quantities of items shown in the Bill of Quantities are approximate, and liable to vary during the actual execution of the supplies. The Supplier shall be bound to carry out and complete the stipulated work, irrespective of the variations in individual items, specified in the Bill of Quantities
>
> (ii) Such variations in quantities shall be paid for in the manner laid down below:
>
> (a) The accepted rates for various individual shall remain firm for variation upto (+) or (-) 25%
>
> (b) In case the variations in individual items is more than (+) or (-) 25% the rate for the increased quantities beyond (+) or (-) 25% shall be negotiated between the Engineer and the Supplier."

6.2 Clauses 2.5 and 2.8 of the LOA:

> "**2.5 Approval of the Design of system/various component from the client**
>
> The supplier is required to submit detailed design calculations of the fastening system for various types of fastenings (straight track and for track on curves of various radia) as provided in the Bill of Quantities. The supplier shall be primarily responsible for obtaining the approval for the above designs from the Client and various components shall be supplied only as per the designs/drawing approved by the Client.
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> *** *** ***

2.8 Quantity Variation

Clause 27.0 of General Conditions of Contract shall be applicable for the total quantity of fastening sets of various types contained in Bill of Quantity i.e. sum total of item no (i) to (vi) i.e. for total quantity of 1,86,500 sets and will not be applicable for the variation of individual items of each type."

6.3 Clause 1 of the SCC:

"**ORDER OF PRIORITY OF CONTRACT DOCUMENTS:**

Where there is any conflict between the various documents in the contract, the following order of priority shall be followed i.e. a document appearing earlier shall override the document appearing subsequently:

1) Agreement

2) Letter of Acceptance of Tender

3) Notice Inviting Tender

4) Instructions to the Tenderers

5) Appendix to Tender

6) Form of Bid

7) Special Conditions of the Contract

8) General Conditions of Contract

9) Technical Specifications

10) Relevant codes and Standards

11) Bill of Quantities"

6.4 Stipulation No. 6 of the TS:

"6. The Bill of Quantities provides for the supply of set of fastening system (imported and Indian components) for straight track and for curve track for various range of radius. The supplier shall be responsible for obtaining

> approval of the Client for the design of fastenings sets for various types as regards the nos. of anchor bolts with associated components per set (Bolt calculations). The accepted rates shall remain unchanged irrespective of the design of fastening system approved by the Client as regards nos. of anchor bolts for various range of radius. No claim on this account shall be accepted."

7. The petitioner was the successful bidder and was issued LOA for supply of 1,86,500 sets. The quantity of the sets to be supplied increased to 1,98,715. For the additional sets supplied, the petitioner was paid at the agreed rate.

8. The surviving dispute is that due to the variation in quantity the petitioner had to supply additional components for which payment is claimed over and above the agreed price of the sets.

9. The NIT invited bids for supply of a total of 1,86,500 sets, comprising of both Indian and imported components. The bid was for a price per set as is evident from the contract documents including the NIT, LOA and BOQ and held by the arbitrator. The LOA dated 21.05.2015, was for the total cost of work to be undertaken and bifurcated the amount into Indian Rupees (hereinafter referred to as 'INR') and US Dollars, the price was inclusive of taxes, levy, cess, etc.

10. The arbitrator after considering the terms and clauses of the tender and the LOA concluded that the supply of sets was at a fixed cost and the agreement dated 09.10.2015, executed between the parties was to that effect. The challenge to the finding of a fixed value

contract by learned counsel for the petitioner by relying upon Clause 27 of the GCC and the BOQ, lacks merit. Clause 27 of the GCC specifies that the quantities mentioned in the BOQ may vary and the supplier would be bound to complete the work despite variation. The price for additional supplies consequent to variation are dealt with in two categories: first, where the variation is upto (+) or (-) 25% , the supplies are to be made at the accepted rates and second, where the variation exceeds (+) or (-) 25%, the rates for the increased quantities had to be negotiated. The clause does not deal with the rate fixed for the supply of 2-bolt and 4-bolt sets or with additional components supplied. The rates specified in clause 27 of GCC in case there is variation in quantities does not alter the position that sets were to be supplied on fixed price. The BOQ gives the split of price for imported components, Indian components, transportation costs, taxes, amount payable in USD and the amount payable in INR but does not support the case of the petitioner that the contract was for the supply of individual components and not complete sets. The conclusion of the arbitrator is a plausible one.

11. The component wise price break-up in annexure to the LOA was specified to be for taxes and transportation only and was considered accordingly by the arbitrator. The price break-up would not affect the tender awarded for total cost of the work i.e., the cost for supply of the sets of various categories.

12. It is an admitted fact that consequent to variation order the petitioner was paid the agreed price for the supply of additional sets

but the grievance is that consequent to variation the petitioner ended up supplying additional components. Stipulation No. 6 of the TS forms part of the contract and obligated the petitioner to get approval from DMRC of the designs for various types of sets and the number of anchor bolts with associated components per set. It provides that the accepted rates shall remain the same irrespective of design of the fastening system approved by DMRC and no claim shall be accepted on this account. The claim of the petitioner for payment of additional components over and above the agreed price of the sets is barred by stipulation no. 6 of the TS.

13. The issue as to the type of sets to be used for the curved track above 500 metres was pending and the insistence of the petitioner on use of 2-bolt system instead of a 4-bolt system was not accepted by DMRC. The petitioner in violation of Stipulation No. 6 of the TS made the supplies prior to obtaining approval from DMRC. The petitioner raised a claim that due to the supply of additional components, the procurement cost increased and petitioner is entitled to additional payment over and above the agreed price. It is important to note that Stipulation No. 6 of the TS provided that the accepted rates shall not change upon approval of the design by DMRC. The arbitrator rightly noted that the bolt calculation was dependent upon approval of the design by DMRC and this was also evident from the email communication of the petitioner dated 07.08.2015.

14. The arbitrator was right in holding that Clause 27 of the GCC and Stipulation No. 6 of the TS deal with different situations and there

was no need to go into the priority ranking *inter se* the two clauses. The case set up by the petitioner for getting out of the rigours of Stipulation No. 6 of the TS by contending that acceptance of the supplies by the respondent tantamounted to acceptance of the design was contrary to Stipulation No. 6 of the TS. The design was to be approved by DMRC and not by IRCON ltd., the executing agency.

15. It would be relevant to note that as per Clause 2.8 of the LOA, Clause 27 of the GCC was applicable for variation of the sets of various types contained in the BOQ i.e. for sum total of Item no. (i) to (vi) mentioned in the BOQ and not for the variation of individual items. The contention of learned counsel for the petitioner that Clause 2.8 of the LOA dealt with individual items and not additional components is ill-founded. If the argument if taken to logical end would mean that upon variation, the contract would change from a set-based to a component-based contract, which the parties never contemplated. The total quantity in the BOQ mentioned in Clause 2.8 relates to the quantity of sets to be supplied and the clause cannot be read to mean that in case of variation of quantity of sets, the nature of the tender would change and the varied quantity is to be supplied item-wise and not on complete set basis as the original quantity was being supplied.

16. The argument of learned counsel for the petitioner that the arbitrator has re-written the terms and conditions agreed between the parties is noted to be rejected. The arbitrator took into consideration

the terms of the tender, TS and the clauses of the LOA and has given a plausible interpretation.

17. The scope of interference under Section 34 of the Act is well settled. The award cannot be interfered for another possible view. The interpretation of the clauses of the contract falls within the exclusive domain of the arbitrator. The award cannot be interfered with for every legal or factual error unless it is vitiated by perversity. Reference in this regard may be made to the following decisions of the Supreme Court:

17.1 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."

17.2 In ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO)***, **2025 INSC 1457** it was 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[14], 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."

17.3 In ***Consolidated Construction Consortium Limited v. 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."

17.4 In ***Sepco Electric Power Construction Corporation v. GMR Kamalanga Energy Ltd.,*** **2025 INSC 1171** it was held as under:

"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 component thereof."

17.5 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 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."

(Emphasis supplied)

18. The conclusions of the tribunal: (i) that the petitioner started the supplies before the design was approved on 19.11.2015 and thereby violated Stipulation No. 6 of the TS; (ii) there was no modification of the contract and only the number of sets of various kinds to be supplied were varied; (iii) the payment for additional sets supplied was to be made at the agreed price; and (iv) rejecting the claim of the petitioner seeking payment over and above the agreed price, for

additional components supplied consequent to variation order, suffers from no legal or factual error much less perversity and the view is plausible, neither against public policy and nor is patently illegal.

19. No case is made out for interference under Section 34 of the Act. The impugned award is upheld.

AVNEESH JHINGAN, J

MAY 20, 2026
'ha'

Reportable:- **Yes**