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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1775 OF 2015

M/S. FORECH INDIA LIMITED,
a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Hilton House, S-23, Green Park Extension, New Delhi – 100 016. **...PETITIONER**

Versus

JSW JAIGARH PORT LIMITED,
a Company incorporated under the provisions of The Company Act, 1956 and having its registered office at JSW Centre, Bandra-Kurla Complex, Bandra (East), Mumbai – 400 051. **...RESPONDENT**

Mr. Sharan Jagtiani, Senior Counsel a/w Mrs. Jyoti A. Singh, Ms. Sankalpita Mullick, Mr. Sakil Ansari & Mr. Ritwik Kulkarni i/b AJA Legal, *learned counsel for the Petitioner.*

Mr. Karl Tamboly a/w Mr. Arup Pereira, Mr. Huzefa Nasikwala, Mr. Freddy Daruwala, Mr. Idris Balasinorwala & Ms. Farzana Rine i/b Nasikwala Law Office, *learned counsel for the Respondent.*

CORAM : ARUN R. PEDNEKER, J.

RESERVED ON : 8th OCTOBER, 2026.
PRONOUNCED ON : 19th OCTOBER, 2026.

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JUDGMENT :

1. Heard learned counsel appearing for the parties and perused the records.

2. By the present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("**the Act**"), the Petitioner challenges the Arbitral Award dated 12th August, 2015 passed by the Arbitral Tribunal in a reference made by this Court in Arbitration Application No. 132 of 2013, whereby the Arbitral Tribunal has directed the Petitioner to pay the Respondent/Claimant a sum of Rs. 2,16,44,423/- (Rupees Two Crores, Sixteen Lakhs, Forty-four Thousand, Four Hundred and Twenty-three) together with the interest at the rate of 12% per annum (from the date of claim till payment of the entire contract value (minus) the value of performance Bank Guarantee), which was encashed by the Respondent/Claimant.

3. Learned Arbitral Tribunal by the impugned Award has also rejected the Petitioner's counter-claim of Rs. 20,40,180/-, the claim towards encashment of the performance Bank Guarantee furnished by the Petitioner to the Respondent/Claimant and the damages.

4. The brief facts giving rise to the Petition are that, in the year 2011, the Respondent/Claimant issued an enquiry letter with

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respect to supply of EP Belts for its coal handling system at Jaigarh Port, along with the technical specifications.

5. The Petitioner engaged in the business of EP Belt manufacturing, submitted its offer for supply of EP Belts to the Respondent/Claimant.

6. Pursuant to further negotiations between the parties, the Respondent/Claimant issued a Letter of Intent dated 19th July, 2011 to the Petitioner for manufacture and supply of EP conveyor Belts (EP Belts), in accordance with the technical specifications and scope set out in Annexure-I to the Letter of Intent.

7. Pursuant to the Letter of Intent, the said two Purchase Orders were placed by the Respondent/Claimant with the Petitioner. In terms of the contract between the parties, EP Belts were supplied under two Purchase Orders; *first* Purchase Order dated 21st July, 2011 and *second* Purchase Order dated 19th August, 2011.

8. The details of Purchase Orders are set out herein below :-

21.07.2011	Purchase Order PO/JSWJPL/11-12/2675 **(First Purchase Order)** (i) Conveyor Belt - EP Belt Width - 1800mm, Belt Rating - 800/4, Grade - M24, Thickness Top/Bottom – 5mm/2mm (Quantity Ordered – 690 mts.)	Total Basic Value – Rs. 1,20,01,800/- Excise Duty – Rs. 12,36,186/- CST – Rs. 6,94,994/-

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	(ii) Conveyor Belt - EP Belt Width - 1800mm, Belt Rating - 1250/4, Grade – M24, Thickness Top/Bottom - 5mm/2mm (Quantity Ordered – 1400 mts.)	Total Rs. 1,39,32,980/-
19.08.2011	Purchase Order PO/JSWJPL/11-12/2779 **(Second Purchase Order)** Conveyor Belt - EP Belt Width - 1800mm, Belt Rating – 1250/4, Grade - M24, Thickness Top/Bottom – 5mm/2mm (Quantity Ordered – 1400 mts.)	Total Basic Value – Rs. 84,00,000/- Excise Duty – Rs. 8,65,200/- CST – Rs. 4,86,423/- Total Rs. 97,51,623/-

9. The Petitioner also furnished performance Bank Guarantee dated 29th September, 2011 for Rs. 12,00,180/-, valid upto 14th April, 2013 *qua* the first Purchase Order and a performance Bank Guarantee dated 9th December, 2011 for Rs. 8,40,000/- valid upto 30th May, 2013 for the second Purchase Order.

10. Prior to dispatch of EP Belts on 21st September, 2011 and 22nd September, 2011, joint inspection of EP Belts was conducted by the representatives of Petitioner and Respondent/Claimant at the site of Petitioner. Thereafter, the items under Purchase Orders were dispatched.

11. On 17th October, 2011, certain objections were raised vide letter by the Respondent/Claimant, which are noted below :-

i) During laying of 220 metres roll, waviness was noticed in ply in a width of about 400 mm and the wave form can be clearly

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seen on the belt surface. On other roll, these wave form is noticed at about 200 mm width

ii) On one of the roll at the edge of the belt for a width of about 70mm only three plies could be seen.

Due to above facts, the Petitioner has to stop replacement of belting and only one belt having length of 220 metres has gone on installation.

12. On 21st October, 2011, Mr. I. P. Singh, Manager (Technical) of the Petitioner, visited the site of Respondent/Claimant at Jaigarh Port and observed that the alleged defects were superficial, noting that they generally occurred with higher width belts and would not adversely affects the performance of the belt during operation. Thereafter, the Respondent/Claimant proceeded with installation of the said belts on their Conveyor System.

13. On 2nd November, 2011, a meeting took place between Mr. I. P. Singh, representing the Petitioner's side and Mr. Jigshu Shah, Assistant General Manager of the Respondent/Claimant, wherein the Petitioner provided clarifications regarding the waviness and use of 3 plies instead of 4 plies on the edge.

14. On 11th April, 2012, a portion of EP Belt of apprximately 260 metres installed on R2A conveyor, was replaced by the Claimant, as it had developed air pockets stretching across 260 metres length and spanning width of about 100 mm along the bottom side of the belt.

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15. On 15th May, 2012, the Respondent/Claimant sent an e-mail to the Petitioner stating that they have not received any replacement belt. The Petitioner was called upon to replace 800 metres of the belts, which they alleged to be defective.

16. On 30th September, 2012 and 1st October, 2012, the belting installed on R2A conveyor developed similar defects and resulted in the replacement of 150 metres length within the warranty period.

17. On 4th October, 2012, the Respondent/Claimant sent an e-mail to the Petitioner stating that the problem had developed on the entire length of 800/4 rating belting and that the alleged defects had extended to the R2A Conveyor System, on which the said rating belt had been installed by the Petitioner. On 23rd October, 2012, both the performance Bank Guarantees furnished by the Petitioner were encashed by the Respondent/Claimant. Thereafter on 24th December, 2012, the Respondent/Claimant issued an arbitration notice to the Petitioner in connection with the disputes that had arisen between the parties. Thereafter an arbitral application was filed, this Court appointed an Arbitrator and the Arbitrator passed an Arbitral Award on 12th August, 2015.

18. Challenging the Arbitral Award, Mr. Sharan Jagtiani, learned senior counsel for the Petitioner submits that the Arbitral Award is patently contrary to the contract between the parties, which form the basis of incorrect finding of manufacturing defects.

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19. Learned senior counsel for the Petitioner submits that the Petitioner was required to supply the conveyor belt of IS 1891 to be used on conveyor system of technical parameters and specifications of Indian Standard (IS) 11592. The contract required the Petitioner to manufacture and supply belting, which would adhered to standards provided in IS 1891 for the use and operation on a Conveyor System that would be operated in accordance with IS 11592.

20. Learned senior counsel for the Petitioner submits that the Arbitrator has awarded the cost of entire conveyor belt, even though only 150 metres of 800/4 rating belting and 710 metres of 1250/4 rating belting were replaced. The cost paid was awarded on the entire belting although there was no evidence that the entire belt was replaced or that another belting system was purchased by the Respondent/Claimant. There is no evidence for finding that the Respondent/Claimant replaced the belts by placing orders with other suppliers.

21. Learned senior counsel for the Petitioner submits that the Arbitral Award ignores vital evidence in arriving at the finding that the belting did not conform to technical specifications of the Conveyor System. The contract between the parties required the Petitioner to manufacture conveyor belts as per the technical specifications provided by the Respondent, i.e. for a Conveyor System that would operate as per the provisions of IS 11592, and not

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as would function on the actual Conveyor System of the Respondent, the details of which were not known to the Petitioner until 2nd May, 2012. The Arbitral Tribunal has arrived at a finding in para 29 of the Arbitral Award that the Petitioner has not led any evidence to show that the belting supplied by it meets the technical specifications specified by the Respondent/Claimant. The Arbitral Tribunal has observed that there was no satisfactory evidence that the belts supplied by the Petitioner meet the technical specifications specified by the Respondent, the following vital, admitted documents were ignored :

a. Joint Inspection Report for joint inspection of 800/4 and 125014 rating belting supplied under the purchase order dated 21st July, 2011;
b. Test Certificate dated 14th October, 2011 for 1250/4 rating belting;
c. Test Certificate dated 1st November, 2011 for 125014 rating belting and
d. Test Certificate dated 9th November, 2011 for 1250/4 rating belting.

Therefore, the above finding in para 29 of the Arbitral Award ignores vital and satisfactory evidence produced by the Petitioner in the form of joint inspection reports and test certificates, which establish that the belting supplied by the Petitioner met every technical specification specified by the Respondent and, in fact, far

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exceeded the requisite quality parameters stipulated by IS 1891 (Part I).

22. Learned senior counsel for the Petitioner submits the Arbitral Award has applied different and unequal standards in considering the evidence led by witnesses of the Petitioner. In para 25 of the Arbitral Award, the Arbitral Tribunal has disregarded the evidence of the Petitioner's witnesses on maximum speed of belting under IS 11592 on the criteria that both witnesses are in-house witnesses. On the contrary, in para 21 of the Arbitral Award, the Arbitral Tribunal has placed reliance on oral evidence of the Respondent's witness Mr. Yeshwant Vaman Dhond, also an in-house witness, to conclude that the Respondent's Conveyor System did not transgressed any of the parameters prescribed by IS 11592. The Learned Arbitral Tribunal has on the one hand disregarded the oral evidence of the Petitioner's witnesses on account of being in-house witnesses while on the other hand it has heavily relied upon the oral evidence of the Respondent's witnesses, who were also in-house witnesses (CW-1 Mr. Vaman Yeshwant Dhond was DGM Operation & Maintenance of the Respondent organisation and CW-2 Mr. Babu Reddy was General Manager (Commercial) of the Respondent organisation).

23. Learned senior counsel for the Petitioner submits the Arbitral Tribunal has on the one hand, disregarded the oral evidence

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of the Petitioner's witness Mr. Bhattacharya (RW-2), on account of him not being an expert in Conveyor Systems, while on the other hand, the Arbitral Tribunal has relied upon the oral evidence of the Respondent's witness (CW-1) Mr. Dhond in relation to the Respondent's Conveyor System allegedly operating in accordance with IS 11592, despite the said witness also not being an expert in Conveyor Systems. The Arbitral Tribunal has disregarded the evidence of the Petitioner's witness Mr. Bhattacharya (RW-2), merely on the ground that he is engaged in the manufacture of conveyor belts and is not an expert in Conveyor Systems, while entirely ignoring the crucial fact that it goes to the root of the matter that his dealing with the manufacture of conveyor belts is intended for the use in Conveyor System. Although the Arbitral Tribunal noted in paragraph 18 of the Arbitral Award that the Petitioner has also led the oral evidence of Mr. Krishan Agarwal, Director of the Petitioner (RW-1), the Arbitral Tribunal has entirely disregarded the evidence of the said witness of the Petitioner, despite he being an Industrial Engineer by qualification having ample experience in the field of conveyor belt manufacturing.

24. Learned senior counsel for the Petitioner submits that there is no evidence on finding that the Respondent replaced the belts by placing orders with other suppliers or that any loss was caused to the Respondent. In para 30 of the Arbitral Award, the Arbitral Tribunal

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has recorded a finding that : "The Claimant had to replace the belts supplied by the Respondent by placing orders with other suppliers."

25. The said finding is contrary to the Respondent's own case. In respect of the 150 metres of 800/4 rating belting replaced between 30th September, 2012 and 1st October, 2012, the Respondent's witness has stated in his oral evidence that the said length of 150 metres was replaced by removing belting from a different installation/conveyor of the Respondent. In respect of a length of 710 metres of 1250/4 rating belting that was replaced by the Respondent, it is nowhere the case or claim of the Respondent that this length of belting was replaced by procuring belting from other suppliers. Furthermore, the Respondent has produced no evidence whatsoever (documentary or oral) in support of a case that it has sourced belting from other suppliers for replacing belting supplied by the Petitioner. No evidence has been led in support of the finding in the impugned Arbitral Award that the Respondent had replaced the belting by placing orders with other suppliers.

26. It is submitted that the total value on the purchase, (minus) the value of encashed Bank Guarantee was directed to be paid to the claimant along with the interest. It is submitted that even assuming that the belts supplied by the Petitioner developed manufacturing defects, compensation should have been limited only to the specific portion that developed defects and required replacement, rather than of entire belt.

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27. The chart provided hereinbelow for reference as to the length of belts replaced :-

Sr. No.	Particulars	Quantity (Length)
1.	Length of 800/4 rating belting supplied	690 metres
2.	Length of 1250/4 rating belting supplied	2800 metres
(A)	**TOTAL LENGTH OF BELTING SUPPLIED**	**3490 metres**
3.	Length of 800/4 rating belting replaced by the Respondent	150 metres
4.	Length of 1250/4 rating belting replaced by the Respondent	710 metres
(B)	**TOTAL LENGTH OF BELTING ALLEGEDLY REPLACED BY THE RESPONDENT**	**860 metres**
(C)	**LENGTH OF BELTING SUPPLIED BY THE PETITIONER WHICH THE RESPONDENT HAS NOT REPLACED ON ACCOUNT OF ALLEGED DEFECTS**	**2630 metres**
	Calculation : (A) − (B) = (C)	3490 − 860 = 2630 metres

28. It was an admitted position before the Arbitrator that the selective portion/length of the belting can be cut out and replaced if the defects are found and that the entire length of the belting supplied does not need to be replaced.

29. It is also submitted that the Petitioner had supplied belts of different lengths. It is further submitted that although the Respondent/Claimant made a claim for the replacement of entire belting, the warranty obligation of the Petitioner in respect of the belting supplied was limited to the free replacement/free repair of portion, which could be defective or unserviceable.

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30. Even if assuming that the belts have developed defects, the best case scenario of Respondent's claim for replacement of the belting is the cost of the specific portion of belting supplied by the Petitioner, which the Respondent claims to have replaced.

31. Learned senior counsel for the Petitioner has relied upon judgments, which are noted below :-

a. ***Associate Builders v/s. Delhi Development Authority***[1];

b. ***Ssangyong Engineering and Construction Company Limited v/s. National Highways Authority of India (NHAI)***[2];

c. ***Dyna Technologies Private Limited v/s. Crompton Greaves Limited***[3];

d. ***Ivory Properties & Hotels Private Limited v/s. Vasantben Ramniklal Bhuta since deceased through legal heirs and Others***[4];

e. ***Union of India v/s. Recon, Mumbai***[5];

f. ***Kailash Nath Associates v/s. Delhi Development Authority and Another***[6];

g. ***Essar Procurement Services Ltd. (formerly known as Essar***

[1] (2015) 3 Supreme Court Cases 49.
[2] (2019) 15 Supreme Court Cases 131.
[3] (2019) 20 Supreme Court Cases 1.
[4] 2024 SCC OnLine Bom 1900.
[5] 2020(6) Mh.L.J. 509.
[6] (2015) 4 Supreme Court Cases 136.

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Projects Limited) A Company registered under the provisions of the Companies Act, 1956, having its Registered Office at 77, C.P. Ramaswamy Rd., Abhiramapuram, Chennai-600 018 and Corporate office at Essar House, Mahalaxmi, Mumbai v/s. Paramount Constructions A Partnership firm registered under the Indian Partnership Act, 1932 carrying on business, inter alia office at Paramount Complex, Gotri Road, Race Course, Vadodara-390 007[7];

h. *Wockhardt Hospitals Ltd. v/s. Dr. Nitish Vyas*[8];

i. *Union of India v/s. Ahluwalia Contracts (India) Limited*[9];

j. *Edifice Developers and Project Engineers Ltd. v/s. Essar Projects (India) Ltd.*[10];

k. *Batliboi Environmental Engineers Limited v/s. Hindustan Petroleum Corporation Limited and Another*[11];

l. *Bharat Coking Coal Ltd. v/s. L.K. Ahuja*[12] and

m. *Godrej and Boyce Manufacturing Company Limited v/s. Remi Sales and Engineering Limited*[13].

[7] 2016 SCC OnLine Bom 9697.
[8] Commercial First Appeal No. 27 of 2026 decided on 3rd September, 2026.
[9] 2025 SCC OnLine Del 4066.
[10] 2013 SCC OnLine Bom 5.
[11] (2024)2 Supreme Court Cases 375.
[12] (2004)5 Supreme Court Cases 109.
[13] 2025 SCC OnLine Bom 5334.

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32. *Per contra*, Mr. Karl Tamboly, learned counsel for the Respondent/Claimant submits that the Arbitrator is the final authority to decide the matter on facts and based on the documentary and oral evidence placed on record. The Arbitral Tribunal concluded that the belts supplied by the Petitioner were defective and has awarded the entire cost of the belts and has refused the claim of loss and profits, as no evidence was provided for the same. Learned counsel submits that the Arbitral Award does not suffer from any patent illegalities, nor is it in conflict with the Public Policy of India, as per provisions of the Arbitration and Conciliation Act, 1996.

33. Learned counsel for the Respondent/Claimant submits that the Petitioner seeks to review and revisit the merits of dispute, which has clearly been arbitrated and adjudicated and that the Petition is, therefore, liable to be dismissed at the very threshold. The defects pointed out, were inherent defects in the belts and existed even prior to the installation of the belting. The Petitioner has admitted that the defects were observed even prior to the installation of the belting and the belting was only installed subject to the warranties, without any conditions or restrictions, embodied in the Purchase Order and Letter of Intent. Under the said warranty, the Petitioner was legally bound to replace the entire defective belting and/or refund the purchase price, especially since the entire belting was replaced due to the frequent defects and stoppage within the warranty period, as

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averred in the statement of claim and duly considered by the Arbitrator in granting the refund of the entire purchase price.

34. Learned counsel for the Respondent/Claimant submits that the Respondent/Claimant had invited tenders for the design, installation and supply of the belting subject to the specifications of the system and the Petitioner had done so without any reservations or restrictions at the time of supply and installation of the belting for the Respondent/Claimant, as per the design of its conveyor belting system. The Respondent/Claimant submits that the Claimant is well within its right under the contract to seek a refund of the entire purchase price of the defective belting and that the Arbitrator rightly granted such relief under the Arbitral Award. On merits of the claim, even Letter of Intent clearly provides in clause @ 8 (Limit of liability) that the liability shall be a maximum of 100% of the contract price. Further clause 16 of the Purchase Order also provides that the liability shall be limited to 100% of the total contract price. Thus, Arbitrator has not erred in holding that the Petitioner would be liable for the aggregate value of the belting, in view of the facts stated above, after deducting the value under the Bank Guarantees encashed by the Respondent/Claimant.

35. It is submitted that on 21st October, 2011, Mr. I. P. Singh, Petitioner's Representative visited the site at Jaigarh Port, where he noticed that the belts had defects and had developed waviness. However, he alleged that the defects were merely superficial and

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assured Respondent/Claimant that the defect would have no effect on the belts performance during the operation. He further assured the Respondent/Claimant that the belts would perform satisfactorily with full guarantee for agreed life of the belting, as stipulated in the Purchase Order. It was admitted by the Petitioner that only 3 plies were visible over the length of 70 mm at the end of 800/4 rating belting roll. In any event, the Respondent/Claimant was covered by the warranty, without any specific exclusions, for the entire life of the belt. Further the technical specifications given by the Respondent/Claimant, set out the defects, which are noted below :-

> "*a. Belt shall be suitable to withstand the tension specified and support the load.*
>
> *b. Belt shall confirm to latest revision of IS 1891 (Part I), IS 11592 and other relevant Indian Standards. For the belts the fabrics shall be of single width covering total belt width and there shall not be any joint (longitudinal).*
>
> *c. Belting shall be suitable for heavy-duty application. Synthetic belt shall be cut edge type.*"

36. It is submitted that the total belt length of 1200 metres was installed on the conveyor R2A in the month of October 2011. In April 2012, the Respondent/Claimant noticed that in total length of 260 metres, there were air pockets, each measuring of the width of 100 mm of length on the bottom side of the belt. This length of 260 metres of air pockets were cut and replaced by the Respondent/Claimant. The Respondent/Claimant by its e-mail of

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11th April, 2012 informed the Petitioner about the defect in the belt supplied by it. Photographs of defective belts were also attached to the e-mail. The Respondent/Claimant further also requested the Petitioner to replace the defective belt, which was covered under the warranty and also depute the representative to study the problem. The Petitioner had sent Mr. I.P. Singh on two occasions for inspection of the belting and he has not disputed the fact of waviness and air pockets. The Petitioner sought to explain away this defect of waviness saying that it does not affect the performance and by wrongly putting the blame on the Respondent/Claimant that it is operating the Conveyor System at a speed of over 3 metres per second ("**m/s**") and having troughing angle of 45 degrees on the belting.

37. It is further submitted that the Petitioner vide e-mail dated 15th May,2012 has clearly admitted that there was defect in the belting (development of air pocket in 1250/4 rating belting though it wrongly sought to blame the speed of the Respondent/Claimant's Conveyor System and its troughing angle of 45 degrees).The Petitioner attempted to misguide the Respondent by recommending the steel cord belting for speeds of conveyor higher than 3.5 m/s. The Petitioner has made an attempt to shift the entire blame on the Respondent/Claimant for the reasons that have resulted in defects in belting. The Petitioner admittedly refused to replace its defective belting. The Claimant has denied that 150 metres 800/4 rating

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belting referred to by the Claimant by its e-mail of October 2011 formed part of 220 metres 800/4 rating belting referred to by the Claimant's e-mail dated 4th October, 2012.

38. It is also submitted that the Arbitral Tribunal considered the contents of IS 1891 (Part-I) and IS 11592 in comprehensive detail, assessed evidence given by the parties and rightly concluded in paragraph 25 of the Award that Conveyor System was being operated in accordance with the specifications prescribed under IS 11592 (providing for speed of 4.5 m/s and troughing angle of 45 degrees considering the material used by the Respondent/Claimant). It is submitted that the Arbitral Tribunal also saw through the Petitioner's feeble attempts to "cherry pick" data from the standards in question to suit its own ends and has considered the standards holistically. It is submitted that this clearly shows that the Petitioner is blowing hot and cold on the issue of selection of conveyor belting in accordance with IS 11592, merely to absolve itself of its warranty obligation under the warranty for supply of defective belting. It is submitted that the Arbitral Tribunal duly considered IS 1891, IS 11592 and also the Purchase Orders and the warranty clause therein, as the foundation for grant of the Arbitral Award.

39. Learned counsel for the Respondent/Claimant has relied upon various judgments, which are noted below :-

a. ***Board of Control for Cricket in India v/s. Kochi Cricket Private***

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Limited and Others[14];

b. *Hindustan Construction Company Limited and Another v/s. Union of India and Others*[15];

c. *Sepco Electric Power Construction Corporation v/s. Power Mech Projects Limited*[16];

d. *Rajkot Municipal Corporation v/s. M/s. Jay Hind Project Ltd.*[17];

e. *Delhi Airport Metro Express Private Limited v/s. Delhi Metro Rail Corporation Limited*[18];

f. *Ramesh Kumar Jain v/s. Bharat Aluminium Company Limited (BALCO)*[19];

g. *M/s. S. F. Engineer v/s. Metal Box India Ltd. and Another*[20];

h. *Associate Builders v/s. Delhi Development Authority*[21];

i. *Mcdermott International Inc. v/s. Burn Standard Co. Ltd. and Others*[22];

j. *MMTC Limited v/s. Vedanta Limited*[23];

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[14] (2018)6 Supreme Court Cases 287.
[15] (2020)17 Supreme Court Cases 324.
[16] (2026)3 Supreme Court Cases 701.
[17] R/Special Civil Application No. 19550 of 2022 decided on 8th January, 2024.
[18] (2022)1 Supreme Court Cases 131.
[19] 2025 SCC OnLine SC 2857.
[20] Civil Application No. 4189 of 2014 decided on 28th March, 2014.
[21] (2015)3 Supreme Court Cases 49.
[22] (2006)11 Supreme Court Cases 181.
[23] (2019)4 Supreme Court Cases 163.

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k. *Dyna Technologies Private Limited v/s. Crompton Greaves Limited*[24];

l. *Konkan Railways Corporation Limited v/s. Chenab Bridge Project Undertaking*[25];

m. *Madhya Pradesh Power Generation Company Limited and Another v/s. Ansaldo Energia Spa and Another*[26];

n. *OPG Power Generation Private Limited v/s. Enexio Power Cooling Solutions India Private Limited and Another*[27];

o. *National Highways Authority of India v/s. ITD Cementation India Limited*[28];

p. *Ssangyong Engineering and Construction Company Limited v/s. National Highways Authority of India (NHAI)*[29];

q. *UHL Power Company Limited v/s. State of Himachal Pradesh*[30] and

r. *PSA Sical Terminals Private Limited v/s. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others*[31].

[24] (2019)20 Supreme Court Cases 1.
[25] (2023)9 Supreme Court Cases 85.
[26] (2018)16 Supreme Court Cases 661.
[27] (2025)2 Supreme Court Cases 417.
[28] (2015)14 Supreme Court Cases 21.
[29] (2019) 15 Supreme Court Cases 131.
[30] (2022)4 Supreme Court Cases 116.
[31] (2023)15 Supreme Court Cases 781.

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40. Upon considering the rival submissions and perusal of the records in detail, the following questions arise for consideration before this Court :-

1. Whether the Arbitral Tribunal has considered the evidence adduced by both the parties and has rendered a finding that the operation of conveyor belting system supplied by the Petitioner was defective or whether such a finding has been arrived at by disregarding the evidence given by the Petitioner's witness ?

2. Whether the Arbitral Award has travelled beyond the terms of contract, i.e. the warranty clause, which provides for replacement/maintenance of defective parts by granting claim for the entire belting system and thereby violated the provisions of Sections 12, 13 and 59(2) of the Sale of Goods Act, 1930 and Section 73 of the Indian Contract Act, 1872, thereby making the Award violating the statutory provisions and beyond the contract?

3. Whether the Arbitrator has treated all the parties equally, i.e. whether the Arbitrator has rejected the evidence of similarly placed witness of one party, while accepting evidence of similarly placed witness of the other party and thereby, the Arbitral Award is in violation of provisions of Sections 18 and 34(2A) of the Arbitration and Conciliation Act, 1996 ?

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4. Whether the Arbitral Award suffers from patent illegalities ?

41. The relevant law on interference of Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996 is noticed below :-

a. ***Associate Builders*** (*supra*)

"*19....*

74. In the result, it is held that:
(A)(1) The court can set aside the arbitral award under Section 34(2) of the Act if the party making the application furnishes proof.

(2) The court may set aside the award:
...
(ii) if the arbitral procedure was not in accordance with:
(a) the agreement of the parties, or
(b) failing such agreement, the arbitral procedure was not in accordance with Part I of the Act.
However, exception for setting aside the award on the ground of composition of Arbitral Tribunal or illegality of arbitral procedure is that the agreement should not be in conflict with the provisions of Part I of the Act from which parties cannot derogate.
(c) If the award passed by the Arbitral Tribunal is in contravention of the provisions of the Act or any other substantive law governing the parties or is against the terms of the contract.

(3) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to:
(a) fundamental policy of Indian law; or

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(b) the interest of India; or
(c) justice or morality; or
(d) if it is patently illegal.

(4) It could be challenged:
(a) as provided under Section 13(5); and
(b) Section 16(6) of the Act.

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

(ii) 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 Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons15, it was held: (SCC p. 317, para 7)

> *"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 tosuffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."*
>
> *In Kuldeep Singh v. Commr. of Police 16, it was held: (SCC p. 14, para 10)*

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> *"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."*

42. In the 1996 Act, this principle is substituted by the "patent illegality" principle which, in turn, contains three subheads:

42.1. (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:

> *"28. Rules applicable to substance of dispute.-(1) Where the place of arbitration is situated in India -*
>
> *(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;"*

42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

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42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

> *"28. Rules applicable to substance of dispute.-(1)-(2)...*
>
> ***(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.****"*

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. 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."

b. ***Ssangyong Engineering And Construction Company Limited*** (*supra*)

"*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*

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ground of patent illegality.

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.*"

c. ***Dyna Technologies Private Limited*** (*supra*)

"***25. Moreover, umpteen number of judgments of this Court have categorically held that the courts 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.***

34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, whichrean in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators

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having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. *If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.*"

d. ***MMTC Limited*** (*supra*)

"*10. Before proceeding further, we find it necessary to briefly*

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revisit the existing position of law with respect to the scope of interference with an arbitral award in India, though we do not wish to burden this judgment by discussing the principles regarding the same in detail. Such interference may be undertaken in terms of Section 34 or Section 37 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act"). While the former deals with challenges to an arbitral award itself, the latter, inter alia, deals with appeals against an order made under Section 34 setting aside or refusing to set aside an arbitral award.

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) Le. 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[3] 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

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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. Also see ONGC Ltd. v. Saw Pipes Ltd.; Hindustan Zinc Lid. v. Friends Coal Carbonisation; and McDermott International Inc. v. Burn Standard Co. Ltd.)

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 Taw or by reappreciation of evidence."

e. ***Madhya Pradesh Power Generation Company Limited and Another*** (*supra*)

"***25. The limit of exercise of power by courts under Section 34 of the Act has been comprehensively dealt with by R.F. Nariman, J. in Associate Builders v. DDA6. Lack of judicial approach, violation of principles of natural justice, perversity and patent illegality have been identified as grounds for interference with an award of the arbitrator. The restrictions placed on the exercise of power of a court under Section 34 of the Act have***

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been analysed and enumerated in Associate Builders which are as follows:
(a) The court under Section 34(2) of the Act, does not act as a court of appeal while applying the ground of "public policy" to an arbitral award and consequently errors of fact cannot be corrected.
(b) A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the sole judge of the quantity and quality of the evidence.
(c) Insufficiency of evidence cannot be a ground for interference by the court. Re-examination of the facts to find out whether a different decision can be arrived at is impermissible under Section 34(2) of the Act.
(d) An award can be set aside only if it shocks the conscience of the court.
(e) Illegality must go to the root of the matter and cannot be of a trivial nature for interference by a court. A reasonable construction of the terms of the contract by the arbitrator cannot be interfered with by the court. Error of construction is within the jurisdiction of the arbitrator. Hence, no interference is warranted.
(f) If there are two possible interpretations of the terms of the contract, the arbitrator's interpretation has to be accepted and the court under Section 34 cannot substitute its opinion over the arbitrator's view."

42. On perusal of the Arbitral Award, it is seen that the Arbitrator has formulated the following questions for determination in the claim and counter-claim, which are noted below :-

Sr. No.	QUESTIONS
1.	Whether the belting supplied by the Respondent to the

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	Claimant was in accordance with the technical specifications of annexure 1 to the Purchase Order?
2.	Whether the belting supplied by the Respondent to the Claimant had manufacturing defects which caused them to fail shortly after installation?
3.	Whether the speed at which the Conveyor was run by the Claimant and/or the troughing angle used on the Claimant's Conveyor System caused specific types of defects such as waviness and air pockets as alleged by the Respondent?
4.	Whether the claimant was entitled to encash the performance bank guarantees given by the Respondent for the belting supplied by the Respondent?
5.	Whether the encashment by the Claimant of the bank guarantees given by the Respondent was unauthorised and illegal?
6.	Whether the Claimant was entitled to a refund of the total purchase price from the Respondent after deducting the amount of two bank guarantees encashed by the Claimant, amounting to Rs. 2,16,44,423/- together with interest at 18% per annum or at such other rate as the Tribunal may deem fit?

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7.	Whether the Claimant is entitled to a further sum of Rs. 5,90,249/- being the amount paid by the Claimant for repairing the defective belting?
8.	Whether the Claimant is entitled to claim from the Respondent a sum of Rs. 5,00,000/- or such other sum as the tribunal may determine as the legal and other expenses upto the commencement of arbitration proceedings?
9.	Whether the Claimant is entitled to interest at the rate of 18% per annum or at any other rate on the said amounts in points 6 and 7 above?
10.	Whether the claimant is entitled to claim damages/loss of profit for stoppage/extreme slowing down of transportation by Conveyor belting system for its power plant, and if so, what amount?
11.	Whether the Claimant is entitled to costs and if so, what amount?
12.	Whether Respondent is entitled to a sum of Rs. 20,40,180/- together with interest at the rate of 18% per annum or such other rate as the Tribunal may deem fit for unauthorised encashment by the Claimant of the bank guarantees given by the Respondent?

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13.	Whether the Respondent is entitled to a sum of Rs. 4,00,000/- or any other sum in respect of legal and other costs incurred by the Respondent upto the stage of commencement of the arbitration proceedings?
14.	Whether the Respondent is entitled to interest at the rate of 18% per annum or such other sum as the Tribunal may deem fit on the above amount in point 13?
15.	Generally.

43. The claimant has led oral evidence of Mr. Babu Reddy, General Manager-Commercial of the Claimant (CW-1) and of Mr. Vaman Yeshwant Dhond, Deputy General Manager-Operation and Maintenance (CW-2).

44. The Respondent/Claimant has led oral evidence of Mr. Krishan Aggarwal, Director of the Respondent (RW-1) and Dr. Timir Baran Bhattacharya, Vice President-Works of the Respondent/Claimant (RW-2).

45. The Arbitral Tribunal at paragraphs 19 and 20 of its Arbitral Award has noted the undisputed factual aspects and thereafter at paragraph 21 discussed the evidence of Mr. Dhond (CW-2) and at paragraph 22, the contentions of present Petitioner (Respondent before the Arbitrator) are noted. At paragraph 23, the Arbitrator has

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discussed about IS 11592 of Conveyor Systems and at paragraph 24, the Arbitrator has discussed about the standard treaties on material handling by Ishwar and Mulani, where the recommended maximum belt speed for belts of width 1800 and above is upto 5 m/s. At paragraph 25, the Arbitral Tribunal holds that from a mere perusal of IS 11592, it is not possible to come to the conclusion that the claimant's conveyor belt system was wrongly designed for the speed of 4.5 m/s without any evidence to this effect of an expert in designing of conveyors or Conveyor Systems and the necessary inputs required under IS 11592 to arrive at the speed limit and the same is the case with troughing angle of 45 degrees. IS 11592 does not say that in no case should the speed exceed 3 or 3.5 m/s or the troughing angle cannot be 45 degrees.

46. The Arbitral Tribunal has observed that the evidence of Petitioner in this regard does not inspire confidence. Both the witnesses are in-house witnesses and that Dr. Bhattacharya (RW-2) has stated that under his supervision, the Respondent's Technical Team studied minutely the design parameters of the claimant's Conveyor System. However, RW-2 is not an expert in this area. He deals with manufacture of conveyor belts. The Respondent knew that it was supplying conveyor belts for the claimant's conveyor belt system, which was already in operation. It is thought that the speed and troughing angle were important for the functioning of its belts, it

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should have so informed the claimant and taken care to ascertain the same before supplying the belts.

47. The Arbitral Tribunal has held that it has no satisfactory evidence before it to come to the conclusion that the speed of 4.5 m/s and/or troughing angle of 45 degree alone were responsible or were at all responsible for the air pockets which developed in the conveyor belts supplied by the Respondent and which resulted in failure of the belts and their replacement. In respect of waviness, the defect was seen at the time of installation itself and hence, cannot be attributed to the speed or the troughing angle of the conveyor belt system. Apart from the bare words of the Respondent, there is no evidence to show that this waviness as well as noticing only 3 plies at the edge at the time of installation were merely superficial defects and would not affect the functioning of the Conveyor belt. Anyway, the Conveyor belt in question also developed air pockets after some use. To the knowledge of the Respondent, the belts supplied by them had to be replaced by the Claimant with spare belts or other belts to keep the Conveyor System functioning.

48. The Arbitral Tribunal has observed that the defects in question were found within the warranty period. The defects must be attributed to inherent defects in the belts manufactured and supplied by the Respondent. The Respondent is bound and liable, under the terms of the Contract, to replace the belts. The Respondent has, however, refused to do so. It did offer partial

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replacement at a price set out by it which the Claimant declined. The Letter of Intent as well as the Purchase Orders pursuant to the Letter of Intent are clearly for supply of Conveyor belts for the claimant's Conveyor Belt System at Jaigarh Port. The claimant has given technical specifications required at the time of placing the order for the belts. The Respondent has not led any satisfactory evidence to show that the belts supplied by them meet the technical specifications specified by the claimant.

49. **It is further observed that the claimant had to replace the belts supplied by the Petitioner by placing orders with other suppliers.** In the premises, the claimant was justified in invoking the Bank Guarantees and therefore, entitled to recover from the Petitioner, the amount paid by it to the Petitioner for the belts.

50. On perusal of the records, it is seen that there is no evidence whatsoever, that the Respondent/Claimant has purchased new conveyor belts, for replacing the belts supplied by the Petitioner within the warrant period or even thereafter, rather the evidence indicates that the Respondent/Claimant used the belts supplied by the Petitioner by making replacement on portion of belts.

51. From perusal of IS 11592 specification document, it is apparent that the speed of the Conveyor System can be 4.5 m/s, if the other factors are supportive. In the instant case, considering the material used, the lump size abrasive factor and air bone factor as

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provided under IS 11592, the maximum speed works out to 3 m/s. The conveyor belt system being used at 4.5 m/s, which could also be partially responsible for the defects seen in the belts.

52. The evidence, however given in this regard, has been rejected on two counts :-

(i) that the witnesses are in-house witnesses and

(ii) that they are not the expert witnesses.

This Court has analysed the evidence only to examine if the Petitioner had led any evidence on the aspect of the Conveyor System being run at the speed of 4.5 m/s and variable inputs therein are not supportive in terms of the charts provided in IS 11592 specifications. This Court do not intend to render any finding thereon.

53. The witnesses of Petitioner, who are the technical persons, involved in manufacturing and sale of conveyor belts. The belts supplied are to be used on Conveyor System. The Petitioner was called upon to supply conveyor belts meeting the specification of utilisation of the belt on a Conveyor System of IS 11592. The belts so produced were in terms of the Letter of Intent meeting the specification of IS 11592. If IS 11592 itself provides that the lump size abrasive factor, etc. determines the maximum speed at which the system is required to be operated and for the material conveyed on

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the claimants Conveyor System with the specified lump size and other factors as observed later in this judgment, the speed works out to be 3 m/s. Admittedly by the e-mail dated 2nd May, 2012, the report submitted by the Respondent/Claimant also provides that they have been using the machine at 4.5 m/s and the lump size and the abrasive factors are also provided in the report.

54. IS 11592 Conveyor System provided various charts for input and corresponding speed and the same can be understood by a technical person, who operates the Conveyor Systems. In the instant case, an Industrial Engineer, who is in business of manufacturing and supplying of conveyor belts with sufficient knowledge of Conveyor Systems, has given evidence.

55. IS 11592 specifications for conveyor belt system provides as under :-

Clause 7 provides for 'Conveyor Design Procedure'. Clause 7.2 provides that the known maximum lump size of the material can be found from Table 3 taking into account the classification of material as given in Clause 7.3.1. Table 3 provides for 'Maximum Lump Sizes in Relation to Belt Width (Clause 7.2)'. In the instant case, the width of belt is 1800. The lump size used is given in the e-mail and inspection report of the Respondent/Claimant dated 2nd May, 2012. Clause 7.4 provides for speed, which is noted below :-

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"*7.4 Ascertain speed factor as sum of lump size factor (see Table 4), air borne factor (see Table 4) and abrasiveness factor (see Table 5) and select belt speed (see Table 6).*"

Table 4 provides for 'Lump Size Factor', Table 5 provides for 'Abrasiveness Factor' and Table 6 provides for 'Maximum Recommended Belt Speeds (meter per second)'.

56. Considering the lump size, the abrasive factor of the material used and lump size as provided in the report including conveyor specifications, submitted by the Mr. Vaman Dhond, Respondent/Claimant by e-mail dated 2nd May, 2012 (at page nos. 234 and 235 of the Compilation of Documents-Volume-2), the maximum permissible Conveyor System speed works out at 3 m/s.

57. In the instant case, it is an admitted position that the speed of Conveyor System was 4.5 m/s. The arguments canvassed by the Claimant is that if the Conveyor System operates at this speed, i.e. 4.5 m/s, it was a duty of the present Petitioner to make a belt compliable to the speed of Conveyor System. However, the Purchase Order was for the conveyor belt of IS 11592.

58. The Arbitral Tribunal has rejected the evidence of Petitioner on the ground that the witnesses are in-house witnesses and they are not expert witnesses for Conveyor Systems. The evidence required is not of an specialized expert in the instant case. Speed depends on input and the witnesses of Petitioner are technical persons/industrial

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engineers and the witnesses were competent to depose in this regard. Merely being the in-house witnesses, is not sufficient to discard the evidence of Petitioner's witnesses.

59. The Arbitral Tribunal has also held that the Petitioner has failed to produce any evidence that the conveyor belts supplied by the Petitioner met the specifications of the Purchase Orders. The belts were accepted after inspection. Some defects were noticed at the stage of installation and some while usage. But, the Inspection Reports do not indicate that the entire conveyor belts supplied were defective and thus replaced.

60. The question before the Arbitral Tribunal was, 'Whether the conveyor belt supplied by the Petitioner met the requirement of the Purchase Orders, which in turn specified the IS 11592?' and secondly, the issue was 'Whether the defects observed were on account of operation of Conveyor System or on account of the inherent defects in the conveyor belt or both ?' The defect in conveyor belt was inherent defect or the speed of the Conveyor Sytem was contributory factor, could have only been ascertained after considering the evidence of claimant and also the Petitioner's evidence. This wholesome rejection of the Petitioner's evidence would fall foul as the law laid down in the judgment in the cases of ***Associate Builders*** (*supra*) and ***Ssangyong Engineering and Construction Company Limited*** (*supra*). The wholesome rejection of one party's evidence, while accepting evidence the claimant, whose

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witnesses were also in-house, without composite scrutiny shows one sided appreciation. The Arbitral Tribunal has not engaged with the evidence of the Petitioner. This is also in violation of the provisions of the Arbitration and Conciliation Act, 1996 and the law laid in the case of ***Dyna Technologies Private Limited*** (*supra*).

61. In the instant case, the goods, i.e. the conveyor belt is accepted by the Respondent/Claimant after inspection. Further defect of waviness was noticed while installing on some portion of the belt. Certain defects were noticed while usage. The Respondent/Claimant has continued to use the conveyor belt with replacement of defective portion of the belt.

62. The total quantity of belts supplied of 800/4 rating is 690 metres and 1250/4 rating is of 2800 metres and total replaced quantity of belts is 860 metres from the total supplied belts of 3490 metres. There is no evidence that the remaining belts of 2630 metres were replaced.

63. The present case would fall in breach of warranty and not of condition of sale as contemplated under Sections 12 and 13 of the Sale of Goods Act, 1930. There is no rejection of the belt outright or even, later when the defects are noticed. There is absolutely no evidence that the belts were replaced. The conveyor belts are used for the entire warranty period with replacements of parts at certain portions. This becomes a claim for breach of warranty under Section

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59(2) of the Sale of Goods Act, 1930 and the damage, to be ascertain as provided under Section 73 of the Indian Contract Act, 1872.

64. Sections 12, 13 and 59(2) of the Sale of Goods Act, 1930 and Section 73 of the Indian Contract Act, 1872 are quoted below for ready reference :-

"***12. Condition and warranty***

(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

13. When condition to be treated as warranty

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(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, 5[***] the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty fulfillment of which is excused by law by reason of impossibility or otherwise.

59. Remedy for breach of warranty.*-(1) Where there is a breach of warranty by file seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may-*

(a) set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) sue the seller for damages for breach of warranty.

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(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

73. Compensation for loss or damage caused by breach of contract. *- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.*-When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*

Explanation. - In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the

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inconvenience caused by the non-performance of the contract must be taken into account."

65. The Petitioner cannot set up defence of extinction of the price without returning the goods. The usage of goods by the claimant and not returning the goods, would amount to waiving of contract condition under Section 13 of the Sale of Goods Act, 1930 and the breach can be claimed under the warranty. The warranty clause is provided in the Purchase Orders as Clause 15. The same is noted below for ready reference :-

"***15. WARRANTY :***

The material to be supplied under this order would carry a warranty from you for free replacement/free repair(s) of any part(s) which could be defective or unserviceable within 12 months from the date of commissioning or 18 months from the date of last dispatch, whichever be earlier. The warranty period shall automatically get extended for the period which is required for rectification."

66. In the instant case before accepting the belts, admittedly at the Petitioner's site, a joint inspection was carried out of the belts and the Purchase Orders were accepted. Later on during installation, certain waviness was noticed on the portion of belts and on further usage of belts, defects were noticed in the portion of belts as observed above.

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67. Warranty is of free replacement/free repair of any part(s), which could be defective or unseviceable within the stipulated period. There is no evidence of entire conveyor belts being defective of replaced in the warranty period and thus, it was necessary to restrict the claim to the warranty clause. In the instant case, there is no proof of loss of profit, for the losses suffered due to defective belts, as such the Arbitral Tribunal has not granted claim towards the loss of profits.

68. The Hon'ble Supreme Court in the case of ***Sepco Electric Power Construction Corporation v/s. GMR Kamalanga Energy Ltd.***[32], has observed with regard to the power of Arbitrator with reference to the clauses of contract as such :-

> "*96. Further clarification of this proposition is brought about through observations of this Court in a further decision by 3-Judge Bench in Union of India v. Bharat Enterprise wherein it was underlined that the existence and powers of an arbitrator are a creature of the agreement between the parties, and it is the terms of the contract which serves as a fundamental basis for the procedure to be adopted by the Arbitral Tribunal. Therefore, the arbitrator concerned is restricted to the terms of the contract thereof and cannot go outside its scope or what is, per se, specified. In words of the Bench, "A disregard of the specific provisions of the contract would incur wrath of the award being imperilled. This position cannot be in the region of dispute."*

[32] (2026)2 Supreme Court Cases 542.

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97. In order to achieve an enhanced understanding apropos the scope of the powers and jurisdiction of an arbitrator, a reference may also be made to a decision of this Court in Associated Engg. 22, which was determined vis-à-vis Section 30 of the Arbitration Act, 1940 wherein, it was observed that: (SCC pp. 103-105, paras 24-27)

"24. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it."

69. In the instant case, the Arbitral Award suffers from "Patent Illegality" as it discards evidence of Petitioner as being in-house and not being of expert, while accepting similarly placed evidence of Claimant's witness and thus violates Section 18 of the Arbitration and Conciliation Act, 1996. Its the specific case of the Claimant that they have purchased the entire belt from other sources and there is no evidence placed on record of purchase or replacement of entire belt thus, the Arbitral Award contravenes the contract i.e. the warranty clause. The award also contravenes the substantial law of India as it violates the provisions of Sections 12, 13 and 59(2) of the Sale of Goods Act, 1930 and thus suffers from patent illegality, in

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view of the law laid down in the case of ***MMTC Limited*** (*supra*), which is quoted below for reference :-

> "***Furthermore, "patent illegality" itself has been held to mean***
>
> ***(a) contravention of the substantive law of India,***
>
> ***(b) contravention of the 1996 Act, and***
>
> ***(c) contravention of the terms of the contract.***"

70. In view of the above, it is not possible for this Court to accept the submission of Respondent/Claimant that the Arbitral Award is a reasonable one and merely grants the cost price of the defective conveyor belts. For the reasons noted above, the Arbitral Award suffers from patent illegality, and is set aside. Accordingly, the Arbitral Award pased in the counter-claim is also set aside. The Arbitration Petition is disposed of with remedy as is available in law.

71. In the event, the parties apply again for appointment of Arbitrator, the evidence in the present proceedings may also be used in addition to any other evidence, the Arbitrator may permit.

[ARUN R. PEDNEKER, J.]

BHALCHANDRA GOPAL DUSANE

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