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

% ***Judgment reserved on: 14.05.2026***

Judgment pronounced on: 20.05.2026

Judgment uploaded on: 20.05.2026

\+ FAO(OS)(COMM) 109/2026

MMTC LIMITED .....Appellant

Through: Ms. Nandita Rao, Sr. Adv. along with Mr. Akhil Sachar, Ms. Sunanda Tulsyan, Ms. Shweta Pattnaik, Ms. Babita Rawat, Ms. Kashish Maheshwari and Mr. Ujjwal Sharma, Advs.

versus

M/S KNOWLEDGE INFRASTRUCTURE & ANR. .....Respondents

Through: Mr. Rajshekhar Rao, Sr. Adv. along with Ms. Manali Singhal, Mr. Santosh Sachin, Mr. Deepak Singh Rawat and Ms. Tarini Khurana, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'Act of 1996'] seeks to set-aside the Impugned Judgment dated 19.03.2026 passed by the Single Bench (SB), whereby the view of the Arbitral Tribunal (AT) to refuse to set off the payments to be payable by the Appellant to East

Coast Railways (ECR), came to be upheld.

2. Pursuant to an agreement between the Appellant and Damodar Valley Corporation (DVC) for supply of non-coking steam coal at three Thermal Power Stations (TPS) of DVC, the parties herein *vide* Tripartite Agreement dated 01.08.2012, agreed to supply 1.119 MMT of non-coking steam coal in bulk to the aforementioned TPSs. While Respondent No.1, under the Agreement, was to arrange stevedoring, handling, storage, port clearances, railways rakes, loading, transportation and delivery to the TPS, the Respondent No.2, being an overseas supplier of coal, was bestowed the duty of supplying coal to the Appellant at Paradip, Haldia, Dharma and other eastern ports of India.

3. Upon dispute arising between the parties pertaining to outstanding payments, the Respondents invoked the Arbitration Clause, raising claims, *inter alia*, against the amounts retained by the Appellant, totalling to sum of Rs.1,64,38,456/- towards Railway Surcharge (Claim No.3) and Rs.56,93,579/- towards detention charges of adjustment of overloaded wagons (Claim No.4).

4. The aforestated claims came to be allowed by the AT in favour of the Respondents. It was held that the amount payable towards Railway surcharge is time barred since Eastern Central Railways (ECR) did not claim the same for over five years since 2014 and, therefore, the same could not have been retained by the Appellant. Aggrieved thereby the Appellant approached the SB under Section 34 of the Act of 1996.

5. The opinion formed by the AT was upheld by the SB, with a further observation that in case, ECR was to deduct amount from other ongoing projects of the Appellant, it would be at liberty to invoke the indemnity bonds signed by the Respondents. Aggrieved by the same, the Appellant has filed the present Appeal seeking our indulgence.

6. In order to appreciate the controversy, it would be apposite to note the clause contained in the Tripartite Agreement, on which the Appeal is to be premised, which reads as follows:

> *"5.2 HANDLING CHARGES AND OTHER REIMBURSABLE EXPENSES PAYABLE TO KISPL*
>
> *(ii) KISPL has to ensure that there is no under loading of wagons. However, in case of under loading the charges of proportionate basis shall be recovered from KISPL's dues. All other charges like Demurrage/Dispatch, Wharfare, Overloading/Under loading charges etc. as applicable for Ports and Railways shall be to the account of KISPL. Any delay/detention charges of Rakes at DVC's Power plants shall be to the account of MMTC/DVC.*"
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> ***(Emphasis Supplied)***

7. On 23.04.2026, while issuing notice to the Respondents, this Court identified the issue requiring adjudication, which was to determine whether the AT was justified in refusing to set off the payments claimed by the ECR from the Appellant on account of demurrage and overloading charges which were payable by Respondent No.1.

8. Learned senior counsel representing the Appellant urged that the AT has acted beyond its jurisdiction by travelling outside the four walls of contract, in particular, Clause 5.2 of the Tripartite Agreement.

9. It has also been urged that the view taken by the SB, is not

correct since the Award dated 07.11.2019 is against the public policy inasmuch as it is contrary to the law of limitation, which only bars the remedy and not the right.

10. Accordingly, the view of the SB that the challenge did not fall within the scope of Section 34 of the Act of 1996 was erroneous.

11. In support of her submissions, learned senior counsel has placed reliance on ***Indian Oil Corporation Limited Through its Senior Manager v. M/s Shree Ganesh Petroleum Rajgurunagar, through its Proprietor***[1]***, Food Corporation of India v. Chanu Construction and Another***[2]***, PSA Sical Terminals Pvt. Ltd. v. The Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others***[3]***, Sepco Electric Power Construction Corporation v. GMR Kamalanga Energy Ltd.***[4] ***and Associate Builders v. DDA***[5].

12. *Per contra*, learned senior counsel representing the Respondents, while supporting the findings rendered by the AT and SB, has opposed the present Appeal, in as much as the same does not call for any interference.

13. Additionally, it was also contended that the Respondents are willing to give unconditional undertaking, in addition to indemnity, for any dues that may be payable by the Petitioner to the ECR.

14. At the outset, we may highlight that the jurisdiction exercised by a Court under Section 37 of the Act of 1996, is limited to the

[1] (2022) 4 SCC 463
[2] (2007) 4 SCC 697
[3] 2023 (15) SCC 781
[4] 2026 (2) SCC 542
[5] (2015) 3 SCC 49

grounds stipulated under Section 34 thereof, and the Courts are not expected to reassess the merits of the dispute. However, such restraint under Section 34 does not divest the Court of its power to interfere where an award suffers from patent illegality, particularly in contravention of Section 28(3) of the Act of 1996, which mandates that the AT shall decide the disputes in accordance with the terms of the contract. [*See:* ***Associate Builders*** *(Supra)*].

15. In the instant case, the question highlighted in Paragraph No.6 (*Supra*), hinges on the relevance of Clause 5.2 of the Tripartite Agreement, which has been relied upon by the Appellant. Needless to state that, arbitration proceedings are founded upon party autonomy, and the AT, being a creature of the contract, remains bound by the allocation of rights and liabilities consciously agreed upon between the parties.

16. Clause 5.2 herein is ex-facie unambiguous and particularly imposes the liability for payment of any additional charges in relation to Railways upon the Respondent No.1. The second limb of the clause states, '*…All other charges like Demurrage/Dispatch, Wharfare, Overloading/Under loading charges etc. as applicable for Ports and Railways shall be to the account of KISPL…',* thereby making it evident that the particulars under Claim Nos.3 and 4 fall within the ambit of the said stipulation, rendering the Respondent No.1 contractually liable to bear such charges.

17. In such circumstances, once a demand had already been raised by ECR against the Appellant on 23.01.2014 towards 'to-pay surcharge' for delayed payment of freight for the time period of April,

2013 to August, 2013, the Appellant was justified in withholding and adjusting the corresponding amounts from the dues payable to the Respondent No.1.

18. In this regard, it is apposite to note that upon a consolidated demand of Rs. 4,78,17,458/- raised by the ECR, the Respondent No.1 disputed such levy on the ground that timely payments had been made and requested the Appellant to seek withdrawal of the said demand by the ECR. However, ECR *vide* its communication dated 01.09.2014, declined to withdraw the same, thereby requesting to clear said dues at the earliest.

19. Thus, the liability stood crystallised and enforceable against the Appellant. Despite the aforestated, the AT as well as the SB failed to give effect to the express stipulation in Clause 5.2, thereby proceeding in a manner that effectively diluted the contractual burden, which lies on the Respondent No.1.

20. Similarly, we do not agree with the view of SB that the Appellant could invoke the indemnity bonds in the event of future deductions by ECR. The Tripartite Agreement does not stipulate that the Appellant must first discharge liabilities attributable to Respondent No.1 and thereafter seek reimbursement through a separate indemnificatory mechanism. Thus, such an interpretation by the SB travels beyond the four corners of the Agreement.

21. Moreover, the Respondents have failed to challenge the dues sought by ECR. In such circumstances, if in future, the Respondents get a declaration, exempting it from the aforesaid liability they shall

be at liberty to approach the appropriate Court in accordance with law for recovery of the concerned amount.

22. The view taken by the AT that the bar of limitation in respect of claim of ECR would absolve the right of the Appellant to effect the set-off against the Respondent No.1 is equally untenable. It is well settled that limitation merely bars the remedy and not the underlying right, unless the statute expressly provides otherwise.

23. The expiry of limitation may preclude ECR from independently enforcing its claim by way of legal proceedings, but it does not extinguish the contractual liability undertaken by the Respondent No.1 under Clause 5.2, nor does it divest the Appellant of its right to effect contractual set-off.

24. The view that lapse of time rendered the liability itself incapable of adjustment proceeds on a fundamental misconception of law of limitation. The Appellant herein, is not seeking an independent recovery against the Respondent No.1 but merely adjusting amounts contractually attributable to them pursuant to a crystallised demand already raised by ECR. Such adjustment, being in the nature of set-off arising from mutual obligations, cannot be defeated merely on the ground that the original claim of ECR may have become time barred.

25. In view of the foregoing discussion and findings, this Court is of the opinion that findings rendered by the Arbitral Tribunal, as affirmed by the Single Bench, are contrary to the express terms of the Tripartite Agreement and suffers from patent illegality.

26. Accordingly, the present Appeal is allowed and the Impugned

Judgment dated 19.03.2026 along with the Award dated 07.11.2019 to the extent it allowed Claim Nos.3 and 4 of the Respondents for sums of Rs.1,64,38,456/- towards Railway Surcharge and Rs.56,93,579/- towards detention charges arising out of adjustment of overloaded wagons, respectively, which had been withheld by the Appellant for the purpose of set-off against the claims raised by the ECR towards 'to-pay surcharge' for delayed payment of freight from the Appellant, is hereby set-aside.

27. The pending applications also stand closed.

28. At the cost of repetition, it is clarified that in case of exemption from the liability of the aforesaid amounts, the Respondents shall be at liberty to claim the same from the Appellant, in accordance with law.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MAY 20, 2026
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