IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05-08-2026

PRONOUNCED ON : 08.09.2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA No. 140 of 2022
AND
A. NO. 3696 of 2023 in OP NO. 709 OF 2016

1. Ansaldo Energia S.P.A
   Duly Organized and existing under the laws of
   Italy with its Principal office at
   via N.Lorenzi, 8, 16752 Genova, Italy,
   Rep by its Authorized Signatory
   Mr.Lorenzo Pesenti.
2. Asia Power Projects Private Limited,
   Formerly known as Ansaldo Services Pvt. Ltd,
   A Company incorporated under the Companies
   Act, 1956 and
   having its Registered Office at
   6, Lakeside Residency, 4, Annaswamy
   Mudaliar Road, Bangalore 560 042,
   Rep by its Director Mr.Lorenzo Pesenti.

..Appellants

Vs

M/s. Neyveli Lignite Corporation Ltd.,
A Company incorporated under the Companies
Act, 1956 and having its Registered Office at
Neyveli House,
135, Periyar EVK High Road, Kilpauk,
Chennai 600 010.

..Respondent

A No. 3696 of 2023

M/s.Neyveli Lignite Corporation Ltd.
(Presently known as M/s. NLC India Limited)
A Company incorporated under the Companies Act
1956, and having its Registered Officer at
Neyveli House, 135, Periyar EVK High Road,
Kilpauk, Chennai-600 010.

..Petitioner

Vs

1. Ansaldo Energia S.P.A
   duly organised and existing under the Laws of
   Italy with its Principal Office at
   Via N.Lorenzi, 8, 16152 Genova, Italy,
   Represented by its authorized Signatory
   Mr. Lerenzo Pesenti.
2. Asia Power Projects Private Limited,
   (formerly known as Ansaldo Services Private
   Limited) a Company incorporated under the
   Companies Act, 1956, and having registered
   Office at
   Neyveli House, 135, Periyar EVK High Road,
   Kilpauk, Chennai-600 010.

..Respondents

OSA No. 140 of 2022

Prayer : Original Side Appeal is filed under Clause XV of the Letters Patent read with Section 37 of the Arbitration Conciliation Act, 1996, to set aside the Judgment and Decree, dated 19.08.2021, of the learned Single Judge made in O.P.No.709 of 2016.

A No. 3696 of 2023

Prayer: To order payment of the sum of Rs.66,16,458/- together with accrued interest thereon as on date, which was deposited in terms of order dated 03.10.2016 passed in Application No.5074 of 2016 in O.P.No.709/2016 to the Applicant / Respondent.

For Appellant in OSA No.140/2022 and Respondents in A.No.3696/2023:	Dr. Veerendra Tulzapurkar, Senior Advocate assisted by Mr. Yashesh Kamdar Mr. Nahush Shah for Mr.S. Vasudevan
For Respondent in OSA No.140/2022 / for applicant in A.No.3696/2023 :	Mr.AR.L.Sundaresan, Additional Solicitor General of India assisted by Mr.N. Nithianandam M/s. N. Nithianandam A. Jayaraman For Sole Respondent

Judgment

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

The present Original Side Appeal is directed against the order dated 19.08.2021 made in O.P. No.709 of 2016, whereby the learned Single Judge dismissed the petition filed by the Appellants under section 34 of the Arbitration and Conciliation Act, 1996, challenging the Arbitral Award dated 12.02.2016.

2. Facts:

2.1. The Appellants are companies belonging to the Ansaldo group and are engaged in the business of Power Project Engineering and supply of power equipment. The Respondent, Neyveli Lignite Corporation Limited, invited global tenders for expansion of its First Thermal Power Station by installation of two units of 210 MW each. The project was divided into several packages. The Appellants were awarded Package - A-01relating to erection of the boiler and a furnace and allied works. The Letter of Award was issued on 10.08.1988. The contracts became effective from 10.12.1988. Under the contracts, the Provisional Take Over (PTO) for unit I was stipulated on 10.10.2001 and for Unit-II on 10.04.2002. The Respondent subsequently granted extension on three occasions, namely, 31.01.2002, 29.04.2002 and 26.09.2002, ultimately extending the period upto 31.03.2003, while expressly reserving its right to levy liquidated damages.

2.2. Disputes arose between the parties concerning delay in completion of the project and the Appellants' liability for liquidated damages. An Arbitral Tribunal consisting of three members, was constituted.

2.3. The Appellants raised claims seeking, inter alia, extension of time, a declaration that liquidated damages were not leviable and payment of substantial amounts alleged to be due under the contract.

2.4. The Tribunal, by majority award dated 12.02.2016, rejected the claims. Aggrieved by the Award, the Appellants filed O.P. No.709 of 2016 under Section 34 of the Arbitration and Conciliation Act, 1996 (in short "A&C

Act, 1996"). The learned Single Judge, by order dated 19.08.2021, dismissed the petition. Hence, the present appeal.

2.5. Dr. Veerendra Tulzapurkar, learned Senior Advocate appearing for the Appellants submitted that the learned Single Judge failed to appreciate that the Tribunal had committed patent illegality in its interpretation of Section 55 of the Indian Contract Act, 1872. According to the learned counsel for the Appellants, time was the essence of the contract. The contractual dates for completion had admittedly expired and the Respondent accepted performance after the stipulated dates. In such circumstances, it was contended that Section 55(3) of the Contract Act, required the Respondent, at the time of acceptance of delayed performance, to give notice of its intention to claim compensation.

2.6. It was further submitted that no such notice was issued at the time of actual acceptance of the works. Therefore, the subsequent levy of liquidated damages was legally unsustainable. It was also contended that the Tribunal erroneously treated the extensions of time granted by the Respondent, containing a reservation of the right to levy liquidated damages, as sufficient compliance with Section 55(3) of the Contract Act. The learned counsel further contended that the Tribunal failed to appreciate that the contract contained reciprocal obligations and that the delay was substantially attributable to the Respondent and the non completion of other packages forming part of the same project.

2.7. The learned counsel for the Appellants would contend that this appeal is under Section 37 of the A&C Act, 1996, against the order of the learned Single Judge dismissing the Appellants' petition under Section 34 for setting aside the award and that the scope of an appeal under Section 37 is same as that of Section 34 of the A&C Act, 1996. The learned counsel placed upon the judgments of the Hon'ble Supreme Court in ***Delhi Metro Rail Corporation Limited vs. Delhi Airport Metro Express Pvt. Ltd (2024) SCC Online SC 522*** and submitted that, it is settled law that if a party demonstrates that an award is in conflict with the public policy of India, a Court is entitled to set aside the award. He would further submit that the issue of public policy of India was first considered by the Hon'ble Supreme Court in ***Renusagar Power Co. Ltd., Vs., General Electric Co. 1994 Suppl.(1) SCC 644*** and that the above concept of public policy of India has been reiterated in ***Associates Builders vs. Delhi Development Authority (2015) 3 SCC 49.*** His further contention is that in ***Ssangyong Engineering and Construction Co. Ltd., vs. National Highways Authority of India (2019) 15 SCC 131***, the Hon'ble Supreme Court has once again reiterated the concept of public policy.

2.8. Thus, it is submitted that the impugned award is in conflict with public policy of India, in as much as, the same is contrary to the fundamental policy of Indian law and this is so because, the impugned award has proceeded on the basis that time was not of the essence of the contract despite the fact that both the parties pleaded that "time was of the essence". In other words, though it was common ground that time was of the essence of the contract, the Arbitral Tribunal took it upon itself to make out a case which was not pleaded by the Respondent and held that time was not of the essence of the contract. As such, the Tribunal has travelled beyond the pleaded case of the parties, which is impermissible and contrary to the fundamental policy of Indian law viz., (I) the parties have to adhere to the case pleaded by them and (ii) a Court cannot make out a case for the parties, contrary to their pleadings. Hence,he would submit that, in the instant case, since both parties had agreed that time was the essence – it was not open to the Arbitral Tribunal to hold to the contrary.

2.9. Therefore, his contention is that time was of the essence which fact was accepted and admitted in the pleadings of the Respondent and it was also an admitted fact that, at the time of acceptance of works by the Respondent on the dates beyond the extended dates, no notice under Section 55(3) of the Contract Act, claiming any damages including Liquidated Damages (LD) was given and in the absence of such notice, no LD could be claimed and no amounts could be legally deducted from the amounts payable to the Appellants under the invoices. The learned Counsel would also submit that, in alternative, if time was not of the essence, the Respondent was not entitled to levy LD, as the contracts contained reciprocal obligations and the Respondent was liable to perform those obligations before insisting upon the Appellants to achieve the extended PTO dates and that since these obligations were not performed by the Respondent, the Appellants were discharged from the obligations to achieve the extended PTO dates.

2.10.The next contention of the learned for the appellant is that, requirement of proof of damages as mentioned in part two of Section 55 which is applicable if time is not of the essence. According to the learned counsel, the Respondent had not claimed nor pleaded any actual damages. Nor was any plea raised that it was impossible or difficult to prove actual damages or that the sum stipulated in the contract was a genuine pre estimate of the damages that would be suffered. Therefore, the Respondent could not claim or be awarded liquidated damages *ipso facto* and relied upon the decision of ***Kailash Nath Associates vs. Delhi Development Authority (2015) 4 SCC 136***. He would submit that, after the extended PTO dates, the contract was at large and in the absence of fixing the dates for performance, the Appellants were required to achieve completion within a reasonable time and the same was done by the Appellants and therefore, the deduction of LD from the amounts of invoices legally payable by the Respondent was wrongful. In support of his contentions, he relied on the following judgments:

(1) Swarnam Ramchandran & Anr. vs. Aravacode Chakungal Jayapalan reported in (2004) 8 SCC 689.

(2) Welspun Specialty Solutions Limited vs. Oil and Natural Gas Corporation Ltd. (2022) 2 SCC 382.

3. Per contra, Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing for the Respondent supported the order of the learned Single Judge. It was submitted that the Appellants themselves had taken inconsistent stands before the Arbitral Tribunal. At one stage, they contended that time was the essence of the contract; at another stage, they contended that time was not the essence of contract and that the contractual period had been rendered ineffective by the subsequent conduct of the parties. It was further submitted that the Tribunal had considered the entire contractual scheme, the correspondence between the parties and the circumstances in which extensions were granted. The learned counsel specifically pointed out that each extension was granted expressly reserving the right of the Respondent to levy liquidated damages. Therefore, the Appellants were fully aware that extension of time did not amount to waiver of the Respondent's contractual right to claim damage. It was further submitted that the Tribunal had also examined each of the alleged causes of delay and had found that the Appellants themselves were responsible for substantial delays, including delay in supply of steel and structural materials and delay in erection. It was, therefore, contended that the Appellants were

seeking a fresh appraisal of the evidence, which is impermissible under Sections 34 and 37 of the A&C Act. To support his contention, he has relied upon the following judgments.

(1) Associate Builders vs. Delhi Development Authority reported in (2015) 3 SCC 49.

(2) Board of control for Cricket in India vs. Kochi Cricket Private Limited and others reported in (2018) 6 SCC 287.

(3) Ssangyong Engineering and Construction Co. Ltd., vs. National Highways Authority of India (2019) 15 SCC 131.

(4) OPG Power Generation Private Limited vs. Enexio Power Cooling Solutions India Private Limited and another reported in 2024 SCC OnLine SC 2600.

4. Heard on both sides. Records perused.

5. The following question arises for consideration in this appeal:

"Whether the learned Single Judge was justified in refusing to interfere under Section 34 of the Arbitration and

Conciliation Act, with the majority award dated 12.o2.2016?"

5.1. There can be no dispute that the jurisdiction of this Court under Section 37 is narrower than the jurisdiction ordinarily exercised in a first appeal. This Court does not sit as an appellate authority over the findings of an Arbitral Tribunal. Where the Tribunal has adopted a possible and reasonable interpretation of the contractual provisions and has considered the evidence placed before it, the Court cannot substitute its own interpretation merely because another view is possible. The principle reiterated in ***Associate Builders and, Ssangyong Engineering*** make it clear that interference is warranted only where the award suffers from the recognised statutory defects, including patent illegality appearing on the face of the award, perversity, violation of fundamental principles of law or the limited grounds recognised under Section 34.

5.2. In an appeal under Section 37, the Court must therefore examine whether the learned Single Judge committed an error in refusing to interfere with the Award. The appellate court cannot convert the proceedings into a rehearing on facts. The principal contention of the Appellants concerns Section 55 of the Contract Act. As regards the contention that time was of the essence, the Arbitral Tribunal held that time was not of the essence by going beyond the pleadings and ignoring the admissions in the pleadings by the Respondent that the time was of the essence of the contract. The Arbitral Tribunal further held that notice under Section 55(3) was not required to be given at the time of acceptance of the completed works but the reference to the time of acceptance under Section 55(3) was a reference to the time of performance fixed in the contract. Accordingly, it was held that clause 4.9.1. of the contract providing for levy of LD itself amounted to notice and further the extensions granted amounted to notice. According to the learned counsel for the Appellants these findings were contrary to the express provisions of Section 55 of the Contract Act and constitute an interpretation that no reasonable person could arrive at.

5.3. Section 55 operates differently depending whether time is of the essence of the contract and whether the promisee accepts delayed performance. The Tribunal examined the contractual provisions and the conduct of the parties and came to the conclusion that time was not treated as an absolute essence of the contract in the manner suggested by the Appellants. The tribunal also noticed that the Appellants themselves had taken inconsistent positions concerning the effect of time stipulations. More importantly, the Respondent had granted extensions on three occasions. While granting such extensions, the Respondent expressly reserved its right to levy liquidated damages. Thus, the Appellants were not placed in a position of uncertainty as to whether the Respondent intended to abandon its right to claim liquidated damages. The learned Single Judge, after considering this aspect, held that the contractual correspondence and the extensions themselves sufficiently demonstrated that the Respondent had not waived its right to claim compensation. We find no jurisdictional error in that conclusion.

5.4. The argument that notice under Section 55(3) could be issued only at the stage of final acceptance of the completed works cannot be accepted in the facts of the present case. Section 55(3) contemplates acceptance of performance at a time other than the time originally stipulated. Where the promisee permits further performance and extends the period , the question whether the right to claim compensation has been waived has to be determined from the conduct and communications between the parties. In the present case, the extensions granted by the Respondent were not unconditional extensions. The reservation of the right to levy liquidated damages was specifically communicated while extending the period. Therefore, even assuming that Section 55(3) was attracted, it cannot be said that the Respondent had accepted delayed performance while remaining silent about its intention to claim compensation. The very purpose of the notice contemplated under Section 55 is to prevent the promisor from being misled into believing that the promisee has waived his right to compensation. That mischief does not arise here because the Respondent had expressly reserved its right.

5.5. The Appellants further contended that the Tribunal committed an error in holding that time was not the essence of the contract. We are unable to accept the contention that this finding warrants interference under Section 37.

5.6. Whether time is of the essence depends upon the terms of the contract and the intention of the parties gathered from the agreement and their subsequent conduct. The Tribunal considered the relevant contractual provisions and the conduct of the parties. It particularly noticed that extensions were granted on several occasions and that the project involved several inter dependent packages. The conclusion reached by the Tribunal cannot be characterised as a conclusion which no reasonable Tribunal could have reached. Even if another interpretation is possible, that would not justify interference under Section 37.

5.7. The next contention of the learned counsel for the Appellants is that the delay was caused by the Respondent because other packages forming part of the project were not completed. The Tribunal considered this contention in detail. The Tribunal found that several of the alleged causes of delay had not been established in the manner pleaded and that the Appellants had themselves contributed to delay at different stages. The Tribunal also found that the contention regarding the alleged non readiness of other packages was developed substantially during the course of arguments and had not been pleaded as an independent ground in the original claim. This finding is essentially one of fact. There is no basis for holding that the Tribunal ignored the material evidence. On the contrary, the award demonstrates that the Tribunal considered the various alleged causes of delay individually and recorded findings thereon.

5.8. The Appellants have also challenged the levy of liquidated damages on the ground that the Respondent had not established actual loss. The proposition that a contractual stipulation for liquidated damages is subject to the principles contained in Section 74 of the Contract Act is not in dispute. However, whether the stipulated amount is recoverable in the particular circumstances is dependent upon the terms of the contract and the findings of the Tribunal on breach and delay. In the present case, the Tribunal found that the Appellants were responsible for substantial delay and that the contractual conditions relating to liquidated damages stood attracted . The Tribunal considered the contractual provisions and the evidence before it. The Appellants are essentially inviting this Court to reassess the evidence and substitute a different conclusion regarding the cause of delay. Such an exercise is outside the limited jurisdiction under Section 37.

5.9. The reliance upon ***Kailashnath Associates***, does not advance the case of the Appellants. The said decision cannot be read as laying down an absolute proposition that in every case involving stipulated damages, actual mathematical computations of loss must precede recovery irrespective of the terms of the contract and the nature of the breach. The applicability of the principles depends upon the contractual stipulations and the facts established before the Tribunal. In the present case, the Tribunal considered the contractual mechanism and the delay attributable to the Appellants. No paten illegality is demonstrated merely by relying upon the general principles stated in ***Kailashnath Associates.***

5.10. The Appellants further contended that the Tribunal ignored vital evidence. We have carefully perused the order of the learned Single Judge and the material portions of the Arbitral Award. The Award is a detailed award. The Tribunal considered the various documents, the correspondence between the parties and the rival submissions. The fact that the Tribunal ultimately rejected the interpretation placed by the Appellants cannot be equated with ignoring evidence. A finding becomes perverse only in the legally recognised sense, such as, where it is based on no evidence or is such that no reasonable person could have arrived at it. The present award does not fall within that category.

5.11. The fact that the award was rendered by a majority of three member Tribunal does not provide an additional ground for interference. The majority view is required to be tested under Section 34. The Court does not substitute the dissenting opinion for the majority merely because the dissenting opinion may appear attractive. The majority award is reasoned and deals with the material questions arising between the parties. Upon a careful consideration of the matter, we find that the learned Single Judge correctly applied the restricted parameters of Section 34. What is sought essentially is a re appreciation of evidence concerning the causes of delay and a fresh interpretation of the contractual provisions. That is impermissible in proceedings under Sections 34 and 37.

5.12. The learned Single Judge has considered the principal grounds raised by the Appellants , particularly the applicability of Section 55 of the Contract Act, the effect of the extensions granted by NLC, the reservation of the right to levy LD and the findings of the Tribunal concerning the alleged causes of delay. We find no error warranting appellate interference. Accordingly, the OSA fails.

6. In the result, the Original Side Appeal is dismissed. The order dated 19.08.2021 passed by the learned Single Judge in O.P. No.709 of 2016 is confirmed. The Arbitral Award dated 12.02.2016 shall consequently stand undisturbed. There shall be no order as to costs.

7. A. NO. 3696 OF 2023

In view of the above order in OSA No. 140 of 2022, A. No.3696 of 2023 is allowed. The Applicant / defendant is permitted to withdraw the sum of Rs.66,16,458/- together with accrued interest thereon as on date, which was deposited in terms of the order dated 03.10.2016 passed in Application No.5074 of 2016 in O.P. No.709/2016.

(P.V.,J.) (K.G.T.,J.)
08-09-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

BGA

To

The Sub Assistant Registrar,
Original Side, High Court, Madras

P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.

BGA

Pre-delivery judgment in

OSA No. 140 of 2022
and
A. NO. 3696 of 2023 in OP NO. 709 OF 2016

08 -09-2026