IN THE HIGH COURT OF JUDICATURE AT PATNA
COMMERCIAL APPEAL No.7 of 2025

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1. The Bihar State Food and Civil Supplies Corporation Ltd. Sone Bhawan, Daroga Prasad Rai Path, R. Block, Road No 2, Patna 800001, through its Managing Director.
2. The Managing Director, The Bihar State Food and Civil Supplies Corporation Ltd. Khadya Bhawan, R. Block, Rd. No. 2, Patna 800001.
3. The District Manager, The Bihar State Food and Civil Supplies Corporation Ltd., Madhubani.

... ... Appellant/s

Versus

Piyus Kumar Son of Sanjeev Kumar Singh, Resident of Sinhma, P.S Matihani, District Begusarai.

... ... Respondent/s

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with

COMMERCIAL APPEAL No. 14 of 2025

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1. The Bihar State Food and Civil Supplies Corporation Ltd. Khadya Bhawan, 5th Floor, Birchand Patel Path, Patna, at present Khadya Bhawan, R. Block, Patna.
2. The Managing Director, The Bihar State Food and Civil Supplies Corporation Ltd., Khadya Bhawan, Daroga Prasad Path, R. Block, Rd. No.-2, Patna- 800001.
3. The District Manager, The Bihar State Food and Civil Supplies Corporation, Madhubani, District- Madhubani.

... ... Appellant/s

Versus

Piyush Kumar Son of Sanjeev Kumar Singh Resident of Sihma, P.S.- Matihani, District- Begusarai.

... ... Respondent/s

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Appearance :

(In COMMERCIAL APPEAL No. 7 of 2025)

For the Appellant/s : Mr.Shailendra Kumar Singh, Adv.
For the Respondent/s : Mr. Prashant Kumar, Adv.
Mr. Manish Prakash, Adv.
Mr. Kumar Anjaneya Shanu, Adv.
Mr. Rohit Raj, Adv.

(In COMMERCIAL APPEAL No. 14 of 2025)

For the Appellant/s : Mr.Shailendra Kumar Singh, Adv.
For the Respondent/s : Mr. Prashant Kumar, Adv.
Mr. Manish Prakash, Adv.
Mr. Kumar Anjaneya Shanu, Adv.
Mr. Rohit Raj, Adv.
Mr. Ranvir Pratap Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 23-05-2026

COMMERCIAL APPEAL No. 7 of 2025

1. The present appeal has been filed under Section 13 (1A) of the Commercial Courts Act, 2015 (herein after referred to as the "Act, 2015") read with Section 37 of the Arbitration and Conciliation Act, 1996 (herein after referred to as the "Act, 1996") against the Judgment dated 25.07.2025, passed by the Ld. Court of Principal District Judge, Patna (herein after referred to as the "learned PDJ, Patna") in Miscellaneous (Arbitration) Case No. 158 of 2020.

Facts of the Case:

2. The genesis of the present appeal lies in an agreement executed in between the appellants and the claimant-Respondent herein dated 24.10.2016, pursuant to issuance of notice inviting tender from eligible candidates, for being appointed as transporting-cum-handling agent for a period of three years for the revenue District-Madhubani and acceptance of the tender submitted by the Respondent herein. The claimant-Respondent was entrusted with the work of transportation of food-grains and

other commodities including edible oil to the destinated godown, as directed by or on behalf of the appellants and according to the route chart fixed for the said purpose. The period of contract was for three years pertaining to the District-Madhubani. The claimant-Respondent is stated to have executed the work of transporting-cum-handling agent under the agreement and had submitted several bills in between the years 2017 to 2019.

3. It appears that disputes had erupted in between the parties, leading to claims and counter claims being asserted as also leading to issuance of several show cause notices to the claimant-Respondent by the appellants, which were duly replied to by the claimant-Respondent. Ultimately, the District Manager, Bihar State Food and Civil Supplies Corporation Ltd. (hereinafter referred to as “the BSFC”), Madhubani issued a show cause notice dated 13.5.2019 to the claimant-Respondent, as to why appropriate proceedings for cancellation of agreement and blacklisting for five years be not taken in terms of Clause 4(f) of the agreement, which was replied to by the Respondent. Thereafter, the District Transport Committee, Madhubani, vide minutes of meeting dated 21.5.2019 decided to blacklist the Respondent for a period of five years, forfeit the security

deposit, terminate the agreement and invoke the Bank guarantee. This led to issuance of a reasoned order dated 23.05.2019, by which the claimant-Respondent was blacklisted for five years, the security deposit was forfeited, the agreement was terminated and the Bank guarantee was invoked. The said order dated 23.5.2019 was challenged by the claimant-Respondent by filing a writ petition bearing CWJC No. 12554 of 2019. A Ld. Single Judge of this Court by a judgment dated 21.08.2019 passed in CWJC No. 12554 of 2019 had quashed the order of blacklisting of the claimant-Respondent, however liberty was granted to the claimant-Respondent to seek his remedy against the order of termination, forfeiture of security deposit and invocation of Bank guarantee in a duly constituted arbitration proceedings or as may be advised in accordance with law.

4. The claimant-Respondent had then sent a notice to the appellants on 29.05.2019 for appointing an arbitrator suggesting three names, however the appellants did not respond to the said notice as also failed to appoint any arbitrator within a reasonable time, leading to filing of a request case bearing Request Case No. 66 of 2019 under Section 11(6) of the Act, 1996 by the claimant-Respondent, *inter alia* praying therein for appointment

of an independent and impartial arbitrator, in view of Clause 21 of the agreement dated 24.10.2016. The Hon'ble Chief Justice of this Court by an order dated 06.09.2019, passed in Request Case No. 66 of 2019 and other analogous cases, in exercise of the powers U/s. 11(6) of the Act, 1996 had appointed Hon'ble Mr. Justice Sadananad Mukherjee, a retired Judge of the Patna High Court as the sole Arbitrator to enter upon the disputes and render his award in terms of the provisions of the Act, 1996.

5. The claimant-Respondent had then approached the Ld. Sole Arbitrator on 13.09.2019 with a copy of the aforesaid order dated 06.09.2019, passed in Request Case No. 66 of 2019 and other analogous cases, leading to registration of Arbitration Case No. 08 of 2019, whereafter the claimant-Respondent had filed a detailed statement of claim on 11.10.2019, raising a claim of a sum of Rs. 4,32,23,044.57.

6. The appellants had then filed statement of defence on 13.1.2020, *inter alia* stating therein that the claimant-Respondent has submitted calculation chart at Annexure C-63, page No. 137 of the claim petition without any supporting documents and the admitted outstanding bills have already been paid long back apart from the fact that as per Clause 22 of the agreement, the claimant-Respondent is not entitled to claim any

compensation for detention of trucks at the godown gates or by law enforcing agencies during transit or at any other place. It was also averred that the claimant-Respondent has engaged in breach of the terms and conditions of the contract and he has already received all the admissible outstanding amount against the bills submitted by him, hence the claims raised by him is not admissible in the eyes of law.

7. The Respondent-claimant had then filed a rejoinder to the statement of defence on 11.2.2020, stating therein that in support of the statement of claim annexed at Annexure C-63, photo copies of several bills have been annexed as Annexure C-2 to C-35 to the statement of claim wherein each and every fact as well as supporting documents have been furnished in detail. The claimant-Respondent had also filed a supplementary statement of claim on 14.6.2020 wherein a sum of Rs. 21,00,000/- was claimed as compensation on account of premature termination of contract, resulting in the claimant-Respondent being prevented from transporting food-grains for about seven months during the validity period of agreement, apart from claiming a sum of Rs. 1,50,000/- as travelling expenses for attending arbitral proceedings at Patna and a sum of Rs. 1,60,000/- on the head of fees of the Ld. Advocate. It is a

matter of record that no rebuttal was filed by the appellants to the supplementary statement of claim.

8. The learned Sole Arbitrator had thereafter, framed the following issues for consideration:-

> *"(i) Whether there is any cause of action for the present proceeding.*
>
> *(ii) Whether the claim is barred by limitation.*
>
> *(iii) Whether the claimant has committed breach of contract in violation of conditions of agreement/contract.*
>
> *(iv) Whether the deductions from several bills of the petitioner/claimant by the respondents are valid and justified even without giving any opportunity to show cause in this regard.*
>
> *(v) Whether the petitioner/claimant is entitled to the claims as per statement of claims, including the claim of 18 % interest per year on pending bills.*
>
> *(vi) What relief or relief the petitioner is entitled?"*

9. The Ld. Sole Arbitrator had finally passed the arbitral award on 17.10.2020, holding that the claimant-Respondent shall be entitled to the following award:-

> *"1. The claimant petitioner shall be paid an amount of Rs. 2,67,37,638.62 paise (Two crore sixty-seven lakhs thirty-seven thousand six hundred and thirty eighty) only towards the claimed amount inclusive of security amount.*

2. The claimant petitioner shall be entitled to compensation amount of Rs. 45,00,000/- (Forty-five lakhs) only under Section 54 of the Indian Contract Act.

3. The claimant petitioner shall be entitled to simple interest @10% p.a. from 13.09.2019 till the date of award and further 18% interest over awarded sum from the date of award till realization over the awarded amount.

4. The claimant petitioner shall be entitled to cost towards fees and expenses of the Arbitrator and Courts and other legal expenses.

5. Since the Arbitrator's fees has not been paid by the respondent, the same shall be treated as 'unpaid cost' of the Award, under Section 39 of the Arbitration and Conciliation Act, 1996, and accordingly Arbitrator shall have lien over the award, the respondent shall be liable for making payment of the fees of the Arbitrator before pursuing the matter before the Court."

10. The Ld. Sole arbitrator by the aforesaid award dated 17.10.2020 has though denied the claim of detention charges/bills being contrary to Clause 22 of the agreement but has not only awarded the aforesaid claim of Rs. 2,67,37,638.62/- but also compensation amount to the tune of Rs. 45,00,000/- and interest in favor of the claimant-Respondent.

11. The Ld. Sole Arbitrator had then by an order dated 13.11.2020 indicated that at page no. 17, paragraph no. 1 of the

award dated 17.10.2020, there has been typographical error, inasmuch as the compensation amount has been typed as Rs. 45,00,000/- instead of Rs. 25,00,000/- and since Section 33(3) of the Act, 1996 postulates that the arbitral tribunal may correct any error of the type referred to in Clause (a) of Sub-Section (1) on its own initiation, within 30 days from the date of arbitral award, the award portion at para-1 at page no. 17 and at para-1 at page no. 18, wherever compensation amount of Rs. 45,00,000/- has been mentioned, shall stand corrected and be read as a sum of Rs. 25,00,000/-

12. The aforesaid award dated 17.10.2020, passed by the learned Sole Arbitrator was challenged by the appellants before the learned Court of Principal District Judge, Patna by filing a petition on 24.12.2020 under Section 34 (2) & (2A) of the Act, 1996, which was numbered as Miscellaneous (Arbitration) Case No. 158 of 2020 (arising out of award dated 17.10.2020 passed in Arbitration Case No. 8 of 2019). The grounds which can be culled out from the petition of the said Miscellaneous Case No. 158 of 2020 are enumerated herein below:-

(i) The Sole Arbitrator has passed the award only on the basis of calculation chart produced by the claimant-respondent without any supporting documents.

(ii) The appellants had filed statement of defence before the learned Sole Arbitrator and prayed for directing the claimant-respondent to produce supporting documents against his claims as also examine witnesses but the learned Sole Arbitrator neither followed the provisions contained in the Act, 1996 nor examined the records/ witnesses.

(iii) The learned Sole Arbitrator failed to consider that several claims raised by the claimants are *de hors* the agreement.

(iv) The learned Sole Arbitrator has awarded two penalties against the appellants *i.e.* compensation amount and interest on belated payment of the outstanding amount although the admitted claims of the claimant-respondent have already been paid by the appellants well within time.

(v) The learned Sole Arbitrator failed to consider that the claimant-respondent had failed to adhere to the terms of the agreement regarding installing truck with GPS Load-Cells at the time of lifting food grains, hence appropriate deductions were made from the bills. The learned Sole Arbitrator failed to consider that the appellants had passed the admitted amount of bills of the claimant-Respondent, which he had received without any objection.

(vi) The impugned award is against the provisions of the Act, 1996.

(vii) The learned Sole Arbitrator was though appointed to

consider the disputes arising out of the agreement in question, however he has considered several claims based on different contracts and agreements.

13. The claimant-respondent had filed a reply on 23.12.2021 to the aforesaid Misc. Case No.158 of 2020, *inter alia* stating therein that the said petition filed by the appellants is not maintainable in view of the observations of the learned Sole Arbitrator to the effect that since the arbitration fees has not been paid by the appellants, same shall be treated as unpaid cost of the award under Section 39 of the Act, 1996 and accordingly, Arbitrator shall have lien over the award and the appellants shall be liable to make payment of the fees of the Arbitrator before pursuing the matter before the Court. The claimant-respondent had also raised an objection regarding the aforesaid petition filed by the appellants being in violation of the mandatory provisions contained under Section 34 (5) of the Act, 1996, as no prior notice was issued to the claimant-Respondent before filing of the said petition. The claimant-respondent had also raised the issue of jurisdiction inasmuch as the award under challenge being in respect of commercial dispute as defined under Section 2(1)(c)(xviii) of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015, the appellants were required to invoke

the provisions of the Act, 2015, which has not been invoked, thus the learned Court is not vested with the jurisdiction to decide the case in hand. The claimant-respondent had refuted the contentions made by the appellants in the aforesaid Misc. (Arbitration) Case No. 158 of 2020 and had stated that in pursuance to the agreement dated 24.10.2016 executed in between the claimant-respondent and the appellants, the claimant-respondent had diligently completed the assignment as a Transporting-cum-Handling Agent within the framework of the agreement dated 24.10.2016 and in fact the calculation chart produced by the claimant-respondent with his claim petition is supported by month-wise bills of transport and handling charges as well as other relevant documents which were brought on record before the learned Sole Arbitrator along with the statement of claim filed by the claimant-respondent.

14. It has also been stated by the claimant-respondent in his reply that proper opportunity was provided to the appellants by the learned Sole Arbitrator to file relevant documents, however no documents were filed by the appellants. It has also been stated that as per Clause 12 A of the agreement, the appellants were under contractual obligation to make payments of the bills of the claimant-respondent herein within a period of 15 days of

submission of bills, however none of the bills were paid within time by the appellants. It has also been stated that the appellants never received the bills with any objection. Nonetheless, huge deductions were made by the appellants from the bills without assigning any reason. It has also been stated that the appellants did not file any affidavit of admission/denial of documents of the claimant-respondent before the learned Sole Arbitrator, hence all the documents filed by the claimant-respondent would be deemed to have been accepted. It has further been stated that the claims have only been raised with regard to the district Madhubani for which the claimant-respondent was appointed as a Transporting-cum-Handing Agent *vide* agreement dated 24.10.2016. Thus, it has been stated that the allegations regarding award of such amount which were not pertaining to the contract in question and were in connection with other districts is baseless. Lastly, it has been stated in the reply filed by the claimant-respondent that it is a well settled law, as held by the Hon'ble Supreme Court in a catena of cases that any error on the face of the award or in case there is any patent illegality then the same can be examined by the learned Court under Section 34 of the Act, 1996, however the facts/evidence cannot be re-appreciated by the learned Court at the appellate

stage.

15. It may be pertinent to mention here that in paragraph No.17 of the reply filed by the claimant-respondent in Misc. (Arbitration) Case No. 158 of 2020, it has been specifically stated that claims have been raised only in connection with one revenue district for which the claimant was appointed as Transporting-cum-Handling Agent *vide* agreement dt. 24.10.2016, hence any allegation by the appellants to the effect that claims over and above the agreement in question pertaining to other districts have been raised by the claimant-respondent is denied. At this juncture, it would be apt to reproduce paragraph No. 5 (v) of the supplementary reply filed by the claimant-Respondent herein below:-

> *"(v) For that the Hon'ble Sole Arbitrator has decided the dispute within the scope of the agreement as disputes with respect to only one agreement was adjudicated by the Hon'ble Sole Arbitrator for which the Sole Arbitrator was appointed but the plaintiff is trying to mislead this Learned Court merely on the basis of the statement without substantiating any documents in support of their contention."*

16. The claimant-respondent, in his supplementary reply dated 14.02.2022, filed in the said Misc. (Arbitration) Case No. 158 of 2020, *inter alia* stating therein that the statement of claim

filed by the claimant-respondent before the learned Sole Arbitrator is duly supported by relevant documents which had already been submitted before the concerned officials of the appellants from time to time in accordance with the terms and conditions of the agreement. It has also been stated that interest was claimed on the ground of delay and for the same notice under Section 3 of the Interest Act was sent to the appellants with regard to each and every outstanding amount of bills and the same were also produced before the learned Sole Arbitrator. It has further been stated that the calculation chart produced by the claimant-respondent is duly supported by month-wise bill of transport and handling charges as well as other documents which were brought on record of the arbitral proceedings along with the statement of claim filed by the claimant-respondent and the monthly bills are contained in Annexures C-2 to C-35 of the statement of claim, thus the contention of the appellants that no proof/documents were produce is denied.

17. The learned court of PDJ, Patna by a judgment dated 25.07.2025, passed in Miscellaneous (Arbitration) Case No.158 of 2020, has been pleased to dismiss the said case holding that no valid ground has been made out under Section (2) or (2A) of Section 34 of the Arbitration and Conciliation Act, 1996 so as to

warrant interference with the impugned arbitral award or the findings of the learned Sole Arbitrator. At this juncture, it would be relevant to enumerate in brief, the findings recorded by the learned PDJ, Patna in the aforesaid judgement dated 25.07.2025, herein below:-

(i) The learned PDJ, Patna has held that since the Ld. Sole Arbitrator in his award dated 17.10.2020 has recorded that no breach of contractual obligation was committed by the claimant-respondent, rendering the deductions from the bills not justified, the learned Sole Arbitrator has rightly adjudicated that the deduction of Rs.2,67,37,638.62/- was improper and unlawful, thus has justifiably awarded the said amount in favor of the claimant-respondent.

(ii) As regards compensation amount of Rs. 45 lakhs (*sic* Rs. 25 lakhs) awarded by the learned Sole Arbitrator, considering the provisions contained under Section 54 of the Indian Contract Act, the learned PDJ, Patna has come to a finding that since the claimant-respondent ought not to have been subjected to loss arising from the default committed by the appellants and on account of delayed payments causing wrongful loss, as is reflected from the arbitral award, the appellants failed to perform their part of the agreement, hence they cannot claim the performance of reciprocal promise from the claimant-respondent, thus in view of the undue hardship and financial loss suffered due to delayed payment and

defaults on the part of the appellants, the learned Sole Arbitrator has rightly and justifiably awarded compensation of Rs.45 lakhs (*sic* Rs. 25 lakhs) in favour of the claimant-respondent.

(iii) The learned PDJ, Patna has further held that it is well settled established legal principal that a Court, while adjudicating a petition under Section 34 of the Act, 1996 is empowered to set aside an arbitral award where it is found to be devoid of reasoning, or where its outcome is so unjust and irrational as to shock the judicial conscience and similarly an award may be invalidated if it is based on evidence and resulting conclusions which no prudent or reasonable person could reasonably reach. The learned PDJ, Patna has also held that the Arbitrator remains the ultimate master of the quality and quantity of evidence and unless the Arbitrator's approach is demonstrably arbitrary or capricious, the Court shall refrain from revisiting or re-evaluating factual determinations already placed on record.

(iv) The learned PDJ has come to a finding that none of the grounds enumerated under sub-Sections (2) or (2A) of Section 34 of the Act, 1996 have been substantiated in the challenge to the arbitral award. It has also been held that it is a settled law that the proceedings instituted under Section 34 of the Act, 1996 do not partake the nature of an appeal or revision and the jurisdiction conferred upon the Court is inherently limited as also the Court is neither empowered to re-evaluate the findings and conclusions recorded in the award nor substitute its own views or

effect any modification thereof and furthermore, the Court is also not required to delve into or adjudicate the merits of the award in a petition filed U/s. 34 of the Act, 1996.

(v) The learned PDJ, Patna has thus held that the learned Sole Arbitrator has justifiably rendered the arbitral award dated 17.10.2020, having duly considered and evaluated the evidentiary material placed on record and delivered a well-reasoned and a legally sound award.

(vi) In conclusion, the learned PDJ, Patna has held that considering the materials on record, it is manifest that the appellants have failed to establish any of the ground enumerated under sub-Sections (2) or (2A) of Section 34 of the Act, 1996, hence the circumscribed jurisdiction conferred under Section 34 of the Act, 1996 has not been satisfied in the present case so as to warrant setting aside of the impugned arbitral award. The learned PDJ, Patna has also held that the Ld. Sole Arbitrator has adjudicated the disputes strictly within the confines of the agreement executed between the parties and the documents placed on record in that regard as also the findings are clear and the rationale adopted by the learned Sole Arbitrator in arriving at the conclusion is sound, coherent and well-reasoned, hence the award cannot be regarded as patently illegal, perverse or contrary to the public policy of India.

18. The aforesaid judgment dated 25.07.2025 passed by the learned PDJ, Patna has been challenged in the present appeal.

<u>Submissions of the Ld. Counsel for the Appellants:</u>

19. The learned counsel for the appellants has submitted that the Ld. Sole Arbitrator has passed the award dated 17.10.2020 only on the basis of the calculation chart produced by the claimant-Respondent without any supporting documents and the Ld. Principal District Judge, Patna has similarly erred by not considering the said aspect of the matter. It has been stated that the claimant-Respondent has failed to produce any supporting documents against his claims like truck challan, store issue order etc., apart from the fact that the claimant-Respondent did not examine any witnesses in support of his claim. Thus, it has been submitted that the impugned judgment dated 25.7.2025, passed by the Ld. PDJ, Patna as also the arbitral award dated 17.10.2020, passed by the Ld. Sole Arbitrator, as far as award of claim of a sum of Rs. 2,67,37,638.62/- to the claimant-Respondent is concerned, is perverse, patently illegal and beyond the parameters of the agreement entered into between the parties. It is also submitted that the learned Ld. PDJ, Patna had neither called for the arbitral records nor had examined the records and in an arbitrary manner, has upheld the arbitral award dated 17.10.2020 by the impugned judgment dated 25.7.2025. In fact, the Ld. PDJ, Patna failed to consider that all the admitted outstanding amount of bills/claims have been paid to

the claimant-Respondent and part admitted outstanding dues to the tune of Rs. 1,31,08,638/- (including the security deposit of Rs. 10,00,000/-) has been paid on 10.5.2023, however the same has not been accounted for in the impugned Judgment dt. 25.7.2025.

20. The learned counsel for the appellants has further submitted that the Ld. Sole Arbitrator as also the Ld. PDJ Judge, Patna in the impugned arbitral award and judgment dated 17.10.2020 and 25.7.2025 respectively, have failed to consider that several claims raised by the claimant-Respondent are *de hors* the agreement, apart from the fact that though there is no provision for payment of interest and grant of compensation in the agreement entered into between the parties, however both the Ld. Sole Arbitrator as also the Ld. PDJ, Patna have, in utter disregard to the provisions of the agreement allowed the claim of the claimant-Respondent pertaining to grant of interest and compensation. It is further submitted that the Ld. Sole Arbitrator has though been appointed to consider the disputes arising out of the agreement dated 24.10.2016 for the district-Madhubani, however he has considered and allowed several claims based on different contract and agreement. Thus, in nutshell, it is the contention of the learned counsel for the appellants that

the impugned judgment dated 25.7.2025, passed by the Ld. Court of PDJ, Patna is in teeth of the mandate of the provisions contained under Section 34(2)(a), (b) and (2)(A) of the Act, 1996.

21. The learned counsel for the appellants has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Gayatri Balasamy vs. ISG Novasoft Technologies Limited***, reported in ***(2025) 7 SCC 1*** to submit that Section 34 Court can apply the doctrine of severability and modify a portion of the award while retaining the rest, however the same is subject to parts of the award being separable, legally and practically. In fact, the Courts are empowered to modify the arbitral award under Section 34 and 37 of the Act, 1996, nonetheless the same is limited and can be exercised when the award is severable, by severing the "invalid" portion from the "valid" portion of the award by correcting any clerical, computational or typographical errors, which appear erroneous on the face of the record and post-award interest can also be modified in some circumstances as mentioned in the said judgment. Reference has also been made to a judgment rendered by the Hon'ble Apex Court in the case of ***North Delhi Municipal Corporation vs. S.A. Builders Limited***, reported in ***(2025) 7 SCC 132*** to submit

that the arbitral tribunal does not have the power to award interest upon interest or compound interest either for the pre-award period or the post-award period.

22. The learned counsel for the appellants has also referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Union of India vs. Ambica Construction***, reported in ***(2016) 6 SCC 36*** to submit that reference has been made in the said judgment to a Constitution Bench judgment of the Hon'ble Apex Court, rendered in the case of ***Secretary, Irrigation Department, Government of Orissa & Ors. vs. GC Roy,*** reported in ***(1992) 1 SCC 508***, wherein it has been held that if the arbitration agreement or the contract itself provides for interest, the arbitrator would have the jurisdiction to award interest, however where the agreement expressly provides that no interest *pendente lite* shall be payable on the amount due, the arbitrator has no power to award *pendente lite* interest. It would be apt to reproduce paragraph nos. 12, 14 and 34 of the said judgment, rendered in the case of ***Ambica Construction*** (supra), herein below:-

> *"**12.** A Constitution Bench of this Court in G.C. Roy [Irrigation Deptt., State of Orissa v. G.C. Roy, (1992) 1 SCC 508] has considered the question of power of the arbitrator to award pendente lite interest and it has been laid down that if the arbitration agreement or the*

contract itself provides for interest, the arbitrator would have the jurisdiction to award the interest. Similarly, where the agreement expressly provides that no interest pendente lite shall be payable on the amount due, the arbitrator has no power to award pendente lite interest. In G.C. Roy [Irrigation Deptt., State of Orissa v. G.C. Roy, (1992) 1 SCC 508] this Court has held thus : (SCC p. 514, para 7)

> *"7. ... If the arbitration agreement or the contract itself provides for award of interest on the amount found due from one party to the other, no question regarding the absence of arbitrator's jurisdiction to award the interest could arise as in that case the arbitrator has power to award interest pendente lite as well. Similarly, where the agreement expressly provides that no interest pendente lite shall be payable on the amount due, the arbitrator has no power to award pendente lite interest. But where the agreement does not provide either for grant or denial of interest on the amount found due, the question arises whether in such an event the arbitrator has power and authority to grant pendente lite interest.*

14. *Ultimately, in G.C. Roy [Irrigation Deptt., State of Orissa v. G.C. Roy, (1992) 1 SCC 508] , this Court has answered the question whether the arbitrator has the power to award interest pendente lite. Their Lordships have reiterated that they have dealt with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant when the agreement is silent as to award of interest. This Court has laid down various principles in paras 43-44 of the Report thus : (SCC pp. 532-34)*

> *"43. The question still remains whether arbitrator has the power to award interest pendente lite, and if so, on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case*

where the agreement is silent as to award of interest. On a conspectus of the aforementioned decisions, the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34 of the Civil Procedure Code and there is no reason or principle to hold otherwise in the case of arbitrator.

(ii) An arbitrator is an alternative form (sic forum) for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.

(iii) An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law. (The proviso to Section 41 and Section 3 of the Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

(iv) Over the years, the English and Indian courts have acted on the assumption that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator

must have the power to award interest pendente lite. Thawardas Pherumal v. Union of India [Thawardas Pherumal v. Union of India, AIR 1955 SC 468] has not been followed in the later decisions of this Court. It has been explained and distinguished on the basis that in that case there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in the said judgment were not intended to lay down any such absolute or universal rule as they appear to, on first impression. Until Deptt. of Irrigation v. Abhaduta Jena [Deptt. of Irrigation v. Abhaduta Jena, (1988) 1 SCC 418] almost all the courts in the country had upheld the power of the arbitrator to award interest pendente lite. Continuity and certainty is a highly desirable feature of law.

(v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period). For doing complete justice between the parties, such power has always been inferred.

44. Having regard to the above consideration, we think that the following is the correct principle which should be followed in this behalf:

Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes—or refer the dispute as to interest as such—to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter

within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view."

(emphasis in original)

The Constitution Bench of this Court has laid down that where the agreement between the parties does not prohibit grant of interest and where the party claims interest and that dispute is referred to the arbitrator, he shall have the power to award interest pendente lite. The law declared has been held applicable prospectively.

***34.** Thus, our answer to the reference is that if the contract expressly bars the award of interest pendente lite, the same cannot be awarded by the arbitrator. We also make it clear that the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest pendente lite by the Arbitral Tribunal, as ouster of power of the arbitrator has to be considered on various relevant aspects referred to in the decisions of this Court, it would be for the Division Bench to consider the case on merits."*

23. The learned counsel for the appellants has next referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Ltd***., reported in ***(2003) 5 SCC 705,*** paragraphs no. 13, 15 to 22 and 31 whereof are reproduced herein below:-

*"**13.** The question, therefore, which requires consideration is — whether the award could be set aside, if the Arbitral Tribunal has not followed the mandatory procedure prescribed under Sections 24, 28 or 31(3), which affects the rights of the parties. Under sub-section (1)(a) of Section 28 there is a mandate to the Arbitral Tribunal to decide the dispute in accordance with the substantive law for the time being in force in India.*

Admittedly, substantive law would include the Indian Contract Act, the Transfer of Property Act and other such laws in force. Suppose, if the award is passed in violation of the provisions of the Transfer of Property Act or in violation of the Indian Contract Act, the question would be — whether such award could be set aside. Similarly, under sub-section (3), the Arbitral Tribunal is directed to decide the dispute in accordance with the terms of the contract and also after taking into account the usage of the trade applicable to the transaction. If the Arbitral Tribunal ignores the terms of the contract or usage of the trade applicable to the transaction, whether the said award could be interfered. Similarly, if the award is a non-speaking one and is in violation of Section 31(3), can such award be set aside? In our view, reading Section 34 conjointly with other provisions of the Act, it appears that the legislative intent could not be that if the award is in contravention of the provisions of the Act, still however, it couldn't be set aside by the court. If it is held that such award could not be interfered, it would be contrary to the basic concept of justice. If the Arbitral Tribunal has not followed the mandatory procedure prescribed under the Act, it would mean that it has acted beyond its jurisdiction and thereby the award would be patently illegal which could be set aside under Section 34.

15. *The result is — if the award is contrary to the substantive provisions of law or the provisions of the Act or against the terms of the contract, it would be patently illegal, which could be interfered under Section 34. However, such failure of procedure should be patent affecting the rights of the parties.*

16. *The next clause which requires interpretation is clause (ii) of sub-section (2)(b) of Section 34 which inter alia provides that the court may set aside the arbitral award if it is in conflict with the "public policy of India". The phrase "public policy of India" is not defined under the Act. Hence, the said term is required to be given meaning in context and also considering the purpose of the section*

and scheme of the Act. It has been repeatedly stated by various authorities that the expression "public policy" does not admit of precise definition and may vary from generation to generation and from time to time. Hence, the concept "public policy" is considered to be vague, susceptible to narrow or wider meaning depending upon the context in which it is used. Lacking precedent, the court has to give its meaning in the light and principles underlying the Arbitration Act, Contract Act and constitutional provisions.

17. *For this purpose, we would refer to a few decisions referred to by the learned counsel for the parties. While dealing with the concept of public policy, this Court in Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156] has observed thus: (SCC pp. 217-19, paras 92-93)*

> *"92. The Indian Contract Act does not define the expression 'public policy' or 'opposed to public policy'. From the very nature of things, the expressions 'public policy', 'opposed to public policy', or 'contrary to public policy' are incapable of precise definition. Public policy, however, is not the policy of a particular Government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the courts and similarly where there has been a well-recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy. There are two schools of thought — 'the narrow view' school and 'the broad view' school. According to the former, courts cannot create new heads of public policy whereas the latter countenances*

judicial law-making in this area. The adherents of 'the narrow view' school would not invalidate a contract on the ground of public policy unless that particular ground had been well established by authorities. Hardly ever has the voice of the timorous spoken more clearly and loudly than in these words of Lord Davey in Janson v. Driefontein Consolidated Gold Mines Ltd. [1902 AC 484, 500: (1900-03) All ER Rep 426 : 87 LT 372 (HL)]: 'Public policy is always an unsafe and treacherous ground for legal decision.' That was in the year 1902. Seventy-eight years earlier, Burrough, J., in Richardson v. Mellish [(1824) 2 Bing 229, 252 : 130 ER 294] described public policy as 'a very unruly horse, and when once you get astride it you never know where it will carry you'. The Master of the Rolls, Lord Denning, however, was not a man to shy away from unmanageable horses and in words which conjure up before our eyes the picture of the young Alexander the Great taming Bucephalus, he said in Enderby Town Football Club Ltd. v. Football Assn. Ltd. [1971 Ch 591, 606] : 'With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles'. Had the timorous always held the field, not only the doctrine of public policy but even the common law or the principles of equity would never have evolved. Sir William Holdsworth in his 'History of English Law', Vol. III, p. 55, has said:

'In fact, a body of law like the common law, which has grown up gradually with the growth of the nation, necessarily acquires some fixed principles, and if it is to maintain these principles it must be able, on the ground of public policy or some other like ground, to suppress practices which, under ever new disguises, seek to weaken or negative them.'

It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today

become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles underlying the fundamental rights and the directive principles enshrined in our Constitution.

93. The normal rule of common law has been that a party who seeks to enforce an agreement which is opposed to public policy will be non-suited. The case of A. Schroeder Music Publishing Co. Ltd. v. Macaulay [(1974) 1 WLR 1308 : (1974) 3 All ER 616 (HL)], however, establishes that where a contract is vitiated as being contrary to public policy, the party adversely affected by it can sue to have it declared void. The case may be different where the purpose of the contract is illegal or immoral. In Kedar Nath Motani v. Prahlad Rai [AIR 1960 SC 213 : (1960) 1 SCR 861], reversing the High Court and restoring the decree passed by the trial court declaring the appellants' title to the lands in suit and directing the respondents who were the appellants' benamidars to restore possession, this Court, after discussing the English and Indian law on the subject, said (at p. 873):

'The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Williston and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of

the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the court, the plea of the defendant should not prevail.'

The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy and require to be adjudged void."

(emphasis supplied)

18. *Further, in Renusagar Power Co. Ltd. v. General Electric Co. [1994 Supp (1) SCC 644] this Court considered Section 7(1) of the Arbitration (Protocol and Convention) Act, 1937 which inter alia provided that a foreign award may not be enforced under the said Act, if the court dealing with the case is satisfied that the enforcement of the award will be contrary to the public policy. After elaborate discussion, the Court arrived at the conclusion that public policy comprehended in Section 7(1)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act, 1961 is the "public policy of India" and does not cover the public policy of any other country. For giving meaning to the term "public policy", the Court observed thus: (SCC p. 682, para 66)*

"66. Article V(2)(b) of the New York Convention of 1958 and Section 7(1)(b)(ii) of the Foreign Awards Act do not postulate refusal of recognition and enforcement of a foreign award on the ground that it is contrary to the law of the country of enforcement and the ground of

challenge is confined to the recognition and enforcement being contrary to the public policy of the country in which the award is set to be enforced. There is nothing to indicate that the expression 'public policy' in Article V(2)(b) of the New York Convention and Section 7(1)(b)(ii) of the Foreign Awards Act is not used in the same sense in which it was used in Article I(c) of the Geneva Convention of 1927 and Section 7(1) of the Protocol and Convention Act of 1937. This would mean that 'public policy' in Section 7(1)(b)(ii) has been used in a narrower sense and in order to attract the bar of public policy the enforcement of the award must invoke something more than the violation of the law of India. Since the Foreign Awards Act is concerned with recognition and enforcement of foreign awards which are governed by the principles of private international law, the expression 'public policy' in Section 7(1)(b)(ii) of the Foreign Awards Act must necessarily be construed in the sense the doctrine of public policy is applied in the field of private international law. Applying the said criteria it must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality."

(emphasis supplied)

The Court finally held that: (SCC p. 685, para 76)

"76. Keeping in view the aforesaid objects underlying FERA and the principles governing enforcement of exchange control laws followed in other countries, we are of the view that the provisions contained in FERA have been enacted to safeguard the economic interests of India and any violation of the said provisions would be contrary to the public policy of India as envisaged in Section 7(1)(b)(ii) of the Act."

19. *This Court in Murlidhar Aggarwal v. State of U.P.*

[(1974) 2 SCC 472] while dealing with the concept of "public policy" observed thus: (SCC pp. 482-83, paras 31-32)

> *"31. Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time.*
>
> *32. ... The difficulty of discovering what public policy is at any given moment certainly does not absolve the Judges from the duty of doing so. In conducting an enquiry, as already stated, Judges are not hidebound by precedent. The Judges must look beyond the narrow field of past precedents, though this still leaves open the question, in which direction they must cast their gaze. The Judges are to base their decisions on the opinions of men of the world, as distinguished from opinions based on legal learning. In other words, the Judges will have to look beyond the jurisprudence and that in so doing, they must consult not their own personal standards or predilections but those of the dominant opinion at a given moment, or what has been termed customary morality. The Judges must consider the social consequences of the rule propounded, especially in the light of the factual evidence available as to its probable results. ... The point is rather that this power must be lodged somewhere and under our Constitution and laws, it has been lodged in the Judges and if they have to fulfil their function as Judges, it could hardly be lodged elsewhere."*
>
> *(emphasis supplied)*

20. *Mr Desai submitted that the narrow meaning given to the term "public policy" in Renusagar case [1994 Supp (1) SCC 644] is in context of the fact that the question involved in the said matter was with regard to the execution of the award which had attained finality. It was not a case where validity of the award is challenged*

before a forum prescribed under the Act. He submitted that the scheme of Section 34 which deals with setting aside the domestic arbitral award and Section 48 which deals with enforcement of foreign award are not identical. A foreign award by definition is subject to double exequatur. This is recognized inter alia by Section 48(1) and there is no parallel provision to this clause in Section 34. For this, he referred to Lord Mustill & Stewart C. Boyd, Q.C.'s Commercial Arbitration 2001 wherein (at p. 90) it is stated as under:

> *"Mutual recognition of awards is the glue which holds the international arbitrating community together, and this will only be strong if the enforcing court is willing to trust, as the convention assumes that they will trust the supervising authorities of the chosen venue. It follows that if, and to the extent that the award has been struck down in the local court it should as a matter of theory and practice be treated when enforcement is sought as if to the extent it did not exist."*

21. *He further submitted that in foreign arbitration, the award would be subject to being set aside or suspended by the competent authority under the relevant law of that country whereas in the domestic arbitration the only recourse is to Section 34.*

22. *The aforesaid submission of the learned Senior Counsel requires to be accepted. From the judgments discussed above, it can be held that the term "public policy of India" is required to be interpreted in the context of the jurisdiction of the court where the validity of award is challenged before it becomes final and executable. The concept of enforcement of the award after it becomes final is different and the jurisdiction of the court at that stage could be limited. Similar is the position with regard to the execution of a decree. It is settled law as well as it is provided under the Code of Civil Procedure that once the decree has attained finality, in an*

execution proceeding, it may be challenged only on limited grounds such as the decree being without jurisdiction or a nullity. But in a case where the judgment and decree is challenged before the appellate court or the court exercising revisional jurisdiction, the jurisdiction of such court would be wider. Therefore, in a case where the validity of award is challenged, there is no necessity of giving a narrower meaning to the term "public policy of India". On the contrary, wider meaning is required to be given so that the "patently illegal award" passed by the Arbitral Tribunal could be set aside. If narrow meaning as contended by the learned Senior Counsel Mr Dave is given, some of the provisions of the Arbitration Act would become nugatory. Take for illustration a case wherein there is a specific provision in the contract that for delayed payment of the amount due and payable, no interest would be payable, still however, if the arbitrator has passed an award granting interest, it would be against the terms of the contract and thereby against the provision of Section 28(3) of the Act which specifically provides that "Arbitral Tribunal shall decide in accordance with the terms of the contract". Further, where there is a specific usage of the trade that if the payment is made beyond a period of one month, then the party would be required to pay the said amount with interest at the rate of 15 per cent. Despite the evidence being produced on record for such usage, if the arbitrator refuses to grant such interest on the ground of equity, such award would also be in violation of sub-sections (2) and (3) of Section 28. Section 28(2) specifically provides that the arbitrator shall decide ex aequo et bono (according to what is just and good) only if the parties have expressly authorised him to do so. Similarly, if the award is patently against the statutory provisions of substantive law which is in force in India or is passed without giving an opportunity of hearing to the parties as provided under Section 24 or without giving any reason in a case where parties have not agreed that no reasons are to be

recorded, it would be against the statutory provisions. In all such cases, the award is required to be set aside on the ground of "patent illegality".

31. *Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in Renusagar case [1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be — award could be set aside if it is contrary to:*

(a) 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.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void."

24. Thus, it is submitted by the learned counsel for the appellants by relying on the aforesaid judgment rendered by the Hon'ble Apex Court in the case of ***Saw Pipes Ltd.*** (supra) that the arbitral award dated 17.10.2020, passed by the Ld. Sole

Arbitrator is patently illegal, hence is fit to be set aside and this Court is fully empowered to do so by virtue of the provisions contained under Section 37 of the Act, 1996.

25. The Ld. counsel for the appellants has lastly submitted, by referring to Clause 22 of the agreement dated 24.10.2016 that the claimant-Respondent is not entitled to any compensation for detention of their trucks and in fact the Ld. Sole Arbitrator, in the arbitral award dated 17.10.2020, at internal page no. 15 has also held, while referring to the said Clause 22 of the agreement dated 24.10.2016 that the detention charges shall not be payable to the claimant and the detention bills shall stand deducted from various bills, nonetheless the amount awarded in favor of the claimant-Respondent to the tune of Rs. 2,67,37,638.62 also contain detention charges, which is an error apparent on the face of the records.

Submissions of the Ld. Counsel for the claimant-Respondent:

26. Per contra, the Ld. counsel for the claimant-Respondent has submitted that it is wrong to say that no supporting documents were annexed by the claimant-Respondent in his claim petition filed before the Ld. Sole Arbitrator in support of his claims, inasmuch as the bills for various months have been

annexed as Annexure C-2 to C-35, wherein each and every fact as well as supporting documents have been furnished in detail, duly supported by month wise bills of transport and handling charges as well as other relevant documents, however the appellants did not file any affidavit/annexures/denial of documents of the claimant-Respondent before the Ld. Sole Arbitrator, hence all the documents filed by the claimant-Respondent would be deemed to have been accepted. Thus, it is submitted that the claim of a sum of Rs. 2,67,37,638.62 awarded by the Ld. Sole Arbitrator, vide award dt. 17.10.2020 is not only supported by bills / documents but also justified, which have not been denied by the appellants, hence no interference is required.

27. The learned counsel for the claimant-Respondent has further submitted that all the claims have been awarded within the ambit of the agreement in question i.e. the one dated 24.10.2016, pertaining to the district-Madhubani. It is also submitted that there is no bar under the agreement to award interest and compensation, hence the arbitral award dated 17.10.2020 as upheld by the judgment dated 25.7.2025, passed by the Ld. Court of PDJ, Patna under Section 34 of the Act, 1996 does not suffer from any infirmity.

28. The learned counsel for the claimant-Respondent has next

submitted that Section 34 of the Act, 1996 provides for certain grounds on which the competent Court can interfere with the arbitral award, however no interference is permissible if the grounds urged for setting aside of arbitral award is not within the contours of Section 34 of the Act, 1996. Reference has also been made to Section 5 of the Act, 1996 to submit that an arbitration award, which is governed by Part-I of the Act, 1996 can only be set aside on the grounds mentioned under Section 34 (2) and (3) and not otherwise. The Ld. Counsel has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Associate Builders vs. Delhi Development Authority***, reported in ***(2015) 3 SCC 49,*** paragraphs no. 33, 34, 52 and 56 whereof are reproduced herein below:-

> *"**33.** It must clearly be understood 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. 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 [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:*

"General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong".

It is very important to bear this in mind when awards of lay arbitrators are challenged.]. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594], this Court held : (SCC pp. 601-02, para 21)

"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

34. *It is with this very important caveat that the two fundamental principles which form part of the*

fundamental policy of Indian law (that the arbitrator must have a judicial approach and that he must not act perversely) are to be understood.

52. *It is most unfortunate that the Division Bench did not advert to this crucial document at all. This document shows not only that the Division Bench was wholly incorrect in its conclusion that the contractor has tried to pull the wool over the eyes over the DDA but it should also have realised that the DDA itself has stated that the work has been carried out generally to its satisfaction barring some extremely minor defects which are capable of rectification. It is clear, therefore, that the Division Bench obviously exceeded its jurisdiction in interfering with a pure finding of fact forgetting that the arbitrator is the sole Judge of the quantity and quality of evidence before him and unnecessarily bringing in facts which were neither pleaded nor proved and ignoring the vital completion certificate granted by the DDA itself. The Division Bench also went wrong in stating that as the work completed was only to the extent of Rs 62,84,845, Hudson's formula should have been applied taking this figure into account and not the entire contract value of Rs 87,66,678 into account.*

56. *Here again, the Division Bench has interfered wrongly with the arbitral award on several counts. It had no business to enter into a pure question of fact to set aside the arbitrator for having applied a formula of 20 months instead of 25 months. Though this would inure in favour of the appellant, it is clear that the appellant did not file any cross-objection on this score. Also, it is extremely curious that the Division Bench found that an adjustment would have to be made with claims awarded under Claims 2, 3 and 4 which are entirely separate and independent claims and have nothing to do with Claims 12 and 13. The formula then applied by the Division Bench was that it would itself do "rough and ready justice". We are at a complete loss to understand how this can be done by any court under the jurisdiction*

exercised under Section 34 of the Arbitration Act. As has been held above, the expression "justice" when it comes to setting aside an award under the public policy ground can only mean that an award shocks the conscience of the court. It cannot possibly include what the court thinks is unjust on the facts of a case for which it then seeks to substitute its view for the arbitrator's view and does what it considers to be "justice". With great respect to the Division Bench, the whole approach to setting aside arbitral awards is incorrect. The Division Bench has lost sight of the fact that it is not a first appellate court and cannot interfere with errors of fact."

29. The learned counsel for the claimant-Respondent has further submitted that it is a settled position of law that the grounds for interference with the arbitral award under Section 37 of the Act, 1996 is narrower than those under Section 34 of the Act, 1996, hence if an arbitral award has been upheld in challenge under Section 34 of the Act, 1996, then the same should not be disturbed by the Appellate Court. In this regard, reliance has been placed on a judgment, rendered by the Hon'ble Apex Court in the case of ***UHL Power Company Ltd. vs. State of Himachal Pradesh***, reported in ***(2022) 4 SCC 116*** as also upon the one rendered by the Hon'ble Apex Court in the case of ***Reliance Infrastructure Ltd. vs. State of Goa***, reported in ***(2024) 1 SCC 479***, paragraphs no. 25 to 33 whereof are reproduced herein below:-

*"**25.** Having regard to the contentions urged and the*

issues raised, it shall also be apposite to take note of the principles enunciated by this Court in some of the relevant decisions cited by the parties on the scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the 1996 Act.

26. *In MMTC [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163], this Court took note of various decisions including that in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49] and exposited on the limited scope of interference under Section 34 and further narrower scope of appeal under Section 37 of the 1996 Act, particularly when dealing with the concurrent findings (of the arbitrator and then of the Court). This Court, inter alia, held as under: [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163], SCC pp. 166-67, paras 11-14)*

> *"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.*

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49] Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [(2006) 4 SCC 445]; and McDermott International Inc. v. Burn Standard Co. Ltd. [(2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under

Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

27. *In Ssangyong Engg. [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131], this Court has set out the scope of challenge under Section 34 of the 1996 Act in further details in the following words : (SCC pp. 170-71, paras 37-41)*

"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 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.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49], namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49],

however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality 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 [Associate Builders v. DDA, (2015) 3 SCC 49], 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 [(2015) 3 SCC 49], 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."

28. *The limited scope of challenge under Section 34 of the Act was once again highlighted by this Court in PSA Sical Terminals [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2023) 15 SCC 781] and this Court particularly explained the relevant tests as under :*

(SCC paras 40 to 42)

"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.

41. A decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, 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.

42. To understand the test of perversity, it will also be

appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49], which read thus: (SCC pp. 75-76)

> *'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.*
>
> *32. A good working test of perversity is contained in two judgments. In CCE & Sales v. Gopi Nath & Sons [1992 Supp (2) SCC 312], it was held:*
>
> > *"7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."*

29. *In Delhi Airport Metro Express [Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131], this Court again surveyed the case law and explained the contours of the Courts' power to review the arbitral awards. Therein, this Court not only reaffirmed the principles aforesaid but also highlighted an area of serious concern while pointing out "a disturbing tendency" of the Courts in setting aside arbitral awards after dissecting and reassessing factual aspects. This Court also underscored the pertinent features and scope of the expression "patent illegality" while reiterating that the Courts do not sit in*

appeal over the arbitral award. The relevant and significant passages of this judgment could be usefully extracted as under: [Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131], SCC pp. 147-48, 150-51 & 155-56, paras 26, 28-30 & 42)

"26. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law. (See Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd. [(2020) 2 SCC 455], Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. [(2022) 1 SCC 75] & Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [(2012) 5 SCC 306].)

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28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. 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 this 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 categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".

30. Section 34(2)(b) refers to the other grounds on

which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression "public policy of India" and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.

***

42. The Division Bench referred to various factors leading to the termination notice, to conclude that the award shocks the conscience of the Court. The discussion in SCC OnLine Del para 103 of the impugned judgment [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] amounts to appreciation or reappreciation of the facts which is not permissible under Section 34 of the 1996 Act. The Division Bench further held that the fact of AMEL being operated without any adverse event for a period of more than four years since the date of issuance of the CMRS certificate, was not given due importance by the Arbitral Tribunal. As the arbitrator is the sole Judge of the quality as well as the quantity of the evidence, the task of being a Judge on the evidence before the Tribunal does not fall upon the Court in exercise of its jurisdiction U/s. 34. [State of Rajasthan v. Puri Constr. Co. Ltd., (1994) 6 SCC 485] On the basis of the issues submitted by the parties, the Arbitral Tribunal framed issues for consideration and answered the said issues. Subsequent events need not be taken

into account."

(emphasis supplied)

30. *In Haryana Tourism [Haryana Tourism Ltd. v. Kandhari Beverages Ltd., (2022) 3 SCC 237 : (2022) 2 SCC (Civ) 87] , this Court yet again pointed out the limited scope of interference under Sections 34 and 37 of the Act; and disapproved interference by the High Court under Section 37 of the Act while entering into merits of the claim in the following words : (SCC p. 240, paras 8-9)*

"8. So far as the impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers U/s. 37 of the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to: (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd.,

2018 SCC OnLine P&H 3233] passed by the High Court is hence not sustainable."

31. *As regards the limited scope of interference under Sections 34/37 of the Act, we may also usefully refer to the following observations of a three-Judge Bench of this Court in UHL Power Co. Ltd. v. State of H.P. [(2022) 4 SCC 116]: (SCC p. 124, paras 15-16)*

"15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings U/s. 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."

32. *The learned Attorney General has referred to another three-Judge Bench decision of this Court in SAL Udyog [State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275], wherein this Court indeed interfered with the award in question when the same was found suffering from non-consideration of a relevant contractual clause. In the said decision too, the principles aforesaid in Delhi Airport Metro Express [(2022) 1 SCC 131], Ssangyong Engg. [(2019) 15 SCC 131] and other cases were referred to and thereafter, this Court applied the principles to the facts of that case. We shall refer to the said decision later at an appropriate juncture.*

33. *Keeping in view the aforementioned principles enunciated by this Court with regard to the limited scope*

of interference in an arbitral award by a Court in the exercise of its jurisdiction U/s. 34 of the Act, which is all the more circumscribed in an appeal under Section 37, we may examine the rival submissions of the parties in relation to the matters dealt with by the High Court."

30. Thus, it is submitted by the learned counsel for the claimant-Respondent that the law is now well-settled, inasmuch as an arbitral award can be set aside only on the ground of patent illegality, i.e. where illegalities go to the root of the matter but re-appreciation of facts and evidence cannot be permitted under the ground of patent illegality and the jurisdiction conferred on Courts under Section 34/37 of the Act is fairly narrow. It is equally a well-settled law that power of Court under Section 37 of the Act, 1996 is not same as the power of the Appellate Court under Code of Civil Procedure, inasmuch as the learned Appellate Court can re-appreciate both factual and legal position whereas the jurisdiction of the Court under Section 37 is confined only to see that the power under Section 34 has been rightly exercised. In fact, neither the Court exercising jurisdiction under Section 34 nor under Section 37 of the Act, 1996 can go into finding of facts recorded by the arbitral Tribunal. Reference has been made to a judgment rendered by the Hon'ble Apex Court in the case ***Bombay Slum Redevelopment Corporation Ltd. vs. Samir Narain Bhojwani,***

reported in ***(2024) 7 SCC 218*** as also to the one rendered in the case of ***Somdat Builders-NCC-NEC(JV) vs. National Highways Authority of India & Others***, reported in ***(2025) 6 SCC 757*** and the one rendered in the case of ***Jan De Nul Dredging India Private Ltd. vs. Tuticorin Port Trust***, reported in ***(2026) SCC Online SC 33***.

Determination:

31. We have heard the learned counsel for the parties at length and perused the voluminous records, including the records of the arbitral proceedings, copies of Misc. (Arbitration) Case No.158 of 2020 and the reply/supplementary reply filed therein as also the arbitral award dated 17.10.2020 and the impugned judgement passed by the learned PDJ, Patna dated 25.07.2025.

32. Shorn of unnecessary details, the facts of the present case are that an agreement dated 24.10.2016 was entered into between the parties for three years, whereby the claimant-respondent was required to execute the work of Transporting-cum-Handling Agent for the District Madhubani and he was entrusted with the work of transportation of food-grains and other commodities including edible oil to the destinated godown, as directed by or on behalf of the appellants and

according to the route chart fixed for the said purpose. The period of agreement was from 24.10.2016 to 23.10.2019, however it appears that on account of one of the trucks of the claimant-respondent, which was loaded with 550 bags of rice, having been looted, an FIR bearing *Khutaina* P.S. Case No. 133 of 2018 dated 23.12.2018 was registered under Sections 379, 411, 409 and 120 B of the Indian Penal Code read with Section 7 of the Essential Commodities Act, 1955 and Section 37 (6) of the Bihar Prohibition and Excise Act, 2016 against six persons including the driver of the said truck. The said occurrence resulted in the District Manager, BSFC, Madhubani issuing a show cause dated 13.05.2019 to the claimant-respondent, as to why in terms of Clause 4(f) of the Agreement, appropriate proceedings for cancellation of agreement and blacklisting the claimant-respondent for five years be not initiated, to which the claimant-respondent had filed his reply dated 18.05.2019, however the District Transport Committee, Madhubani *vide* minutes of meeting dated 21.05.2019 decided to blacklist the claimant-respondent for a period of five years, forfeit the security deposit, terminate the agreement and invoke the bank guarantee. This was followed by a reasoned order dated 23.05.2019 by which the claimant-respondent was blacklisted

for five years, the security deposit was forfeited, the agreement was terminated and the bank guarantee was invoked. The said order dated 23.05.2019 was though assailed by the claimant-respondent before the learned Single Judge of this Court in CWJC No. 12554 of 2019, however the learned Single Judge of this Court *vide* order dated 21.08.2019 had though quashed the order of blacklisting, however liberty was granted to the claimant-respondent to seek his remedy against the order of termination, forfeiture of security deposit and invocation of bank guarantee in a duly constituted arbitration proceedings or as may be advised in accordance with law.

33. The claimant-respondent had then sent a notice to the appellants on 29.05.2019 for appointing an arbitrator suggesting three names, however the appellants did not respond to the said notice as also failed to appoint any arbitrator within a reasonable time leading to the respondent filing a request case before this Court bearing Request Case No. 66 of 2019, under Section 11(6) of the Act, 1996 for appointment of an independent and impartial arbitrator in lieu of the provisions in the agreement in question, whereupon the Learned Chief Justice of this Court by an order dated 06.09.2019 passed in Request Case No. 66 of 2019 and other analogous cases, had appointed Hon’ble Mr.

Justice Sadanand Mukherjee, a retired judge of the Patna High Court as the Sole Arbitrator to enter upon the disputes and render his award in terms of the provision of the Act, 1996.

34. The claimant-respondent had then filed a detailed statement of claim before the learned Arbitrator on 11.10.2019, being aggrieved with the order dated 23.05.2019, terminating the agreement in question, forfeiting the security deposit and invoking the bank guarantee and further raising claims on the head of non-payment/short payment of the bills pertaining to transportation and handling charges. The claimant-respondent had prayed for the following reliefs in the statement of claim filed before the learned Arbitrator:-

> *"(i) It be held and declared that the Termination of agreement, Forfeiture of Security and Invocation of Bank Guarantee in the Minutes of Meeting dated 21.05.2019 (contained in Annexure- C-48 to the Statement of Claims) of the District Transport Committee, Madhubani and reasoned order contained in Memo No. 681 dated 23.05.2019 issued under the signature of Managing Director of the Corporation (contained in Annexure- C-49 to the Statement of Claims) is inoperative, illegal, unjustified and contrary to the terms of the agreement and not binding on the claimant/petitioner.*
>
> *(ii) By an interim order the operation of the reasoned order contained in (contained in Annexure-C-49 to the Statement of Claims) be stayed till the disposal and final award in the present arbitral proceeding.*
>
> *(iii) Respondents jointly and severely be directed to make*

payment of the claims of the claimant amounting to Rs. 4,32,23,044.57 (four crore thirty two lakh twenty three thousand forty four rupees and fifty seven paisa) towards dues (Illegal deduction and withholding of bills of the claimant/petitioner) with interest thereon @ 18% till 31.10.2019 as noted in Annexure C-63 to the statement of claims, with further interest thereon at the rate of 18% per annum from 01.11.2019 up to date of actual receipt of the awarded amount with interest thereon by the claimant.

(iv) The respondents jointly and severely be directed to pay the cost of arbitration to the claimant.

(v) The Hon'ble Tribunal may grant any other relief or reliefs which is deemed fit and proper in the ends of justice to the claimant."

35. The appellants had then filed statement of defence on 13.01.2020, whereafter the claimant-respondent had filed a rejoinder dated 11.02.2020 as also a supplementary statement of claim on 14.06.2020. The learned Sole Arbitrator had then framed issues for consideration.

36. The learned Sole Arbitrator *vide* arbitral award dated 17.10.2020 has allowed the claim of the claimant-respondent on the head of outstanding bills amount to the tune of Rs. 2,67,37,638.62, compensation to the tune of Rs. 25 lakhs, simple interest @ 10% for the pendente lite period and further 18% interest over the awarded sum from the date of award till realization of the awarded amount, cost towards fees and expenses of the arbitrator and courts and other legal expenses

apart from treating the arbitrator's fees not paid by the appellants as unpaid cost of the award under Section 39 of the Act, 1996. We have already reproduced the entitlements of the claimant-respondent, as awarded by the learned Sole Arbitrator by the arbitral award dt. 17.10.2020, hereinabove in paragraph No. 9. The said award dated 17.10.2020 was challenged by the appellants before the learned Court of PDJ, Patna by filing Misc. (Arbitration) Case No.158 of 2020 under Section 34 (2) & (2A) of the Act, 1996, to which the claimant had filed a reply as also a supplementary reply dt. 23.12.2021 & 14.2.2022, respectively.

37. The learned PDJ, Patna by the impugned judgment dated 25.07.2025 has been pleased to dismiss the said Misc. (Arbitration) Case No. 158 of 2020 holding that no valid ground has been made out under Section (2) or (2A) of Section 34 of the Act, 1996 so as to warrant interference with the impugned arbitral award or findings of the learned Sole Arbitrator. The findings recorded by the learned PDJ, Patna in the aforesaid judgement dated 25.07.2025 has already been detailed hereinabove in paragraph No. 17.

38. At the outset, it would be apt to reproduce the relevant Clauses of the Agreement dt. 24.10.2016 entered into between

the parties for the District of Madhubani, herein below:-

> ***"12.*** *The First Pary shall be liable to pay the second Party remuneration for the undertaking in this agreement at the rates specified below against each item. No other charges shall be admissible to the second party for the due performance to this agreement. These rates are also subject to revision at any time at the discretion of the First Party. If the Second Party agree to such revisions either by express consent or by implied action such rates would automatically be binding to the second Party.*
>
> *(Application of rate of Particular slab will be only upto the maximum distance fixed for the beginning form Zero)*
>
> ***13.*** *No separate handling and stacking charges is payable in respect of handling work taking place at F.C.I. depot or rail head/Godown. Schedule of approved rates for transport and handling is indicated above in this agreement.*
>
> ***14.*** *The District Manager, Bihar state Food & Civil Supplies Corporation Ltd. shall on completion of each month, calculate the amount of remuneration for which the Second Party is entitled to as aforesaid and pay the same by Account Payee cheque within a reasonable period after such accounting. However, after the submission of bills by the Second Party and subject to the completion of such other formalities as required by the First party, the payment against bill submitted by the Second-Party will be made by the first party in the manner specified in the Head office Circular No. Audit-IX 13/96-799 dated 07.02.2001. The First Party reserves the right to amend the procedure of payment as and when such is required. No interest shall be payable to the Second Party for unavoidable delay in the payment. In special circumstances, the payment may be made even within the quarter at discretion of the District Manager with prior approval of the Managing Director while*

making the payment the damage like shortage officially, accident, theft etc. payable by the Second Party will be deducted and if damage is claimed but not finally determined, payment to that extent will be withheld till final determination which is to be done at the shortest possible time.

18. *The agreement shall remain in operation for the period of three years from the date of publication of Tender notice by the contractor has been appointed and it can be terminated any time by issuing 15 days prior notice. This may be terminated earlier than the period mentioned above on behalf of the First Party in case of non-lifting of grains, sugar, edible oil etc. During the specified period if there is any breach of any of the terms of the agreement by the second party, the agreement may be terminated and blacklisted as well as debarred for next five years from future transportation work, security deposits will be forfeited and Bank guarantee of 20 lacs (twenty lac only) will be utilized and encashed at once by the First Party. The responsibility of the second party shall not cease with the termination of the agreement unless he has redelivered the grains, sugar, edible oils and etc., entrusted to him and rendered complete accounts thereof to the satisfaction of the First Party.*

21. *All disputes arising under or in pursuance of this agreement between the parties, except matters decision of which herein expressly is otherwise provided, shall be referred to sole arbitration of the C.M.D/Managing Director of the Bihar State Food & Civil Supplies Corporation Ltd. Patna or a person nominated by the C.M.D/ Managing Director decision of such arbitrator shall be final and binding on both the parties. The provisions of the arbitration and conciliation Act, 1996 and rules framed there under and statuary modifications thereof shall apply to the proceedings of arbitration and all such disputes shall be subject to the jurisdiction of courts at Patna.*

> ***22.*** *The second party would not be entitled to claim any compensation for detention of their trucks at the godown gates or detention by law enforcing agencies during transit any other authorized places of the corporation from where the delivery of any consignment is to be obtained or where any delivery is to be given."*

39. At this juncture, we would like to delve upon the scope of Sections 34 and 37 of the Act, 1996, as has been considered and settled in a catena of cases by the Hon'ble Apex Court. In this regard, we would first refer to the judgment rendered by the Hon'ble Apex Court in the case of ***SEPCO Electric Power Construction Corporation vs. GMR Kamalanga Energy Limited*** reported in ***(2026) 2 SCC 542***, paragraph Nos. 68, 114 to 116 whereof are reproduced herein below:-

> ***"68.*** *Furthermore, in the process of discussing the jurisdiction and powers of courts under Sections 34 and 37 of the 1996 Act, a 3-Judge Bench of this Court, in UHL Power Co. [UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116] while holding that the learned Single Judge of the High Court concerned had exceeded his jurisdiction through interference with the arbitral award, explicated the reasons of such narrow scope of powers of a court under Section 34 of the 1996 Act. Referencing extensively on other decisions of this Court, namely, MMTC [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163], K. Sugumar v. Hindustan Petroleum Corpn. Ltd. [(2020) 12 SCC 539] , Dyna Technologies [(2019) 20 SCC 1] , and Parsa Kente Collieries [(2019) 7 SCC 236], it laid down that the courts do not sit in appeal over arbitral awards, therefore, the jurisdiction of the courts concerned is confined to specific grounds as laid down under Section 34 of the 1996 Act, for instance, violation*

of public policy, patent illegality, or misconduct. Furthermore, it is based on the principle of party autonomy and the need to uphold the finality of an arbitral award. Concluding, it iterated that when the parties have, through conscious decision-making, opted for arbitration as an alternative means of dispute mechanism, the courts ought to refrain from reappreciation of evidence or substitution of interpretation(s), unless the award is perverse, unreasonable, or contrary to the mandate of the statute or decisions of court.

114. *Summarising the principles as aforesaid, it is undoubtful that the interference under jurisprudence laid down under Sections 34 and 37 of the 1996 Act is narrow, while aforementioned decisions do acknowledge that, SEPCO has vehemently pushed so in an attempt to persuade us to hold the Division Bench in error. However, the jurisprudence, as also identified in the aforesaid issues, clarifies that the principles of natural justice, and the public policy of India are paramount and cannot be ignored or sidelined in an attempt not to frustrate the patent or latent commercial wisdom of the parties to seek an alternative means of dispute resolution. Such issues attack the root of the Indian legal system and the courts cannot be made a mere spectator to such gross violations.*

115. *The scope under Section 37, as rightly argued by SEPCO, is slimmer than that under Section 34, but, in the instant case, the Section 34 judgment had failed to appreciate the gross violations of the basic principles of adjudication of a dispute. While one may argue some of those may be latent and not a prima facie violation, thereby not mandating any interference, direct omission of the mandate of Section 18 and Section 28 sub-section (3) of the 1996 Act are clearly patent through a skimming of arbitral award. No contentions appear on behalf of SEPCO vis-à-vis waiver through the circumstances arising in March 2012, and despite such a*

want, the Arbitral Tribunal exceeded the mandate to deem a waiver on the part of GMRKE Limited for contractual notices, without any explicit intent. Thereafter, it patently discriminates against GMRKE Limited to deny their claims for want of contractual notice(s).

116. *An attack on the fundamental policy of Indian law allows for reappreciation and thereby, the impugned judgment cannot be faulted with on the ground of having exceeded its jurisdiction under Section 37 of the 1996 Act. The Division Bench was correct in this regard, as to open up the necessary floodgates of reappreciation of the arbitral award."*

40. Yet another judgment on the aforesaid issue is the one rendered by the Hon'ble Apex Court in the case of ***UHL Power Company Limited vs. State of Himachal Pradesh***, reported in (**2022) 4 SCC 116**, paragraph Nos. 16 to 19 and 21 whereof are reproduced herein below:-

"16. *As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [(2019) 4 SCC 163], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words:*

"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy

of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."

17. *A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corpn. Ltd. [(2020) 12 SCC 539], wherein it has been observed as follows : (SCC p. 540, para 2)*

"2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

18. *It has also been held time and again by this Court that if there are two plausible interpretations of the terms*

and conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [(2019) 20 SCC 1], the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus : (SCC p. 12, para 24)

> *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."*

19. *In Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. [(2019) 7 SCC 236], adverting to the previous decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [(2006) 11 SCC 181] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [(2012) 5 SCC 306], wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus:*

"9.1. ...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.

9.2. Similar is the view taken by this Court in NHAI v. ITD Cementation India Ltd. [(2015) 14 SCC 21], SCC para 25 and SAIL v. Gupta Brother Steel Tubes Ltd. [(2009) 10 SCC 63], SCC para 29."

21. *An identical line of reasoning has been adopted in South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd. [(2020) 5 SCC 164] and it has been held as follows:*

"12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [(2019) 20 SCC 1] laid down the scope of such interference. This Court observed as follows:

'24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a

casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.'

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies [(2019) 20 SCC 1] observed as under :

'25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

41. We may also refer to the judgement rendered in the case of ***Jan De Nul Dredging India Private Limited vs. Tuticorin Port Trust*** reported in **2026 SCC OnLine SC 33**, paragraph Nos. 36, 37 whereof are reproduced herein below:-

"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.

37. *Undoubtedly, in the case at hand, the award of the Arbitral Tribunal is not contrary to any substantive provision of law or any provision of the Act. Yet, it has been disturbed by the appellate court, apparently by giving a different interpretation of the clauses of the licence agreement which jurisdiction was not vested in it. Ordinarily, the interpretation given by the Arbitral Tribunal, as affirmed by the court in exercise of powers under Section 34 of the Act ought to have been accepted."*

42. We have already referred to the judgments rendered in the cases of ***Saw Pipes Limited*** *(supra),* ***Associate Builders*** *(supra),* ***Reliance Infrastructure Limited*** *(supra),* ***Bombay Slum Re-development Corporation Limited*** *(supra),* ***Somdat Builders-NCC-NEC (JV)*** *(supra)* and host of other judgments

referred to in the said judgements on the scope of interference under Sections 34 and 37 of the Act, 1996. We find from the law propounded in the aforesaid judgments, referred to hereinabove that broadly as far as Sections 34 and 37 of the Act, 1996 are concerned, the Court is not required to sit in appeal over the arbitral award and reappreciate the evidence, however interference would be permissible in the following situations:-

(i) When the *award* is in violation of Public Policy of India *i.e*. the Fundamental Policy of Indian Law.

(ii) In case of violation of the Principles of Natural Justice as envisaged under Sections 18 and 34 (2)(a)(iii) of the Act, 1996.

(iii) If the *award* is in conflict with justice or morality i.e. in conflict with the most basic notions of morality and justice.

(iv) If the *arbitral* award shocks the conscience of the Court.

(v) An arbitral award can also be set aside on the ground of patent illegality appearing on the face of the award which goes to the root of the matter.

43. Thus, in nutshell we find that an award can be challenged on the grounds provided for under Section 34 (2) and (2A) of the Act, 1996. It is a well settled law that where a finding is based on no evidence or an arbitral tribunal takes into account

something irrelevant to the decision which it arrives at or ignores vital evidence in arriving at its decision, such decision would necessarily be perverse and liable to be set aside on the ground of patent illegality. A conspectus of the aforesaid judgement rendered by the Hon'ble Apex Court would demonstrate that award can be set aside under Sections 34 and 37 of the Act, 1996, if the award is found to be contrary to:-

(a) Fundamental policy of Indian Law; or
(b) The Interest of India; or
(c) Justice or morality and
(d) It is patently illegal.

44. Yet another issue which arises for consideration is whether the powers of the Court under Sections 34 and 37 of the Act, 1996 will include the power to modify an arbitral award and if the power to modify the award is available, whether such power can be exercised only where the award is severable and a part thereof can be modified. The said issues have been answered in a constitution bench judgment rendered by the Hon'ble Apex Court in the case of ***Gayatri Balasamy vs. ISG Novasoft Technologies Limited***, reported in **(2025) 7 SCC 1**, to the effect that the Court has a limited power under Sections 34 and 37 of the Act, 1996 to modify the arbitral award which may be exercised under the following circumstances:-

(i) When the award is severable, by severing the "invalid" portion from the "valid" portion of the award;

(ii) By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record.

(iii) By modifying post-award interest in some circumstances;

45. It would be apropos to reproduce paragraph Nos. 32 to 34, 38, 39, 41 to 45, 49, 63, 65 and 87 of the judgment rendered by the Hon'ble Apex in the case of ***Gayatri Balasamy*** (*supra*), herein below:-

> ***"II. Severability of awards***
>
> ***32.*** *In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenz-kompetenz, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the "valid" part(s) of the award while setting aside the "invalid" ones. [The "validity" and "invalidity", as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the 1996 Act.] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.*

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.*

III. Difference between setting aside and modification

38. *This distinction lies at the heart of many arguments canvassed before us. The parties opposing the recognition of a power of modification of the courts have strenuously contended that modification and setting aside are distinct and sui generis powers. While modification involves altering specific parts of an award, setting aside does not alter the award but results in its annulment. Their primary concern is that recognising a power of modification may invite judicial interference with the merits of the dispute—something arguably inconsistent with the framework of the 1996 Act.*

39. *We agree with this argument, but only to a limited extent. It is true that modification and setting aside have different consequences: the former alters the award, while the latter annuls it. [The words used in the statute must be interpreted contextually, taking into account the purpose, scope, and background of the provision. Many words and expressions have both narrow and broad meanings and thereby open to multiple interpretations.*

Legal interpretation should align with the object and purpose of the legislation. Therefore, we may not strictly apply a semantic differentiation while interpreting the words "modification" or "setting aside". Instead, a holistic and purposive interpretation of these words will be consistent with the intent behind the provision and the 1996 Act. Linguistically and even jurisprudentially, a distinction can be drawn between the expressions — "modification", "partial setting aside", and "setting aside" of an arbitral award in its entirety. However, we must note that the practical effect of partially setting aside an award is the modification of the award.] However, we do not concur with the view that recognising any modification power will inevitably lead to an examination of the merits of the dispute. It will completely depend on the extent of the modification powers recognised by us. In the following part of our Analysis, we outline the contours of this limited power and explain why, in our view, recognising it will ultimately yield more just outcomes.

41. *To deny courts the authority to modify an award—particularly when such a denial would impose significant hardships, escalate costs, and lead to unnecessary delays —would defeat the raison d'être of arbitration. This concern is particularly pronounced in India, where applications under Section 34 and appeals under Section 37 often take years to resolve.*

42. *Given this background, if we were to decide that courts can only set aside and not modify awards, then the parties would be compelled to undergo an extra round of arbitration, adding to the previous four stages: the initial arbitration, Section 34 (setting aside proceedings), Section 37 (appeal proceedings), and Article 136 (SLP proceedings). In effect, this interpretation would force the parties into a new arbitration process merely to affirm a decision that could easily be arrived at by the Court. This would render the arbitration process more cumbersome than even*

traditional litigation.

43. *Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the Court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34. In other words, the power cannot contradict the essence or language of Section 34. The Court would not exercise appellate power, as envisaged by Order 41 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code").*

44. *We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided in toto. Read in this manner, the limited and restricted power of severing an award implies a power of the Court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.*

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

49. *Notwithstanding Section 33, we affirm that a Court reviewing an award under Section 34 possesses the authority to rectify computational, clerical, or typographical errors, as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation. There are certain powers inherent to the Court, even when not explicitly granted by the legislature. The scope of these inherent powers depends on the nature of the provision, whether it pertains to appellate, reference, or limited jurisdiction as in the case of Section 34. The powers are intrinsically*

connected as they are part and parcel of the jurisdiction exercised by the Court.

63. *We are unable to accept the view taken in Kinnari Mullick [Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , which insists that an application or request under Section 34(4) must be made by a party in writing. The request may be oral. Nevertheless, there should be a request which is recorded by the Court. We are also unable to agree that the request must be exercised before the application under Section 34(1) is decided. Section 37 (Annexure A) permits an appeal against any order setting aside or refusing to set aside an arbitral award under Section 34. To this extent, the appellate jurisdiction under Section 37 is coterminous with, and as broad as, the jurisdiction of the Court deciding objections under Section 34. Hence, the contention that the Tribunal becomes functus officio after the award is set aside is misplaced. The Section 37 Court still possesses the power of remand stipulated in Section 34(4). Of course, the appellate court, while exercising power under Section 37, should be mindful when the award has been upheld by the Section 34 Court. But the Section 37 Court still possesses the jurisdiction to remand the matter to the Arbitral Tribunal.*

65. *In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , this Court emphasised that the issuance of a reasoned award is not a mere formality under the 1996 Act. For an award to be termed "reasoned", it must meet three essential yardsticks: it must be proper, intelligible, and adequate. The purpose behind Section 34(4) is clear: it allows for an award to become enforceable after granting the Tribunal an opportunity to cure any defects. This power is exercisable when the Arbitral Tribunal has failed to give any reasoning or the award exhibits gaps in reasoning and these defects can be cured, thereby preventing*

unnecessary challenges. The underlying intent is to provide an effective, expeditious forum for addressing curable defects, which Section 34(4) facilitates.

Conclusions

87. *Accordingly, the questions of law referred to by Gayatri Balasamy [Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2024 SCC OnLine SC 1681] are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:*

87.1*. When the award is severable, by severing the "invalid" portion from the "valid" portion of the award, as held in Part II of our Analysis;*

87.2. *By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in Parts IV and V of our Analysis;*

87.3. *Post-award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or*

87.4. *Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in Part XII of our Analysis."*

46. Now coming back to the facts of the present case, we find that the Ld. sole Arbitrator has by his award dated 17.10.2020 held that the claimant-respondent shall be paid a sum of Rs.2,67,37,638.62/-, including the security amount to the tune of Rs.10 lakhs. In this regard, it would be relevant to point out here that the learned Arbitrator has come to a finding at internal page No.13 of the award dated 17.10.2020 that the claimant-respondent has not committed any breach of contract so as to be

rendered liable under Section 4(f) of the agreement, hence he cannot be saddled with any liability for any deduction of the amount on account of theft and institution of FIR, however the claimant-respondent has raised a claim of Rs.4,32,23,044.57 towards dues comprising of alleged illegal deduction and withholding of bills of claimant-respondent and damages for retention of trucks as noted in the tabular content of the statement of claim filed by the claimant-respondent. The learned Arbitrator, at internal page No.15 of the award dated 17.10.2020 has further come to a finding that from a perusal of the bills submitted by the claimant-respondent it appears that a substantial number of retention (*sic* detention) bills have been added along with the amount fallen due, however under Clause 22 of the Contract, there is clear indication that no charges on deduction arising out of detention of the trucks shall be payable, thus all such amount are not fit to be reimbursed, hence the detention bill shall stand deducted from various bills and such amount shall not be payable. Thereafter, the learned Arbitrator at internal page No. 16 of the award dated 17.10.2020 has come to a finding that on computation of payable bills, a sum of Rs. 2,57,37,738.62 along with a sum of Rs. 10 lakhs on the head of security money is payable to the claimant.

The only issue which arises for consideration is as to whether the learned Arbitrator has committed computational error while deducting the detention bills. The records would bear it out that the amount claimed by the claimant-respondent on the head of “balance payment due” (Column 8 of the Chart annexed at running page Nos.223 and 224) is a sum of Rs. 3,10,21,638.62 but claim to extent of a sum of Rs. 2,57,37,738.62 has been allowed, meaning thereby that a sum of Rs.52,83,900/- has been deducted on the head of detention bills, however if the amount of detention bills annexed as Annexures-C-6, C-8, C-10, C-12, C-13, C-14, C-15, C-16, C-17, C-21, C-23 and C-24 at running page Nos. 125, 127, 129, 131, 132, 133, 134, 135, 136, 140, 142 and 143 of the brief are totaled-up, the amount of detention bills would add up to a sum of Rs. 58,55,100/-, hence the Ld. Sole Arbitrator ought to have awarded a sum of Rs. 2,51,66,538.62 instead of sum of Rs. 2,57,37,738.62 apart from a sum of Rs. 10 lakhs on the head of security deposit totaling to a sum of Rs.2,61,66,538.62/-, which in any view of the matter is a computational error, erroneous on the face of the record, hence we direct that the amount awarded in favor of the claimant-Respondent by the Ld. Sole Arbitrator vide award dated 17.10.2020, pertaining to item No.1 at internal

page No.17 of the said award would stand corrected as follows:-

> "(i) The claimant-respondent shall be paid an *amount* of Rs. 2,61,66,578.62 towards the claimed amount inclusive of security amount."

47. It is a well-settled law that an Appellate Court cannot re-appreciate the evidence. In the present case the bills submitted by the claimant before the Ld. Sole Arbitrator along with the statement of claim have been marked as Annexure-C-2 to C-35, however the same have not been refuted by the appellants, inasmuch as they did not file any affidavit of admission / denial of documents of the claimant-Respondent before the Ld. Sole Arbitrator, hence all the bills filed by the claimant before the Ld. Sole Arbitrator would be deemed to have been accepted by the appellants to be correct except to the extent of deduction of detention bill from various bills, as aforesaid.

48. At this stage, we may hasten to add that an Arbitrator has to act within the ambit of the contract, as has been held in the case of ***Jayesh H. Pandya vs. Subhtex (India) Ltd. & Others***, reported in **(2020) 17 SCC 383**. In yet another judgement rendered by the Hon'ble Apex Court in the case of ***SEPCO Electric Power Construction Corporation*** (*supra*), it has been held that the Arbitrator lacks the power to deviate from or to re-

interpret the terms of the contract while making an award, the award must be within the parameters of the agreement entered into between the parties and the arbitrator is restricted to the terms of the contract and cannot go outside its scope.

49. In one another judgment rendered by the Hon'ble Apex Court in the case of ***State of Rajasthan vs. Nav Bharat Construction Co.***, reported in **(2006) 1 SCC 86,** it has been held that an Arbitrator cannot go beyond the terms of the contract and when an agreement has been filed in the Court and order of reference has been made then the claim has to be limited to that relief and the Arbitrator cannot enlarge the scope of reference.

50. The other issue which arises for consideration in the present case is regarding award of compensation to the tune of Rs. 25 lakhs under Section 54 of the Indian Contract Act. The findings of the learned Arbitrator in this regard can be found at internal page No.17 of the award dated 17.10.2020, which is reproduced herein below:-

> *"Since the contract between the parties consists of reciprocal promises, in the circumstances of the case, in view of the delayed payments causing wrongful loss to the claimant-petitioner, the claimant-petitioner shall be paid compensation amount of Rs. 45 lakhs (modified to Rs. 25 lakhs vide order dated 13.11.2020) only as per Section 54 of the Indian Contract Act."*

51. A bare perusal of the entire award rendered by the learned

Sole Arbitrator dated 17.10.2020 would show that the prayer of the claimant-respondent to declare the termination of agreement, forfeiture of security deposit and invocation of bank guarantee *vide* order dated 23.05.2019, issued by the Managing Director, BSFC, Patna to be inoperative, illegal, unjustified and contrary to the terms of the agreement, has not been allowed by the learned Arbitrator and the only finding arrived at by the learned Arbitrator is that the claimant cannot be saddled with any liability for any deduction of the amount on account of theft and institution of FIR and after deduction of the detention bills, the outstanding claim of the claimant-respondent on the head of outstanding bills has been allowed.

52. Now, it would be apt to refer to the pleadings made by the claimant-respondent in the statement of claims filed before the learned Arbitrator on the aforesaid aspect of the matter, which is contained in paragraph Nos. 18 and 19 thereof and the same is being reproduced herein below:-

> *"18. That the termination of agreement vide order contained in Memo No. 681 dated 23.05.2019 issued under the signature of Managing Director of the Corporation (contained in Annexure C-49) is illegal, unjustified and contrary to the terms of the agreement.*
>
> *19. That due to premature termination of the contract by the respondent contained in Annexure-C-49 the claimant/ petitioner has suffered a loss of Rs. 21,00,000/- (Rupees*

twenty one lakh) as the claimant/petitioner was prevented from transporting the food grains for about seven (07) months during the validity period of agreement. The claimant/petitioner has to incur losses due to unjustifiable reasons of the detention of trucks at the time of unloading for which bills have been submitted. Idling charges has been calculated at the rate of Rs. 1,000/ per day for 6 wheels truck, Rs. 1,500/- per day for 10 wheels truck, Rs. 2,000/- per day as idling charges per truck for 12 wheels truck besides GPS Load Cell rent."

53. In the supplementary statement of claim, while the aforesaid claim of loss of Rs. 21 lakhs has been reiterated, it has been further stated that the trucks hired by the claimant-respondent had remained idle, leading to him having paid charges to the respective truck owners for ideal period of total seven months *i.e.* May, 2019 to November, 2019, apart from the claimant having incurred a sum of Rs.1,50,000/- on the head of travelling expenses for travelling to Patna to attend the arbitral proceedings and a sum of Rs.1,60,000/- on the head of the fees of his learned Advocate. The law with regard to claim of loss of profit and award of compensation is no longer *res integra*. In this regard, we would first refer to a judgement rendered by the Hon'ble Apex Court in the case of ***Unibros vs. All India Radio***, reported in **2023 SCC Online SC 1366**, paragraph Nos. 15 to 21 whereof are reproduced herein below:-

"15. *Considering the aforesaid reasons, even though*

little else remains to be decided, we would like to briefly address the appellant's claim of loss of profit. In Bharat Cooking Coal (supra), this Court reaffirmed the principle that a claim for such loss of profit will only be considered when supported by adequate evidence. It was observed:

> *"24. ... It is not unusual for the contractors to claim loss of profit arising out of diminution in turnover on account of delay in the matter of completion of the work. What he should establish in such a situation is that had he received the amount due under the contract, he could have utilised the same for some other business in which he could have earned profit. Unless such a plea is raised and established, claim for loss of profits could not have been granted. In this case, no such material is available on record. In the absence of any evidence, the arbitrator could not have awarded the same."*
>
> *(emphasis ours)*

16. *To support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts that the appellant could have earned elsewhere by taking up any, it becomes imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence. This evidence should convincingly demonstrate that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere.*

17. *One might ask, what would be the nature and quality of such evidence? In our opinion, it will be contingent upon the facts and circumstances of each case. However, it may generally include independent contemporaneous evidence such as other potential projects that the contractor had in the pipeline that could have been undertaken if not for the delays, the total number of tendering opportunities that the contractor received and*

declined owing to the prolongation of the contract, financial statements, or any clauses in the contract related to delays, extensions of time, and compensation for loss of profit. While this list is not exhaustive and may include any other piece of evidence that the court may find relevant, what is cut and dried is that in adjudging a claim towards loss of profits, the court may not make a guess in the dark; the credibility of the evidence, therefore, is the evidence of the credibility of such claim.

18. *Hudson's formula, while attained acceptability and is well understood in trade, does not, however, apply in a vacuum. Hudson's formula, as well as other methods used to calculate claims for loss of off-site overheads and profit, do not directly measure the contractor's exact costs. Instead, they provide an estimate of the losses the contractor may have suffered. While these formulae are helpful when needed, they alone cannot prove the contractor's loss of profit. They are useful in assessing losses, but only if the contractor has shown with evidence the loss of profits and opportunities it suffered owing to the prolongation.*

19. *The law, as it should stand thus, is that for claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions : first, there was a delay in the completion of the contract; second, such delay is not attributable to the claimant; third, the claimant's status as an established contractor, handling substantial projects; and fourth, credible evidence to substantiate the claim of loss of profitability. On perusal of the records, we are satisfied that the fourth condition, namely, the evidence to substantiate the claim of loss of profitability remains unfulfilled in the present case.*

20. *The First Award was interfered with by the High Court for the reasons noted above. The Arbitrator, in view of such previous determination made by the High*

Court, could have granted damages to the appellant based on the evidence on record. There was, so to say, none which on proof could have translated into an award for damages towards loss of profit. A claim for damages, whether general or special, cannot as a matter of course result in an award without proof of the claimant having suffered injury. The arbitral award in question, in our opinion, is patently illegal in that it is based on no evidence and is, thus, outrightly perverse; therefore, again, it is in conflict with the "public policy of India" as contemplated by section 34(2)(b) of the Act.

21. *For the reasons aforesaid, we find no merit in this appeal. The same stands dismissed. However, cost awarded by the learned Single Judge is made easy."*

54. Yet another judgment on the aforesaid issue is the one rendered by the Hon'ble High Court of Bombay in the case of ***Hindustan Petroleum Corporation Ltd., Mumbai vs. Batliboi Environmental Engineers Ltd, Mumbai and Another***, reported in **(2007) SCC OnLine BOM 1016**, paragraph Nos. 14, 21, 22, 26, 27, 28 and 29 whereof are reproduced herein below:-

"14. Arbitrator is creation of the contract between the parties and he gets jurisdiction under the terms of contract. He is expected to interpret and apply provisions of the contract and pass an award accordingly. While passing the award he has to bear in mind the provisions of section 28 of the Act, which clearly provides that in case of domestic arbitration in India, the Arbitral Tribunal shall decide the dispute in accordance with substantive law for the time in force in India. If the Arbitrator ignores the substantive law in force in India and passes an award, it is bound to cause injustice and is liable to be set aside. For example law requires that the claim should be within limitation. If the

award is passed on a claim, which is clearly barred by the limitation, that will be against the provisions of law and the award cannot be sustained. In the present case, it is the contention of the petitioner that the learned Arbitrator ignored the terms of the contract, relevant documents as well as the provisions of section 55 of the Contract Act and, therefore, the award is liable to be set aside. It will be necessary to examine the record to find out in the light of this contention.

21. Section 55 of the Contract Act reads as follows:

> *"55. Effect of failure to perform at fixed time, in contract in which time is essential.—*
>
> *When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract."*
>
> *Effect of such failure when time is not essential.*
>
> *If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.*
>
> *Effect of acceptance of performance at time other than that agreed upon. If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless at the time of such acceptance he gives notice to the promisor of his*

intention to do so."

22. From this it is clear that if the promisor had accepted the performance of the contract beyond the expiry of the time fixed for the same, he cannot claim compensation for any loss occasioned by the non-performance of the terms at the time agreed unless at the time of such acceptance, he gives notice to the promisor of his intention to claim compensation for the delay.

26. It is material to note that total cost of the work was Rs. 474 lakhs and 80% of the work was admittedly completed for which the payment was also made. Thus, when the work was stopped or abandoned by the contractor, only 20% of the work was remaining and the cost of the 20% work was only Rs. 114.80 lakhs. If the contractor would have completed the work, he would be entitled to receive Rs. 114.80 lakhs and according to his own contention and as per the assessment made by the arbitrator, he would be getting 10% on account of overheads and 10% on account of profits. Thus, the gain of the contractor would be 20% of the said amount, which would be only Rs. 22.96 lakhs. Against this the Arbitrator awarded Rs. 1,57,37,666/- which is much more than 20% of even the total contract money and, therefore, it can be said that compensation awarded by the arbitrator was infact arbitrary against the terms of the contract and perverse and, therefore, it may be held that he acted beyond his jurisdiction. It cannot be termed as a mere error within jurisdiction.

27. The arbitrator also awarded amount of Rs. 12 lakhs towards compensation for idle machinery and equipment for a period of 24 months at the rate of Rs. 50,000/- per month. According to the Arbitrator it is based on the inspection visit to the site. The petitioner has rightly pointed out that no such site inspection report is available on record nor it is made available to the parties. There is no valid reason for grant of this award.

28. The learned Arbitrator also awarded compensation

of Rs. 1,95,000/- for extra work. In fact, there is no record to show that the contractor had issued any notice to the petitioner about any such extra work, nor there is any oral or documentary evidence to support this claim.

29. Taking into consideration the terms of the contract, legal provisions and the award passed by the learned Arbitrator, it is clear that the award is clearly against the terms of the contract, provisions of law and infact, it is perverse and cannot stand judicial scrutiny. In our considered opinion, the award is liable to be set aside. At the same time, we may also note that the petitioner is also not entitled to any counter-claim on account of any delays on the part of the contractor as the petitioner had extended time on request of the contractor and that too without indicating that the petitioner would claim any compensation as required under section 55 of the Contract Act. Though there was provision in terms of the contract for liquidated damages, in fact as pointed out above, the petitioner also could not establish that delay was only on account of the contractor. In view of the above, the appeal deserves to be allowed & the impugned judgment and the award are liable to be set aside.

55. The aforesaid judgement rendered in the case of ***Batliboi Environmental Engineers Ltd****. (supra)* by the Hon'ble High Court of Bombay has been upheld by a judgment rendered by the Hon'ble Apex Court in the case of ***Batliboi Environmental Engineers Limited vs. Hindustan Petroleum Corporation Limited and Another***, reported in **(2024) 2 SCC 375**, paragraph Nos. 23, 44, 45 and 47 whereof are reproduced herein below:-

"23. *Ordinarily, when the completion of a contract is delayed and the contractor claims that s/he has suffered*

a loss arising from depletion of her/his income from the job and hence turnover of her/his business, and also for the overheads in the form of workforce expenses which could have been deployed in other contracts, the claims to bear any persuasion before the arbitrator or a court of law, the builder/contractor has to prove that there was other work available that he would have secured if not for the delay, by producing invitations to tender which was declined due to insufficient capacity to undertake other work. The same may also be proven from the books of accounts to demonstrate a drop in turnover and establish that this result is from the particular delay rather than from extraneous causes. If loss of turnover resulting from delay is not established, it is merely a delay in receipt of money, and as such, the builder/ contractor is only entitled to interest on the capital employed and not the profit, which should be paid.

44. *The decision of this Court in Associate Builders [(2015) 3 SCC 49] elaborately examined the question of public policy in the context of Section 34 of the A&C Act, specifically under the head "fundamental policy of Indian law". It was firstly held that the principle of judicial approach demands a decision to be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would not satisfy the said requirement.*

45. *Referring to the third principle in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263], it was explained that the decision would be irrational and perverse if (a) it is based on no evidence; (b) if the Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or (c) ignores vital evidence in arriving at its decision. The standards prescribed in State of Haryana v. Gopi Nath & Sons [1992 Supp (2) SCC 312] (for short Gopi Nath & Sons) and Kuldeep Singh v. Delhi Police [(1999) 2 SCC 10] should be applied and relied upon, as good working tests of perversity. In Gopi Nath & Sons [1992 Supp (2)*

SCC 312] it has been held that apart from the cases where a finding of fact is arrived at by ignoring or excluding relevant materials or taking into consideration irrelevant material, the finding is perverse and infirm in law when it outrageously defies logic as to suffer from vice of irrationality. Kuldeep Singh [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10] clarifies that a finding is perverse when it is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it. If there is some evidence which can be acted and can be relied upon, however compendious it may be, the conclusion should not be treated as perverse. This Court in Associate Builders [(2015) 3 SCC 49] emphasised that the public policy test to an arbitral award does not give jurisdiction to the court to act as a court of appeal and consequently errors of fact cannot be corrected. Arbitral Tribunal is the ultimate master of quality and quantity of evidence. An award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Every arbitrator need not necessarily be a person trained in law as a Judge. At times, decisions are taken acting on equity and such decisions can be just and fair should not be overturned under Section 34 of the A&C Act on the ground that the arbitrator's approach was arbitrary or capricious. Referring to the third ground of public policy, justice or morality, it is observed that these are two different concepts. An award is against justice when it shocks the conscience of the court, as in an example where the claimant has restricted his claim but the Arbitral Tribunal has awarded a higher amount without any reasonable ground of justification. Morality would necessarily cover agreements that are illegal and also those which cannot be enforced given the prevailing mores of the day. Here again interference would be only if something shocks the court's conscience. Further, "patent illegality" refers to three sub-heads: (a)

contravention of substantive law of India, which must be restricted and limited such that the illegality must go to the root of the matter and should not be of a trivial nature. Reference in this regard was made to clause (a) to Section 28(1) of the A&C Act, which states that the dispute submitted to arbitration under Part I shall be in accordance with the substantive law for the time being in force. The second sub-head would be when the arbitrator gives no reasons in the award in contravention with Section 31(3) of the A&C Act. The third sub-head deals with contravention of Section 28(3) of the A&C Act which states that the Arbitral Tribunal shall decide all cases in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction. This last sub-head should be understood with a caveat that the arbitrator has the right to construe and interpret the terms of the contract in a reasonable manner. Such interpretation should not be a ground to set aside the award, as the construction of the terms of the contract is finally for the arbitrator to decide. The award can be only set aside under this sub-head if the arbitrator construes the award in a way that no fair-minded or reasonable person would do.

47. *We have extensively analysed the award, its patent flaws and illegalities which emanate from it, like the manifest lack of reasoning in arriving at the conclusions and the calculation of amounts awarded, which, in fact, amount to double or part-double payments, besides being contradictory, etc. In view of our aforesaid reasoning, the award has been rightly held [Hindustan Petroleum Corpn. Ltd. v. Batliboi Environmental Engineers Ltd., 2007 SCC OnLine Bom 1016] to be unsustainable and set aside by the Division Bench of the High Court exercising power and jurisdiction under Section 37 read with Section 34 of the A&C Act."*

56. We may, at this juncture also quote Section 54 of the Indian Contracts Act, 1872 herein below:-

> ***"54. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises—****When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract."*

57. Now coming back to the facts of the present case, we find that the claimant-respondent has claimed a sum of Rs.21 lakhs by way of compensation on the ground that he has suffered a loss to the said extent since he was prevented from transporting the food grains for about seven months during the validity period of agreement on account of premature termination of the contract/agreement by the appellants as well as on account of detention of trucks. In this context, we find that first of all the learned Arbitrator has not granted any relief to the petitioner as far as the order dated 23.05.2019, issued by the Managing Director, BSFC, Patna terminating the agreement in question is concerned, hence unless and until the premature termination of the contract/agreement by the appellants is set aside, the claimant-respondent is not entitled to claim any compensation on account of the loss suffered due to premature termination of the contract.

58. It is yet another aspect of the matter that the claimant-respondent has failed to bring on record credible evidence to substantiate the claim of loss of profitability and has in an *ad hoc* manner averred in the statement of claim that a loss of Rs. 21 lakhs has been incurred on account of idling/detention of trucks which in any view of the matter is barred under Clause 22 of the Agreement dated 24.10.2016, as has already been held by the learned Arbitrator, which has been referred to hereinabove in the preceding paragraphs. Thus, there is no proof much less any evidence whatsoever, on the records of the arbitral proceedings regarding the claimant-respondent having suffered any loss or injury, hence the award of compensation to the tune of Rs.25 lakhs is based on no evidence, thus is outrightly perverse, hence is set aside. This aspect of the matter stands fully covered by the judgement rendered by the Hon'ble Apex Court in the case of ***Unibors*** *(supra)*.

59. The other issue, which arises for consideration is the award of interest by the Ld. Sole Arbitrator vide arbitral award dated 17.10.2020 in the following manner:-

> *"The claimant-petitioner shall be entitled to simple interest at the rate of 10 per cent per annum from 13.9.2019 till the date of award and further 18 per cent interest over awarded sum from the date of award till realization over the awarded amount."*

60. The findings of the Ld. Sole Arbitrator with regard to the aforesaid aspect of the matter is as follows:-

> *"The claimant petitioner has claimed interest @ 18% per annum upto the date of actual receipt of awarded amount. Section 3 of the Interest Act does not provide grant of interest @18% per annum.*
>
> *The Arbitrator shall follow the provision of Section 31(7) (a) of the Arbitration and Conciliation Act 1996 as amended in granting interest. It may be stated that interest upon the interest is not payable. The Arbitrator does not consider it proper to grant 18% interest on the interim bills as made out in the tabular statement (Annex-C-63). The Arbitrator shall grant interest on the awarded amount during the pendency of the proceeding and upon making the award."*

61. Thus, we find that the Ld. Sole Arbitrator vide arbitral award dated 17.10.2020 has awarded interest *pendente lite* as also interest from the date of award till realization of the awarded amount. The law in this regard is no longer *res integra*, inasmuch as the Hon'ble Apex Court has repeatedly held that if the arbitration agreement or the contract itself provides for interest, the Arbitrator would have the jurisdiction to award interest, however when the agreement expressly provides that no interest *pendente lite* shall be payable on the amount due, the Arbitrator has no power to award *pendente lite* interest. Reference in this connection be had to the judgments rendered by the Hon'ble Apex Court in the case of ***Ambica Construction***

(supra) and the one rendered in the case of ***GC Roy*** (supra). In this regard, we would also refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Union of India & Ors. vs. Larsen & Tubro Limited (L&T)***, reported in ***2026 SCC Online SC 327***, para nos. 29, 31, 34, 36, 38, 40, 43, 45, 46, 47, 48, 52, 53, 55, 56, 59, 61 and 62 whereof are reproduced herein below:-

> *"**29.** We have heard learned counsel for the parties and perused the material placed on record. The following issues are raised for our consideration:—*
>
> ***A.** Whether the AT is justified in awarding pre-award/pendente lite interest, by way of compensation, while passing the award in favour of the respondent-claimant, and more particularly in view of Clause 16(3) and Clause 64(5) of GCC.*
>
> ***B.** Whether the AT is justified in awarding post award interest in favour of the respondent-claimant.*
>
> ***C.** Whether the Courts below committed any error while dealing with Issue (A) and Issue (B) referred hereinabove while exercising the powers under Section 34 and Section 37 of the Act.*
>
> ***31.** Clause 16(3) of the GCC reads as under:*
>
> *"no interest will be payable upon the Earnest Money and Security Deposit or amounts payable to the Contractor under the Contract, but Government Securities deposited in terms of Sub-Clause (1) of this clause will be payable with interest accrued thereon".*
>
> ***34.** Section 31(7)(a) and 31(7)(b) further clarifies that the power of the arbitral tribunal to award interest, which reads as under:—*
>
> *"31. Form and contents of arbitral award.—*

……..

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made."

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978)."

36. *In the present case, Clause 16(3) of the GCC, as referred hereinabove, expressly stipulates that no interest will be payable upon earnest money and security deposits or amounts payable to the contractor under the contract.*

38. *This Court in the decision rendered in the case of Manraj Enterprises (supra) has considered a similar submission canvassed on behalf of the party concerned and thereafter observed and held in para 12.1 as under:*

"12.1. It is required to be noted that Clause 16(1) is with respect to earnest money/security deposit. However, Clause 16(2) is specifically with respect to interest payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract. The words used in Clause 16(2) is "or". Therefore, the expression "amounts payable to the contractor under the contract" cannot be read in conjunction with "earnest money deposit" or "security

deposit" by applying the principle of ejusdem generis. The expression "amounts payable to the contractor under the contract" has to be read independently and disjunctively to earnest money deposit and security deposit as the word used is "or" and not "and" between "earnest money deposit", "security deposit" and "amounts payable to the contractor under the contract". Therefore, the principle of ejusdem generis is not applicable in the present case."

40. *At this stage, we would also like to refer to the decision rendered by a three-judge bench of this Court in Bright Power Projects (India) (P) Ltd. (supra), wherein in para 10, 11 and 13, it was held as under:*

"10. Thus, it had been specifically understood between the parties that no interest was to be paid on the earnest money, security deposit and the amount payable to the contractor under the contract. So far as payment of interest on government securities, which had been deposited by the respondent contractor with the appellant is concerned, it was specifically stated that the said amount was to be returned to the contractor along with interest accrued thereon, but so far as payment of interest on the amount payable to the contractor under the contract was concerned, there was a specific term that no interest was to be paid thereon.

11. When parties to the contract had agreed to the fact that interest would not be awarded on the amount payable to the contractor under the contract, in our opinion, they were bound by their understanding. Having once agreed that the contractor would not claim any interest on the amount to be paid under the contract, he could not have claimed interest either before a civil court or before an Arbitral Tribunal.

……..

13. Section 31(7) of the Act, by using the words "unless otherwise agreed by the parties", categorically

specifies that the arbitrator is bound by the terms of the contract so far as award of interest from the date of cause of action to date of the award is concerned. Therefore, where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest."

43. *Now, at this stage, it is pertinent to observe that this Court, thereafter, in the case of Manraj Enterprises (supra) had an occasion to consider similar issues involved in the present matter and had considered all the aforementioned decisions, including the decisions rendered in the cases of Bright Power Projects (India) (P) Ltd. (supra), Raveechee and Company (supra) and Ambica Construction v. Union of India, (2017) 14 SCC 323 (a three-judge bench judgment of this Court). After considering the aforesaid decisions as well as several other decisions referred on the issue, this Court has observed in para 8 and 11 as under:*

"8. After considering various decisions on award of interest pendente lite and the future interest by the arbitrator and after discussing the decisions of this Court in Ambica Construction v. Union of India [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257] and Raveechee & Co. [Raveechee & Co. v. Union of India, (2018) 7 SCC 664 : (2018) 3 SCC (Civ) 711] and other decisions on the point, this Court has observed in paras 9 to 18 as under: (Garg Builders [Garg Builders v. BHEL, (2022) 11 SCC 697], SCC paras 9-19)

"9. On the other hand, Mr. Pallav Kumar, learned counsel for the respondent, submitted that Section 31(7)(a) of the 1996 Act gives paramount importance to the contract entered into between the parties and categorically restricts the power of an arbitrator to award pre-reference and pendente lite interest when the parties themselves have agreed to the contrary. He argued that if the contract itself contains a specific

clause which expressly bars the payment of interest, then it is not open for the arbitrator to grant pendente lite interest. It was further argued that Ambica Construction [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257] is not applicable to the instant case because it was decided under the Arbitration Act, 1940 whereas the instant case falls under the 1996 Act. It was further argued that Section 3 of the Interest Act confers power on the court to allow interest in the proceedings for recovery of any debt or damages or in proceedings in which a claim for interest in respect of any debt or damages already paid. However, Section 3(3) of the Interest Act carves out an exception and recognises the right of the parties to contract out of the payment of interest arising out of any debt or damages and sanctifies contracts which bars the payment of interest arising out of debt or damages. Therefore, Clause 17 of the contract is not violative of any the provisions of the Contract Act, 1872. In light of the arguments advanced, the learned counsel prays for dismissal of the appeal.

10. We have carefully considered the submissions of the learned counsel for both the parties made at the Bar. The law relating to award of pendente lite interest by arbitrator under the 1996 Act is no longer res integra. The provisions of the 1996 Act give paramount importance to the contract entered into between the parties and categorically restricts the power of an arbitrator to award pre-reference and pendente lite interest when the parties themselves have agreed to the contrary.

11. Section 31(7)(a) of the 1996 Act which deals with the payment of interest is as under:

‘31.(7)(a) Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the Arbitral Tribunal may include in the sum for which the award is made interest, at such

rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.'

12. It is clear from the above provision that if the contract prohibits pre-reference and pendente lite interest, the arbitrator cannot award interest for the said period. In the present case, clause barring interest is very clear and categorical. It uses the expression "any moneys due to the contractor" by the employer which includes the amount awarded by the arbitrator.

13. In Sayeed Ahmed & Co. v. State of U.P. [Sayeed Ahmed & Co. v. State of U.P., (2009) 12 SCC 26 : (2009) 4 SCC (Civ) 629], this Court has held that a provision has been made under Section 31(7)(a) of the 1996 Act in relation to the power of the arbitrator to award interest. As per this section, if the contract bars payment of interest, the arbitrator cannot award interest from the date of cause of action till the date of award.

14. In Sree Kamatchi Amman Constructions v. Railways [Sree Kamatchi Amman Constructions v. Railways, (2010) 8 SCC 767 : (2010) 3 SCC (Civ) 575], it was held by this Court that where the parties had agreed that the interest shall not be payable, the Arbitral Tribunal cannot award interest between the date on which the cause of action arose to the date of the award.

15. BHEL v. Globe Hi-Fabs Ltd. [(2015) 5 SCC 718], is an identical case where this Court has held as under : (SCC p. 723, para 16)

'16. In the present case we noticed that the clause barring interest is very widely worded. It uses the words "any amount due to the contractor by the employer". In our opinion, these words cannot be read as ejusdem generis along with the earlier words

"earnest money" or "security deposit".'

16. In Chittaranjan Maity v. Union of India [(2017) 9 SCC 611], it was categorically held that if a contract prohibits award of interest for pre-award period, the arbitrator cannot award interest for the said period.

17. Therefore, if the contract contains a specific clause which expressly bars payment of interest, then it is not open for the arbitrator to grant pendente lite interest. The judgment on which reliance was placed by the learned counsel for the appellant in Ambica Construction [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257] has no application to the instant case because Ambica Construction [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257] was decided under the Arbitration Act, 1940 whereas the instant case falls under the 1996 Act. This has been clarified in Chittaranjan Maity [Chittaranjan Maity v. Union of India, (2017) 9 SCC 611 : (2017) 4 SCC (Civ) 693] as under: (SCC p. 616, para 16)

'16. Relying on a decision of this Court in Ambica Construction v. Union of India [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257], the learned Senior Counsel for the appellant submits that mere bar to award interest on the amounts payable under the contract would not be sufficient to deny payment on pendente lite interest. Therefore, the arbitrator was justified in awarding the pendente lite interest. However, it is not clear from Ambica Construction [(2017) 14 SCC 323] as to whether it was decided under the Arbitration Act, 1940 (for short "the 1940 Act") or under the 1996 Act. It has relied on a judgment of Constitution Bench in Irrigation Deptt., State of Orissa v. G. C. Roy [(1992) 1 SCC 508]. This judgment was with reference to the 1940 Act. In the 1940 Act, there was no provision which prohibited the arbitrator from awarding interest

for the pre-reference, pendente lite or post-award period, whereas the 1996 Act contains a specific provision which says that if the agreement prohibits award of interest for the pre-award period, the arbitrator cannot award interest for the said period. Therefore, the decision in Ambica Construction cannot be made applicable to the instant case.'

18. The decision in Raveechee & Co. [Raveechee & Co. v. Union of India, (2018) 7 SCC 664] relied on by the learned counsel for the appellant is again under the Arbitration Act, 1940 which has no application to the facts of the present case.

19. Having regard to the above, we are of the view that the High Court [Garg Builders v. BHEL, 2017 SCC OnLine Del 12871] was justified in rejecting the claim of the appellant seeking pendente lite interest on the award amount."

……..

11. In the said decision in Bright Power Projects [Union of India v. Bright Power Projects (India) (P) Ltd., (2015) 9 SCC 695 : (2015) 4 SCC (Civ) 702], this Court also considered Section 31(7)(a) of the 1996 Act. It is specifically observed and held that Section 31(7) of the 1996 Act, by using the words "unless otherwise agreed by the parties" categorically specifies that the arbitrator is bound by the terms of the contract insofar as award of interest from the date of cause of action to date of the award is concerned. It is further observed and held that where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest. Thus, the aforesaid decision of a three-Judge Bench of this Court is the answer to the submission made on behalf of the respondent that despite the bar under Clause 16(2) which is applicable to the parties, the Arbitral Tribunal is not bound by the same. Therefore, the contention raised on behalf of the respondent that dehors the bar under Clause 16(2), the

Arbitral Tribunal independently and on equitable ground and/or to do justice can award interest pendente lite or future interest has no substance and cannot be accepted. Once the contractor agrees that he shall not be entitled to interest on the amounts payable under the contract, including the interest upon the earnest money and the security deposit as mentioned in Clause 16(2) of the agreement/contract between the parties herein, the arbitrator in the arbitration proceedings being the creature of the contract has no power to award interest, contrary to the terms of the agreement/contract between the parties and contrary to Clause 16(2) of the agreement/contract in question in this case."

45. *The provisions of the Act of 1996, including provisions contained in Section 31(7)(a) give paramount importance to the contract entered into between the parties and categorically restrict the power of an arbitrator to award pre-award/pendente lite interest when the parties have themselves agreed to the contrary. Thus, the AT cannot award pre-award/pendente lite interest, even in the form of compensation, in view of specific Cl. 16(3) of GCC read with Cl. 64(5) of GCC.*

46. *At this stage, it is also relevant to observe that the AT itself acknowledged this prohibition by rejecting Claim No. 7 seeking pendente lite interest. The relevant paragraph of the Arbitral Award reads as under:—*

"The Interest so claimed is therefore not admissible as per Section 31(7)(a) of the Act read with Clause 64(5) of the GCC & Clause 7.35 of SCC of the contract agreement signed between the two parties. Tribunal did not therefore consider to award any interest on the award sum as claimed by the Claimant. Therefore, Arbitral Tribunal declare Nil Award against this claim."

47. *With regard to the post-award interest, Section 31(7)(b) of the Act provides that unless the award otherwise*

directs, the sum awarded shall carry interest from the date of the award till payment. The legislative intent underlying this provision is twofold: first, to compensate the successful party for delayed realization of the award, and second, to ensure prompt compliance with the award by the judgment-debtor.

48. *Recently, this Court in the case of R.P. Garg (supra), has observed and held in para 9, 11 and 12 as under:*

"9. We are of the opinion that the judgment of High Court is clearly erroneous. Firstly, the interest granted by the First Appellate Court only related to post award period, and therefore, for this period, the agreement between the parties has no bearing. Section 31(7)(b) deals with grant of interest for post award period i.e., from the date of the award till its realization. The statutory scheme relating to grant of interest provided in Section 31(7) creates a distinction between interest payable before and after the award. So far as the interest before the passing of the award is concerned, it is regulated by Section 31(7)(a) of the Act which provides that the grant of interest shall be subject to the agreement between the parties. This is evident from the specific expression at the commencement of the sub-section which says "unless otherwise agreed by the parties".

……..

11. So far as the entitlement of the post-award interest is concerned, sub-Section (b) of Section 31(7) provides that the sum directed to be paid by the Arbitral Tribunal shall carry interest. The rate of interest can be provided by the Arbitrator and in default the statutory prescription will apply. Clause (b) of Section 31(7) is therefore in contrast with clause (a) and is not subject to party autonomy. In other words, clause (b) does not give the parties the right to "contract out" interest for the post-award period. The expression 'unless the award otherwise directs' in Section 31(7)(b) relates to

rate of interest and not entitlement of interest. The only distinction made by Section 31(7)(b) is that the rate of interest granted under the Award is to be given precedence over the statutorily prescribed rate. The assumption of the High Court that payment of the interest for the post award period is subject to the contract is a clear error.

12. The clear position of law that granting post-award interest is not subject to the contract between the parties was recently affirmed in the decision of this Court in Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.,6 wherein the court observed as follows:

"24. The issue before us is whether the phrase "unless the award otherwise directs" in Section 31(7)(b) of the Act only provides the arbitrator the discretion to determine the rate of interest or both the rate of interest and the "sum" it must be paid against. At this juncture, it is crucial to note that both clauses (a) and (b) are qualified. While, clause (a) is qualified by the arbitration agreement, clause (b) is qualified by the arbitration award. However, the placement of the phrases is crucial to their interpretation. The words, "unless otherwise agreed by the parties" occur at the beginning of clause (a) qualifying the entire provision. However, in clause (b), the words, "unless the award otherwise directs" occur after the words "a sum directed to be paid by an arbitral award shall" and before the words "carry interest at the rate of eighteen per cent". Thereby, those words only qualify the rate of post-award interest.

25. Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The arbitrator has the discretion to determine the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the principal amount, and the period for which payment of interest is to be made — whether it should

be for the whole or any part of the period between the date on which the cause of action arose and the date of the award. When a discretion has been conferred on the arbitrator in regard to the grant of pre-award interest, it would be against the grain of statutory interpretation to presuppose that the legislative intent was to reduce the discretionary power of the arbitrator for the grant of post-award interest under clause (b). Clause (b) only contemplates a situation where the arbitration award is silent on post-award interest, in which event the award-holder is entitled to a post-award interest of eighteen per cent."

52. *We are of the view that the AT has committed serious error by awarding pre-award/pendente lite interest qua Claim Nos. 1, 3 & 6, though AT has observed that the said amount are awarded by way of compensation, however, in view of the peculiar clause of GCC as well as provisions contained in Section 31(7)(a) of the Act of 1996 and the decisions rendered by this Court, the AT could not have awarded the pre-award/pendente lite interest.*

53. *For the above stated reasons, the Commercial Court and the High Court failed to appreciate that the AT had awarded pendente lite interest in violation of an express contractual bar and such failure attracts interference even within the limited scope of Sections 34 and 37 of the Act.* ***55.*** *There is no provision in the GCC which expressly bars the grant of post-award interest. In the absence of such an express exclusion, the statutory mandate under Section 31(7)(b) of the Act must prevail.*

56. *In RP Garg (supra), in paragraph 11, this Court reiterated that post-award interest flows as a matter of law under Section 31(7)(b), unless the parties have unequivocally agreed to exclude it.*

59. *In this context, the decision of this Court in Gayatri Balasamy v. ISG Novasoft Technologies Limited, (2025) 7 SCC 1, is significant. In paragraphs 74 to 78, this*

Court has categorically held that courts retain the power to modify post-award interest under Section 31(7)(b) of the Act where the facts justify such modification. It has been clarified that Section 31(7)(b) is a distinct legislative creation which prescribes a statutory standard to guide the determination of post-award interest and since such interest is inherently future-oriented, the courts may increase or decrease the rate of post-award interest where compelling reasons exist. The Court further observed that when the statute itself benchmarks a standard, such benchmark must weigh in the consideration of the rate awarded and that the power of modification is necessary to avoid unnecessary setting aside of the entire award merely on the question of interest.

61. *Accordingly, the answer to the issues framed in the present matter is that:*

A. *The AT is not justified in awarding pre-award/pendente lite interest, by way of compensation, while passing the award in favour of the respondent-claimant, and more particularly in view of Clause 16(3) and Clause 64(5) of the GCC. The award of such interest is not in accordance with the agreement, and liable to be set aside.*

B. *The AT is justified in awarding post award interest in favour of the respondent-claimant, however, the rate of post-award interest is modified from 12% per annum to 8% per annum from the date of award till realization.*

C. *The Courts below committed a serious error while dealing with Issue (A) and Issue (B) referred hereinabove while exercising the powers under Section 34 and Section 37 of the Act.*

62. *In view of the aforesaid discussion, the impugned judgment dated 25.05.2023 passed by the High Court of Judicature at Allahabad, the order dated 15.09.2022 passed by the Commercial Court, Jhansi, and the*

Arbitral Award dated 25.12.2018, are set aside, to the extent of the grant of pre-award/pendente lite interest or amounts in the nature of interest, qua Claim No. 1, 3 and 6. The Arbitral Award dated 25.12.2018 is further modified to the extent of the rate of the post-award interest from 12% per annum to 8% per annum from the date of award till realization."

62. It would be apposite to reproduce paragraphs no. 73 and 74 of the Constitution Bench judgment rendered by the Hon'ble Apex Court in the case of ***Gayatri Balasamy vs. ISG Novasoft Technologies Ltd.,*** reported in (***2025) 7 SCC 1*** herein below:-

*"**73.** The next question that arises is: Do courts possess the power to declare or modify interest, especially post-award interest? In respect of pendente lite interest, Section 31(7)(a)(**Annexure A**), states that unless otherwise agreed by the parties, the Arbitral Tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(b) (**Annexure A**) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till the date of payment. The Explanation defines the expression "current rate of interest".*

***74.** There can be instances of violation of Section 31(7)(a), and the pendente lite interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the Court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or second, recourse may be had to the powers of remand*

under Section 34(4).”

63. It would also be gainful to refer to a judgment rendered by the Hon’ble Apex Court in the case of ***PAM Developments Private Ltd. vs. State of West Bengal & Anr.***, reported in ***(2024) 10 SCC 715***, paragraphs no. 23, 23.1 to 23.6 whereof are reproduced herein below:-

> *“**23.** The power of the arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest under Section 31(7) of the Act is fairly well-settled. The judicial determinations also highlight the difference in the position of law under the Arbitration Act, 1940. The following propositions can be summarised from a survey of these cases:*
>
> ***23.1.** Under the Arbitration Act, 1940, there was no specific provision that empowered an arbitrator to grant interest. However, through judicial pronouncements, this Court has affirmed the power of the arbitrator to grant pre-reference, pendente lite, and post-award interest on the rationale that a person who has been deprived of the use of money to which he is legitimately entitled has a right to be compensated for the same. [State of Orissa v. G.C. Roy, (1992) 1 SCC 508, para 43(i). Also see State of Orissa v. N.C. Budharaj, (2001) 2 SCC 721; Union of India v. Krafters Engg. & Leasing (P) Ltd., (2011) 7 SCC 279 : (2011) 3 SCC (Civ) 533] When the agreement does not prohibit the grant of interest and a party claims interest, it is presumed that interest is an implied term of the agreement, and therefore, the arbitrator has the power to decide the same. [State of Orissa v. G.C. Roy, (1992) 1 SCC 508, paras 43 (iv) & 44]*
>
> ***23.2.** Under the 1940 Act, this Court has adopted a strict construction of contractual clauses that prohibit*

the grant of interest and has held that the arbitrator has the power to award interest unless there is an express, specific provision that excludes the jurisdiction of the arbitrator [Port of Calcutta v. Engineers-De-Space-Age, (1996) 1 SCC 516, paras 4 and 5; Madnani Construction Corpn. (P) Ltd. v. Union of India, (2010) 1 SCC 549 : (2010) 1 SCC (Civ) 168; Tehri Hydro Development Corpn. Ltd. v. Jai Prakash Associates Ltd., (2012) 12 SCC 10 : (2013) 2 SCC (Civ) 122, paras 18-20; Union of India v. Ambica Construction, (2016) 6 SCC 36 : (2016) 3 SCC (Civ) 36 (First Ambica Construction Case); Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257 (Second Ambica Construction Case); Raveechee & Co. v. Union of India, (2018) 7 SCC 664 : (2018) 3 SCC (Civ) 711; Reliance Cellulose Products Ltd. v. ONGC Ltd., (2018) 9 SCC 266 : (2018) 4 SCC (Civ) 351] from awarding interest for the dispute in question [State of U.P. v. Harish Chandra, (1999) 1 SCC 63].

23.3. *Under the 1996 Act, the power of the arbitrator to grant interest is governed by the statutory provision in Section 31(7). This provision has two parts. Under clause (a), the arbitrator can award interest for the period between the date of cause of action to the date of the award, unless otherwise agreed by the parties. Clause (b) provides that unless the award directs otherwise, the sum directed to be paid by an arbitral award shall carry interest @ 2% higher than the current rate of interest, from the date of the award to the date of payment.*

23.4. *The wording of Section 31(7)(a) marks a departure from the Arbitration Act, 1940 in two ways : first, it does not make an explicit distinction between pre-reference and pendente lite interest as both of them are provided for under this sub-section; second, it sanctifies party autonomy and restricts the power to grant pre-reference and pendente lite interest the*

moment the agreement bars payment of interest, even if it is not a specific bar against the arbitrator. [Sayeed Ahmed & Co. v. State of U.P., (2009) 12 SCC 26, paras 14, 23, 24 : (2009) 4 SCC (Civ) 629; Union of India v. Saraswat Trading Agency, (2009) 16 SCC 504 : (2011) 3 SCC (Civ) 499; Sree Kamatchi Amman Constructions v. Railways, (2010) 8 SCC 767, para 19 : (2010) 3 SCC (Civ) 575; Union of India v. Bright Power Projects (India) (P) Ltd., (2015) 9 SCC 695, para 13 : (2015) 4 SCC (Civ) 702; Reliance Cellulose Products Ltd. v. ONGC Ltd., (2018) 9 SCC 266, para 24 : (2018) 4 SCC (Civ) 351; Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd., (2019) 17 SCC 786, paras 13-15 : (2020) 3 SCC (Civ) 605; Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 9 SCC 286, paras 16-20, 24 : (2022) 4 SCC (Civ) 623]

23.5. *The power of the arbitrator to award pre-reference and pendente lite interest is not restricted when the agreement is silent on whether interest can be awarded [Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd., (2019) 17 SCC 786, para 13.2] or does not contain a specific term that prohibits the same [Oriental Structural Engineers (P) Ltd. v. State of Kerala, (2021) 6 SCC 150, paras 15-18:*

23.6. *While pendente lite interest is a matter of procedural law, pre-reference interest is governed by substantive law. [Central Bank of India v. Ravindra, (2002) 1 SCC 367, para 39 following State of Orissa v. G.C. Roy, (1992) 1 SCC 508, para 43(v)] Therefore, the grant of pre-reference interest cannot be sourced solely in Section 31(7)(a) (which is a procedural law), but must be based on an agreement between the parties (express or implied), statutory provision (such as Section 3 of the Interest Act, 1978), or proof of mercantile usage [Central Bank of India v. Ravindra, (2002) 1 SCC 367, para 39; Central Coop. Bank Ltd. v. S. Kamalaveni Sundaram, (2011) 1 SCC 790, para 13 :*

(2011) 1 SCC (Civ) 331] .

64. Thus, we find from the law laid down by the Hon'ble Apex Court in the aforesaid judgments that the provisions of the Act, 1996 including the provisions contained in Section 31(7)(a) of the Act, 1996 gives paramount importance to the contract entered into between the parties and categorically restricts the power of an Arbitrator to pre-award / *pendente lite* interest when the parties have themselves agreed to the contrary, hence an Arbitral Tribunal cannot award pre-award or *pendente lite* interest, even under the guise of compensation, where contract expressly prohibits payment of interest on amounts payable under the contract, however post-award interest is governed by Section 31(7)(b) of the Act, 1996 and can be granted unless expressly barred.

65. Now coming back to the present case, we find that Clause 14 of the agreement dated 24.10.2016 stipulates- "no interest shall be payable to the second party for unavoidable delay in the payment". Therefore, it is amply clear that the agreement dated 24.10.2016 entered into between the parties expressly prohibits payment of interest on amounts payable under the contract / agreement, hence applying the principles laid down by the Hon'ble Apex Court in the aforesaid cases, we hold that the Ld.

Sole Arbitrator was not justified in awarding interest *pendente lite* @ 10 % per annum from the date of start of the arbitral proceedings i.e. 13.09.2019 till the date of award, hence is liable to be set aside. Moreover, neither any pleading has been made by the claimant-Respondent nor any evidence has been brought on record to demonstrate the factum regarding unavoidable/ avoidable delay in the payments. However, award of interest @ 18 % over the awarded sum from the date of award till realization of the awarded amount being covered by the provision contained in Section 31(7)(b) of the Act, 1996 does not require any interference.

66. Having regard to the facts and circumstances of the case discussed hereinabove in the preceding paragraphs and for the foregoing reasons, the arbitral award dated 17.10.2020, passed by the Ld. Sole Arbitrator as also the impugned judgment dated 25.7.2025, passed by the Ld. Principal District Judge, Patna is corrected/modified/set aside in terms of this judgment as follows:-

> "(i) The amount of Rs. 2,67,37,638.62, awarded in favor of the claimant-Respondent by the Ld. Sole Arbitrator, pertaining to item No.1 at internal page No.17 of the award dated 17.10.2020 shall stand corrected / modified to a sum of Rs. 2,61,66,578.62 towards the claimed

amount inclusive of security amount. Accordingly, the finding of the Ld. Principal District Judge, Patna in the impugned judgment dated 25.7.2025 to the said effect shall also stands corrected / modified.

(ii). The award of the Ld. Sole Arbitrator at serial no. 2 at internal page No.18 of the award dated 17.10.2020, holding the claimant-Respondent entitled to compensation of Rs. 25,00,000/- is set aside. Accordingly, the impugned judgment dated 25.7.2025, passed by the Ld. Principal District Judge, Patna, upholding this portion of the award is also set aside.

(iii). The award of the Ld. Sole Arbitrator at serial no. 3 at internal page No.18 of the award dated 17.10.2020 regarding grant of simple interest @ 10 % per annum from 13.9.2019 till the date of award is set aside, however award of interest @ 18 % over the awarded amount from the date of award till realization of the awarded amount is upheld. Accordingly, the impugned judgment dated 25.7.2025, passed by the Ld. Principal District Judge, Patna, upholding this part of the award to the extent of grant of simple interest @ 10 % per annum from 13.9.2019 till the date of award is also set aside.

67. In view of the aforesaid discussion, the award dated 17.10.2020, passed by the Ld. Sole Arbitrator and the impugned judgment dated 25.7.2025, passed by the Ld. Court of Principal District Judge, Patna are corrected/modified/set aside to the above extent.

68. Accordingly, the present appeal is partly allowed to the aforesaid extent.

COMMERCIAL APPEAL No. 14 of 2025

69. The present appeal has been filed by the appellants under Section 13 (1A) of the Act, 2015 read with Section 37 of the Act, 1996 against the order dated 31.07.2025, passed by the learned Principal District Judge, Patna (hereinafter referred to as the "learned PDJ, Patna") in Execution Case No.108 of 2021.

70. Shorn of the unnecessary details, it would suffice to state here that the claimant-respondent had instituted execution proceedings by filing the aforesaid Execution Case No.108 of 2021 under Section 36 of the Act, 1996 for execution of Arbitral award dated 17.10.2020 read with order dated 13.11.2020, passed by the learned Sole Arbitrator, Patna in Arbitration Case No.8 of 2019. The appellants had filed rejoinder to the said execution petition raising various objections and stating therein that the aforesaid award passed by the learned Sole Arbitrator has been challenged under Section 34 of the Act, 1996 by filing Miscellaneous (Arbitration) Case No.158 of 2020, hence the Execution Case be listed after disposal of the said miscellaneous case filed by the appellants.

71. It appears that the learned PDJ, Patna by the impugned

order dated 31.07.2025, passed in Execution Case No.108 of 2021, had on a petition filed by the claimant-respondent supported by an affidavit dated 06.05.2025, attached the bank accounts of the appellants and had directed the Office to issue warrant of attachment in respect of the bank accounts mentioned in the said order dated 31.07.2025, in accordance with due process of law.

72. The Ld. Counsel for the claimant-respondent has further pointed out that subsequently, the learned PDJ, Patna has passed an order dated 26.11.2025 in Execution Case No.108 of 2021 whereby and whereunder the petition filed by the claimant-respondent herein on 26.11.2025 has been allowed and the authorities of the ICICI Bank, Frazer Road Branch, Patna have been directed to effect transfer of amount of Rs.4,79,70,693/- from the bank account standing in the name of the award debtor, maintained at the said branch to the bank account of the claimant-respondent maintained at State Bank of India, Nagarpalika Chowk, Market Branch, Begusarai, whereafter the matter had been directed to be listed on 11.12.2025.

73. Thus, it is submitted by the Ld. Counsel for the claimant-respondent that the present petition has been rendered infructuous on account of passing of the subsequent order dated 26.11.2025 by the learned PDJ, Patna in Execution Case No.108

of 2021, which has not yet been challenged by the appellants.

74. Having regard to the facts and circumstances of the case and without going into the merits of the present appeal, we find that since the award dated 17.10.2020 passed by the learned Arbitrator (as modified vide order dated 13.11.2020), in Arbitration Case No.8 of 2019 as also the judgment dated 25.07.2025 passed by the learned PDJ, Patna in Misc. (Arbitration) Case No.158 of 2020, under Section 34 of the Act, 1996, dismissing the appeal filed by the appellants have now been corrected/modified/set aside by the aforesaid judgment being passed today in the connected Commercial Appeal No.7 of 2025, we are of the view that the present appeal has been rendered infructuous, as such the parties would be well advised to approach the Execution Court, especially in view of the fact that the execution proceedings are still pending.

75. Accordingly, the present appeal stands disposed of.

(Mohit Kumar Shah, J)

I agree.
Arun Kumar Jha, J:

(Arun Kumar Jha, J)

Ajay/Gaurav

AFR/NAFR	AFR
CAV DATE	15.05.2026
Uploading Date	23.05.2026
Transmission Date	NA