HIGH COURT OF JUDICATURE FOR RAJASTHAN

BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 2007/2023

Parsa Kente Collieries Limited, Having Its Registered Office At 6F-32, Mahima Triniti, Plot No.5, Swej Farm, New Sanganer Road, Sodala, Jaipur 302019 (Raj.), Presently having its registered office at- S-20, Mahima Triniti, Plot No.05, Swej Farm, New Sanganer Road, Sodala, Jaipur 302019 (Raj.).

----Appellant/Claimant

Versus

Rajasthan Rajya Vidyut Utpadan Nigam Limited, Having Its Registered Office At:-Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur-302005 (Raj.).

----Respondent/Non-Claimant

For Appellant : Mr. Vikram Nankani, Sr. Adv. (through V.C.) assisted by Mr. Sandeep Pathak, Ms. Abhisaar Bairagi, Mr. Milind Sharma (through V.C.), Mr. Ausaf Ayyab & Mr. Utkarsh Meena

For Respondent : Mr. Kartik Seth with Ms. Ratakshi Sarvaria

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA

HON'BLE MR. JUSTICE BIPIN GUPTA

JUDGMENT

Date of conclusion of Arguments	**:**	**07/05/2026**
Date on which judgment was reserved	**:**	**07/05/2026**
Whether the full judgment or only the operative part is pronounced	**:**	**Full judgment**
Date of pronouncement	**:**	**21st/05/2026**

REPORTABLE

(Per Hon'ble the Acting Chief Justice)

1. The present Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') assails the order dated 20.05.2023 passed by the learned Commercial Court No. 1, Jaipur Metropolitan-II, Jaipur (hereinafter referred to as 'Commercial Court') wherein the

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application filed under Section 34 of the Act of 1996 was allowed and the arbitral award dated 15.01.2021 and additional award dated 05.07.2021 were set aside.

2. Brief facts of the case are that the appellant is a joint venture company incorporated under the Companies Act, 1956 and has its registered office in Jaipur, which was formed with the objective of undertaking the development of the Parsa East and Kanta Basan Coal Block, mining, beneficiation, arranging for transportation and delivery of coal to thermal power stations owned and operated by the respondent, which is an undertaking of the Government of Rajasthan and is engaged in the business of generation and sale of electricity in the state of Rajasthan.

3. On 16.07.2008, the appellant and respondent executed the Coal Mining and Delivery Agreement (hereinafter referred to as 'CMDA') (with Addendum dated 22.09.2010 and Supplementary Agreement dated 29.07.2016) for coal block development, mining of coal and its delivery to thermal power stations owned and operated by the respondent. A mining lease was granted by the Government of Chhattisgarh to the respondent on 30.05.2012, wherein mining and supply were being done as per the CMDA. However, owing to cancellation of the allotment by the Apex Court[1] (and resulting cancellation of mining lease), the Supplementary Agreement was entered into between the parties (pursuant to the respondent's application under the provisions of the Coal Mines (Special Provisions) Act, 2015) to continue with the terms and conditions of the CMDA.

1 Judgment dated 25.08.2014 and order dated 24.09.2014 in Writ Petition (Criminal) No. 120/2012

4. During the operation of this agreement, various disputes pertaining to non-reimbursement (by the respondent) of certain costs borne by the appellant as part of carrying out the operations arose. To resolve the same, the appellant initiated arbitration proceedings against the respondent, culminating in the award dated 15.01.2021 whereby, the learned Arbitrator fully/partially allowed most claims made by the appellant. Thereafter, the appellant preferred an application under Section 33(4) of the Act of 1996 on the ground that the learned Arbitrator did not address the claim pertaining to the additional cost of Rs.66.70 crores incurred by the appellant for land acquisition in four villages. The learned Arbitrator, *vide* additional award dated 05.07.2021, allowed this claim and awarded interest on the said amount.

5. Thereafter, the respondent filed an application under Section 34 of the Act of 1996 before the learned Commercial Court challenging the award dated 15.01.2021 and additional award dated 05.07.2021. *Vide* order dated 20.05.2023, the learned Commercial Court allowed the application and set aside the aforementioned award and additional award.

6. Learned Senior Counsel appearing for the appellant submits that the learned Commercial Court has not given any reasons for setting aside the well reasoned awards of the Arbitrator, which were passed after examining all the relevant material and has exceeded the scope of Section 34 of the Act of 1996, which bars the Courts from sitting in appeal over an arbitral award and challenging it on merits, but rather it confines appeals to certain limited grounds enumerated under the said provision, i.e., on

grounds of being contrary to public policy, being patently illegal or being perverse. In this regard, the learned Senior Counsel also states that the Arbitrator's interpretation of a contractual term is to be respected as he is the Sole Judge of law and facts and that the learned Commercial Court has also erroneously and unjustifiably interfered with multiple interpretations made by the learned Arbitrator.

7. In support of the above arguments, learned Senior Counsel relies on the decision of the Apex Court in **Atlanta Limited Through Its Managing Director vs Union of India Represented By Chief Engineer, Military Engineering Service**[2]. Learned Senior Counsel, in their written submissions, also stated that the learned Commercial Court misapplied the judgement of the Apex Court in **Project Director, National Highways No. 45 E And 220 National Highways Authority Of India vs M. Hakeem And Another**[3], erroneously concluding that severance of an award would mean its modification though the present case involves partial severance which is a different concept.

8. Learned Senior Counsel appearing for the appellant also submitted that the learned Commercial Court erroneously concluded that the additional award was passed by the learned Arbitrator without any reasoning and also wrongly observed that the learned Arbitrator has not examined the aspect of limitation in the additional award. Learned Senior Counsel in this regard submits that the additional award dated 05.07.2021 arose out of

2 (2022) 3 SCC 739
3 (2021) 9 SCC 1

the award dated 15.01.2021. Learned Senior Counsel further submits that the learned Commercial Court did not assign any reasons while rejecting the application made under Section 33(4) of the Act of 1996.

9. Learned Senior Counsel also stated that the learned Commercial Court erroneously sought to re-appreciate the evidence on record and substituted his view for that of the Arbitrator, thereby exceeding the scope of Section 34 of the Act of 1996. Regarding the principle of acting within the confines of Section 34 of the Act of 1996, learned Senior Counsel relies on the judgments of the Apex Court in **Uttarakhand Purv Sainik Kalyan Nigam Limited vs Northern Coal Field Limited**[4], **Bhaven Construction Through Authorised Signatory Premjibhai K. Shah vs Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Another**[5] and **Rashtriya Ispat Nigam Limited vs Dewan Chand Ram Saran**[6]. Learned Senior Counsel also states that the learned Commercial Court failed to consider that a writ petition filed by the respondent is pending before the High Court of Chhattisgarh[7] (as stated in the award).

10. Learned Senior Counsel for the appellant further states that the Apex Court in **Delhi Airport Metro Express Private Limited vs Delhi Metro Rail Corporation Limited**[8] clarified that such 'patent illegality' must go to the root of the matter and if such illegality is of a trivial nature, then an award cannot be said to be patently illegal. Learned Senior Counsel further submits that the

4 (2020) 2 SCC 455
5 (2022) 1 SCC 75
6 (2012) 5 SCC 306
7 Rajasthan Rajya Vidyut Utpadan Nigam Limited vs State of Chhattisgarh WPC No. 2530/2020
8 (2022) 1 SCC 131

respondent never took the ground of patent illegality in any of their written or oral pleadings. Learned Senior Counsel also submits that the learned Commercial Court failed to consider the fact that under Section 34(2A) of the Act of 1996, the 'patent illegality' must be contrary to public policy, which is not so in the present case, as this is a purely commercial transaction lacking any public policy element (as also stated in the CMDA).

11. Learned Senior Counsel for the appellant further submits that the learned Commercial Court erred in interfering with the Arbitration's reasonable interpretation of Clause 7 of the CMDA by interpreting the words "*adversely and directly*" and holding the Arbitrator's finding regarding Force Majeure to be patently illegal. Learned Senior Counsel also states that the learned Commercial Court failed to consider the lack of evidence by the respondent showing occurrence of a force majeure event. Learned Senior Counsel further states that the learned Commercial Court failed to consider Clause 7.1 of the CMDA (which was interpreted by the Arbitrator) whereby "*Change in Law*" defined political Force Majeure events. Learned Senior Counsel also submits that the learned Commercial Court exceeded its jurisdiction under Section 34 of the Act of 1996 by identifying alleged errors in the award.

12. Learned Senior Counsel for the appellant also submits that the learned Commercial Court failed to appreciate the fact that the cause of action arose when the respondent rejected the appellant's claim for reimbursement of legal fees (as the respondent had requested that claim for arbitration should not be pressed until such a claim is being considered by them) and that

the respondent was obligated to pay its own legal fees. Learned Senior Counsel also relies on the decisions of the Apex Court in **B And T AG vs Ministry of Defence**[9] and **CLP India Private Limited vs Gujarat Urja Vikas Nigam Limited and Another**[10] to submit that limitation period commences when cause of action arises (with the Arbitrator adopting the same interpretation) and mentions that the learned Commercial Court has erroneously held respondent's failure to respond to the communication as giving rise to the cause of action. Learned Senior Counsel further states that the learned Commercial Court has erroneously held that the letters/reminders sent subsequently to the claimant would not extend the limitation time and has cited judgments inapplicable to this case and that the Arbitrator's view (which is the only plausible view here), even if implausible, is to be upheld.

13. Learned Senior Counsel for the appellant further submits that the learned Commercial Court has erred in interfering with the findings in paragraphs 155-157 and has effectively re-interpreted the CMDA, despite the fact that the Arbitrator's interpretation of Clause 3 of the CMDA was plausible and supported by sound reasoning. Learned Senior Counsel relied on the decision of the Apex Court in **MMTC Limited vs Vedanta Limited**[11] and Delhi High Court in **Astonfield Renewables Pvt. Ltd. & Anr. vs Ravinder Raina**[12] to submit that interpreting the contract is within the purview of the Arbitrator and that as per the decision of the Apex Court in **Indian Oil Corporation Limited**

9 (2024) 5 SCC 358
10 (2020) 5 SCC 185
11 (2019) 4 SCC 163
12 2018 SCC OnLine Del 6665

Through Its Senior Manager vs Shree Ganesh Petroleum Rajgurunagar Through Its Propreitor Laxman Dagdu Thite[13], the Court does not sit in appeal over an arbitral award. Learned counsel further submits that the claimant obtained all necessary approvals.

14. Learned Senior Counsel for the appellant submits that the learned Commercial Court erred in examining the evidence of the witness in exercise of its jurisdiction under Section 34 of the Act of 1996 and in contravention of the judgments of the Apex Court in **Atlanta Limited** (supra) and **Ravindra Kumar Gupta and Company vs Union of India**[14] when no violation of statue or public policy was made out or that Arbitrator's approach was arbitrary.

15. Learned Senior Counsel for the appellant further submits that the Arbitrator already considered the 2007 Policy to be 'change in law' as per the CMDA and the Arbitrator was bound by principle of issues estoppel. Learned counsel also relies on the decision of the Delhi High Court in **National Highways Authority of India vs IRB Goa Tollway Private Limited**[15] wherein it was held that under Section 34 of the Act of 1996, a Court cannot interfere with an award *suo moto* without any specific plea. Learned Senior Counsel further submits that the learned Commercial Court erroneously set aside those claims with which no error was found by the Court and that the acceptable claims ought to have been severed into a separate award.

13 (2022) 4 SCC 463
14 (2010) 1 SCC 409
15 2022 SCC OnLine Del 533

16. *Per contra*, as per the material available on record, one of the submissions made by the learned counsel for respondent was that the role of the Arbitrator is to conduct the arbitration within the confines of the terms of the contract and cannot exercise powers beyond those stipulated in the contract or exercise power *ex debito justitiae* and therefore the award is patently illegal.

17. Learned counsel for the respondent has further submitted that the Arbitrator failed to address those terms of the CMDA which were relevant for adjudication of the second claim, rendering the finding on the same to be perverse and patently illegal. Learned counsel also submitted that case of **Shivashakti Sugars Limited vs Shree Renuka Sugar Limited And Others**[16] relied upon by the Arbitrator has no relevance to the present case which is based upon a different set of facts and that it is trite law that a decision serves as a precedent of its own facts and that courts, prior to relying upon a decision, must explain the relevance of its facts to the case at hand.

18. Learned counsel has further submitted that the Arbitrator erroneously interpreted the expression ''*Change in Law*'' to include judicial pronouncements and such interpretation is erroneous as the CMDA mentions that a Force Majeure event will not relieve any party from their obligation to comply with the ''*Applicable Law*'', which in this case includes the decision of any court or regulatory body having jurisdiction over the matter.

19. We have considered the submissions made by the learned counsels for the parties.

16 (2017) 7 SCC 729

20. Prior to examining the contentions on merits, it would be apposite to circumscribe the scope of the present discussion. In this regard, it would be apposite to first quote the relevant provisions from the Act of 1996 as under:

> *"**34. Application for setting aside arbitral award.**—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
> *(2) An arbitral award may be set aside by the Court only if—*
> *(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—*
> *(i) a party was under some incapacity, or*
> *(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
> *(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
> *(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*
> *Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*
> *(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or*
>
> *(b) the Court finds that—*
> *(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*
> *(ii) the arbitral award is in conflict with the public policy of India.*
>
> *[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—*
> *(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or*
> *(ii) it is in contravention with the fundamental policy of Indian law; or*
> *(iii) it is in conflict with the most basic notions of morality or justice.]*

[Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.]

[(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]

.....

***37. Appealable orders.**—(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—*

[(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.]

(2) An appeal shall also lie to a Court from an order of the arbitral tribunal.—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court."

21. While discussing the scope of Section 37 of the Act of 1996, the Apex Court recently in **Jan De Nul Dredging India Private Limited vs Tuticorin Port Trust**[17], after examining a catena of judgments, had held as under:

*"**35.** The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.*

***36.** In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the appellate court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The appellate court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The appellate court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement."*

22. From a perusal of the above decision, it is apparent that the scope of judicial scrutiny envisaged under Section 37 of the Act of

17 (2026) 3 SCC 186

1996 is limited to the grounds enumerated under Section 34 of the Act of 1996. Regarding the scope of Section 34 of the Act of 1996, apart from the unambiguous criteria enumerated under the said provision, one of us (*Sanjeev Prakash Sharma, Acting Chief Justice*), in a recent decision delivered in a Co-ordinate Bench in **State of Rajasthan And Others vs Shri I.J. Mamtani And Another**[18], after examining a catena of precedents on the aspect setting aside of an award on grounds of perversity or arbitrariness, had held as under:

> *"13. Although, the award may not fall in any of the categories under Section 34 of the Act of 1996, however, an interpretation has been taken by the Hon'ble Apex Court in certain cases where the Court can interfere with an award, if the same has been passed arbitrarily or where there is a perversity to the extent that the award could not have been passed by any reasonable person.*
> .....
> *15. Before proceeding further, we deem it fit to enumerate the following non-exhaustive principles to aid in determination of whether to set aside an award on grounds of arbitrariness or perversity:*
>
> *a. The finding lacks any or sufficient evidence*
> *b. Conclusion drawn from material available on record is perverse to the extent that no reasonable person examining such material would have arrived at such conclusion*
> *c. Key facts or evidence were not given due consideration*
> *d. Violation of due legal process or principles of natural justice, particularly where it has a material effect on the outcome of the dispute*
> *e. Disregarding the opinion of experts without assigning sufficient reasons, particularly in technical matters*
> *f. Decision amounted to rewriting of contract*
> *g. Tribunal exceeded its mandate in any manner*
> *h. Arbitrariness or perversity goes to the root of the matter*
>
> *While the above-mentioned principles provide useful guidance, they have to be examined in the context of the unique facts and circumstances of each case."*

18 D.B. Civil Miscellaneous Appeal No. 2530/2024, dated 05.03.2026

23. We also note that decision of the Apex Court in **Delhi Airport Metro Express Private Limited** (supra) relied on by the learned Senior Counsel for the appellant was contradicted by the Apex Court in a subsequent curative petition[19] which had disagreed with the findings given in the said decision. In this decision, the Apex Court had also discussed the scope of the term 'patent illegality'. The relevant part is quoted herein under:

> "***35.*** *In Associate Builders v. DDA, a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:*
>
> *(i) based on no evidence;*
>
> *(ii) based on irrelevant material; or*
>
> *(iii) ignores vital evidence.*
>
> ***36.*** *Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned.*
>
> ***37.*** *A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court in Associate Builders v. DDA observed:(SCC pp. 75 & 81, paras 31 & 42)*
>
> *"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*
>
> *(i) a finding is based on no evidence, or*
>
> *(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
>
> *(iii) ignores vital evidence in arriving at its decision,*
>
> *such decision would necessarily be perverse.*
>
> * * *
>
> *42.1. … 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a*

19 Delhi Metro Rail Corporation Limited vs Delhi Airport Metro Express Private Limited (2024) 6 SCC 357

patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside." (emphasis supplied)"

24. Coming to the merits of the dispute, to ascertain whether the learned Commercial Court exceeded its jurisdiction under Section 34 of the Act of 1996, it would be apposite to quote the relevant portions of the order dated 20.05.2023:

"107.....The learned sr. counsel of the applicant submitted in argument that the rakes had to be empty within 4 hours and so they put the coal directly to the boilers. That means, they have no facility to kept the coal and waited for the analysis report to come. But the evidence of their witness Sh. Hemraj RW1 is reflected otherwise……..

108. *It is clear from the evidence of Sh. Hemraj RW1 that before CIMFR the analysis report was received within 4 to 5 days and after CIMFR, it takes around 23 days. The CIMFR is deployed after June, 2017 prior to that the testing was done at the plant. The applicant have the capability to store the coal for 10 to 15 days. But they did not store due to some practical difficulties. These practical difficulties are easy to be forseen. But neither the staking of coal for the period up to which the analysis report came was done nor some other remedify measures were taken. In that context, the arbitral tribunal applies the doctrine of contra proferentem. The view of the arbitral tribunal of invoking the doctrine of contra proferentem in the fact of the case is a plausible view and this court should not interfere in the view of the arbitral tribunal.*

……...

115. The claimant have examined only witness i.e., Sh. Dalip Kumar Jha as CW 1. But his evidence shows that most of the answers to questions in cross examination, his reply was , it is a matter of record, I am not aware, it is a technical matter, I cannot comment, it is not in my affidavit. If shows that the claimant did not lead the best evidence. There are certain facts which are for the claimant to prove by evidence although by documents or by oral evidence. It is also correct the most of the facts are to be proved by the documentary evidence for which the oral evidence have not much of a significance. But the fact that it is implicite in the agreement that the coal which is not according to the parameters to be return to the claimant to improve the quality of coal is to be proved by claimant by laying foundational facts through documentary as well as oral evidence. The witness of the claimant did not able to prove this fact.

……

125…….The tribunal after consider that the subsequent event altered the economic basis of the contract and it will adversely affects the contract or part of contract. But claim 7.1 uses the word "adversely and directly." "And" is a co-ordinating conjunction. It connect two words. Here it connect "adversely" and "directly" that means "adversely" cannot be read in isolation and the conjunction "and" should not be read as "or". So, as per clause 7.1 of the CMDA, as mentioned by the tribunal in para no. 151 of the award, that, (1) event which is beyond the reasonable control of the parties. (2) adversely and directly render the performance of whole or part of the contract impossible. Not considering the word directly with adversely changed a whole lot of meaning to the above provision.

126. The tribunal after in the preceding paragraphs for example in para 164, 166, 170 interpret the above clause only on the basis of "adverse impact" of cancellation of coal block by the judgment. Whether, it render the performance of the part or whole of the contract "adversely and directly" impossible has not be considered by the arbitral tribunal. Can it "directly" also frustate the contract not been considered by the tribunal. It may be adverse to the economic interest of the claimant but it will not "directly" render the performance of contract wholly or partly impossible. Though the cancellation of coal block may not be contemplation of the parties but as has been stated above, the use of the word "as in affect from time to time" in the definition of "applicable law" and "after the effective date" in definition of change of law, show it is within contemplation of parties that changes many occurs in the laws. So, the reading of word "adversely" in isolation and not in relation to directly is a patent illegality.

……..

130……..Pleadings of both the parties i.e., statement of claim and statement of defence has been perused. Para no. 6, which seems from sub para 6.1 to 6.32 relates to claim of interest on overdue payment as per the agreement. The reply to this para was given by the applicant in their statement of defence in para no. 7.1 to 7.7. In their statement of defence they did not utter a word regarding para 6.15. Though the objection of limitation was not taken by the applicant but still the arbitral tribunal can look into it and this court can also go into the question of limitation, if any. applicant did not able to show what was that payment which was pending beyond three years on which interest cannot be charged. They merely pluck out a sentence from the pleading. Other grounds mentioned in the application has already been answered by the arbitral tribunal. The language of clause 6.3 of the CMDA is plain and simple and does not require any interpretation……

……...

167. The finding of the arbitral tribunal on claim no. 2, 4, 6, 7 and 8 set aside on the reasons set out above

and as per the law laid down by Hon'ble Supreme Court of India this court cannot modify the award. So, the application under Section 34 of the Act, 1996 filed by the applicant is allowed and the arbitral award dated 15.01.2021 and additional award dated 05.07.2021 are set aside."

25. With regards to the conclusion reached by the learned Commercial Court pertaining to the non-severability of the award, it would be prudent to note that the prevailing law (as laid down by the Apex Court) mentioned by the learned Commercial Court in paragraph 167, basis which the said conclusion was reached, already stands overruled *vide* the decision of the Apex Court in **Gayatri Balasamy vs ISG Novasoft Technologies Limited**[20] (as also noted by us in a *prima facie* view in this case *vide* order dated 22.04.2026) wherein it was held as under:

*"**33.** We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.*

***34.** To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.*

***35.** However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be interdependent or intrinsically intertwined. If they are, the award cannot be set aside in part.*

.....

***45.** We are thus of the opinion that the Section 34 Court can apply the doctrine of severability and modify*

20 (2025) 7 SCC 1

> *a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in* ***Part II*** *of our* ***Analysis****."*

While the order of the learned Commercial Court predates the decision in **Gayatri Balasamy** (supra), it is settled law that Courts are bound by the prevailing law as on the date of adjudication of the case, which in this case would be the principles expounded in **Gayatri Balasamy** (supra), which are contrary to the conclusion drawn by learned Commercial Court and therefore, such conclusion is contrary to the current prevailing law.

26. Apart from the above, a perusal of paragraphs 125 and 126 of the order of the learned Commercial Court also reveals that the learned Commercial Court has proceeded to erroneously reinterpret the provisions of the agreement, as the same was done without assigning adequate reasons demonstrating that the interpretation made by the Arbitrator was unconscionable, including satisfying any of the criteria enumerated in **State of Rajasthan And Others** (supra) and therefore, fell within the confines of 'patent illegality'. In the context of patent illegality, the Apex Court in **Ssangyong Engineering and Construction Company Limited vs National Highways Authority of India (NHAI)**[21] had held as under:

> *"**37.** Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or*

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public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. *Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.*

.....

40. *The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders, namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).*

41. *What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."*

Therefore, what is only required to be assessed at this stage is whether the view taken by the Arbitrator is a plausible one or whether the illegality "*goes to the root of the matter*". From a perusal of the award dated 15.01.2021, it is evident that the Arbitrator, though did not explicitly examine the word "*directly*", he did examine the effect of subsequent legislative changes on the operation of the CMDA itself and therefore, the said view cannot be said to be patently illegal and no grounds to interfere with the said interpretation arise. The relevant portion of the award is quoted herein under:

"166. The filing of a writ petition against the process of allocation of the coal blocks, the order dated 25th August 2014 cancelling the allotment of the coal block in question along with other coal blocks by the Supreme Court is definitely an unforeseen event and is beyond the control of the parties. The cancellation of allotment of the coal mine, the existence of which was the very fundamental of the CMDA and which in fact forms the very basis of the execution of the contract is definitely an adverse event. The said event altered the very fundamentals on the basis of which the parties had executed the contract. Consequent to the order passed by the Supreme Court it would have been open to both the parties to take the plea that they were unable to perform their obligations under the contract and the contract stood frustrated in its entirety.

167. However, the promulgation of the coal ordinance by the Central Government followed by the enactment of the Coal Act, the total impossibility was turned into a possibility in as much as the allocation of the coal mine was restored but it gave rise to new obligations which entailed new cost and expenses, which could not have been envisaged by the parties when they executed the CMDA. There was no mechanism by which the obligation to incur the new category of expenses like payment of stamp duty etc. for a fresh mining lease, was to be apportioned between the parties. The new set of expenses were all in the nature one-time or capital expenditure, i.e., expenses which in the operation of a mining lease are incurred by parties only once. Acquisition of land, execution of mining lease, payment of stamp duty, development of the mine is incurred only on a single occasion and after the said activities are complete the mine is operated for a long duration of time, without having to incur such expenses over and over again.

168. As already held above, no man of ordinary prudence could have contemplated or foreseen that allocation of the coal block would be cancelled and/or the same will be reallotted pursuant to legislative intervention. It is an unforeseen situation which could not have been provided for. Had a bystander drawn attention to the fact situation of cancellation of the allotment and its re-allotment consequent to legislation, the answer of the parties could only be that in such a situation the parties would be absolved of their obligations. Thus, the imposition of the additional charges on account of cancellation of the allotment and its reallotment consequent to legislation is definitely an event the parties had not contemplated and provided for under the CMDA and thus such expense is liable to be borne by the respondent."

Furthermore, in the context of contractual interpretation, the Apex Court recently in **Prakash Atlanta (JV) vs National Highways Authority of India**[22] mentioned that:

> *"**27.** As long back as in the year 2006, in McDermott International Inc. v. Burn Standard Co. Ltd., this Court affirmed that construction of a contract is within the jurisdiction of the arbitrator and interpretation thereof is a matter for the arbitrator to determine, even if it gives rise to a question of law. This was affirmed in National Highways Authority of India v. ITD Cementation India Limited, wherein this Court held that construction of the terms of a contract is primarily for an arbitrator to decide and he is entitled to take the view that he holds to be the correct one, after considering the material and after interpreting the terms of the contract. It was observed that the Court, while considering a challenge to an arbitral award, does not sit in appeal over the findings and decision therein, unless the arbitrator construed the contract in such a way that no fair-minded or reasonable person would do. We may note that, in this case, the issue was whether additional costs owing to a change in the seigniorage fee had been taken into account in the indexing of inputs, while providing for price adjustment in the contract. NHAI had contended that the said levy was already factored into the indexing price formula and, therefore, no further payments were to be made to the contractor."*

27. The objective of the Act of 1996 is to reduce litigation and ensure finality of the awards of the Arbitrator. Therefore, it is settled law that a Court exercising powers under Section 34 of the Act of 1996 does not sit in appeal over the findings of the Arbitrator barring the narrow exceptions enumerated under Section 34 of the Act of 1996, which in this case have not been met. In this regard, on the aspect of re-appreciation of evidence, the Apex Court in **PSA Sical Terminals Private Limited vs Board of Trustees Of V.O. Chidambranar Port Trust Tuticorin And Others**[23] has held as under:

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> *"**40.** It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.*
>
> *.....*
>
> ***61.**..... We are fully aware, that neither under Section 34 nor under Section 37 of the Arbitration Act, the Court is entitled to reappreciate the evidence. The said limitation would be equally applicable to this Court also....."*

28. Before concluding the present discussion, in the context of the order passed by the learned Commercial Court, it would also be apposite to refer to the judgement passed by the Karnataka High Court in **Navayuga Engineering Company vs Bangalore Metro Rail Corporation Limited And Others**[24] (a Special Leave Petition challenging the same was recently dismissed by the Apex Court[25]):

> *"27. However, as regards the issues emerged in between the appellant and the respondent respectively for the party to the appeals, it is relevant to refer to the judgment rendered by the Hon'ble Supreme Court, in the case of* ***DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED vs. DELHI METRO RAIL CORPORATION LIMITED (2021***

24 Commercial Appeal No. 136/2022, dated 29.08.2024

25 Bangalore Metro Rail Corporation Limited vs Navayuga Engineering Company Etc 2026 SCC OnLine SC 874, dated 12.05.2026

> ***SCC ONLINE SC 695).*** *In this reliance, the Hon'ble Supreme Court has addressed the issues and has interpreted Section 34 of the Act, while examining the validity of the arbitral award. The limited grounds available to courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve the object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorizing them as perverse or patently illegal without appreciating the counters of the said expressions. This reliance is considered by the Challenging Court where the proceeding has been initiated under Section 34 of the Arbitration and Conciliation Act, 1996 relating to the impugned judgment rendered in Com.A.S.No.228/2018."*

29. In view of the law settled as above, if we examine the judgement passed by the learned Commercial Court, we find that the learned Commercial Court has examined the award passed by the Arbitrator, as if he was re-examining all the facts and exercising power of an appeal, considering the limited scope available under Section 34 of the Act of 1996 which requires only to see whether the award was induced or affected by fraud or corruption or whether it was in violation of Section 75 or Section 81 of the Act or whether it was in contravention of the fundamental policy of the Indian law or it is in conflict with the most basic notions of morality or justice, that it could be interfered with, is found to be completely absent.

30. We also notice that the learned Commercial Court, in paragraph 115 of its order also proceeded to re-appreciate the evidence which was submitted before the Arbitrator, which amounts to conducting the entire arbitral proceedings afresh. This

is contrary to the view taken by the learned Commercial Court in paragraph 144 of the same order, wherein the limited scope of Section 34 of the Act of 1996 was recognised and it was mentioned that:

> *".... It is an established proposition of law that a court while exercising jurisdiction under section 34 of the Act, 1996 does not sit in appeal over the award of an arbitral tribunal by recessing or re-appreciating the evidence while applying the test of public policy or patent illegality."*

31. We have noticed in the foregoing paras that the award was passed in accordance with the law and keeping in mind the basic notions of justice, morality and fundamental policy of Indian law.

32. We also notice that the learned counsel for the respondent has completely failed in making out any case in support of the order passed by the learned Commercial Court.

33. In view of the above, we hold that the learned Commercial Court exceeded its jurisdiction under Section 34 of the Act of 1996. We therefore, are unable to sustain the order passed by the learned Commercial Court and the same is accordingly set-aside.

34. Consequently, the present Civil Misc. Appeal is allowed.

35. We may note that in spite of giving time to submit written submissions, no written submissions have been filed by the respondent.

36. Costs made easy.

37. All pending applications stand disposed of.

(BIPIN GUPTA),J (SANJEEV PRAKASH SHARMA),ACTING CJ

Amit/Himanshu/Reserved