2026:AHC-LKO:76455-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 13 of 2026

U.P. Electronics Corporation Ltd. through Managing Director Shri Ravi Ranjan
…..Appellant(s)

Versus

P.S. Global through its partner Karolbagh New Delhi
…..Respondent(s)

Counsel for Appellant(s)	:	S.C.Mishra (Sr. Adv.) with Rajesh Chadha, Akhilesh Kumar Srivastava
Counsel for Respondent(s)	:	Arohi Bhalla (Sr. Adv.) with, Sunil Kumar Singh Kartikeya Yadav Prateek Agarwal.

Reserved : 21.09.2026
Delivered : 24.10.2026

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.

(Per Jaspreet Singh, J)

1. The instant appeal has been preferred under Section 37 of the Arbitration & Conciliation Act of 1996 (hereinafter referred to as 'The Act of 1996') assailing the judgment and order dated 15.12.2025 passed by the Commercial Court No.2, Lucknow rejecting the petition filed by the appellant under Section 34 of the Act of 1996, as a consequence, the award passed by the Sole Arbitrator dated 04.02.2023, has been affirmed.

2. Briefly, the fact giving rise to the instant appeal can be encapsulated as under:-

(i) The appellant herein had floated a tender on 02.02.2018 for selecting an agency for supply and installation of instruments for DNA Unit for setting up of the Forensic Scientific Laboratory (FSL) at Varanasi in the

State of Uttar Pradesh. This was followed by a corrigendum dated 08.02.2018 and in furtherance thereof the respondent (the claimant before the Sole Arbitrator) submitted his bid on 24.02.2018.

(ii) The tender Evaluation Committee screened all the bids and the bid of the respondent was found favourable and after negotiations the appellant issued a work order on 30.03.2018.

(iii) In furtherance of the said work order, the respondent submitted the performance Bank guarantee valid for a period of 66 months in favour of the respondent for a sum of Rs.93,79,535/-

(iv) In terms of the work order, the respondent supplied all 31 items to the appellant within the time prescribed and the same were also duly installed and demonstrated successfully to the appellant.

(v) A certificate was also issued by the Deputy Director, Forensic Science Laboratory, Varanasi indicating installation, demonstration and satisfactory working of the equipments. The appellant on 26.05.2018 had also made an endorsement in its stock entry records and necessary documentation in this regard was also forwarded to the Uttar Pradesh Police Technical Services Headquarters for confirmation.

(vi) In continuation ADG Technical Services Headquarters U.P. on 22.06.2018 informed the appellant in writing that all the items supplied by the respondent were working properly and the payment may be made to the respondent.

(vii) On the very same day i.e. 22.06.2018 the appellant issued a letter stating that on the basis of an inquiry conducted, by an Inquiry Committee, the work order dated 30.03.2019 issued in favour of the respondent was terminated and the performance Bank guarantee submitted by the respondent was confiscated.

(viii) This became the flash point of disputes between the parties. Since the parties had agreed to get their disputes resolved through arbitration, hence in pursuance of an order passed by the High Court dated

12.01.2021, passed in Arbitration Application No.7 of 2021, a Sole Arbitrator was appointed.

(ix) Before the Sole Arbitrator, the parties exchanged their pleadings, led evidence and thereafter the Sole Arbitrator made his award dated 04.02.2022 and allowed the claims of the respondent to the tune of Rs.8,99,38,275/- alongwith interest at the rate of 8% per annum from the date the said amount was due till the final payment was made.

(x) This award dated 04.02.2022 was challenged by the appellant before the Commercial Court No.2, Lucknow by filing a petition under Section 34 of the Act of 1996 which was registered as Arbitration Case No.43 of 2023. After hearing the parties, the Section 34 Court dismissed the petition of the appellant vide its judgment and order dated 15.12.2025 which has been made the subject matter of challenge in this appeal.

3. Shri S. C. Mishra, learned Senior Counsel duly assisted by Shri Rajesh Chadha, learned counsel for the appellant has attacked the award dated 04.02.2022 and the order dismissing the petition under Section 34 of the Act of 1996 dated 15.12.2025 on the following grounds:-

(i) Learned Senior Counsel urged that the initiation of the proceedings before the Sole Arbitrator was non-est as the statement of claim was filed by a dead person. A claim preferred by a dead person was non-est and no life could be infused subsequently and in such circumstances the proceedings were bad in the eyes of law.

(ii) Learned Senior Counsel further submitted that the appellant was merely a facilitator and the actual contracting party was the State of Uttar Pradesh through the Uttar Pradesh Police Technical Services, hence the claim petition suffered from the vice of non joinder of necessary and proper party and in absence thereof the claim petition was defective and could not have been acted upon nor the claims could have been allowed against the appellant.

(iii) Learned Senior Counsel further urged that the respondent alongwith two other bidders had concealed material facts and created a sort of a cartel to gain control and manipulate the bidding process in favour of the

respondent. This amounted to corrupt and fraudulent practice which led to an inquiry and in furtherance thereof the work order issued to the respondent was cancelled. This aspect has been completely misconstrued by the Sole Arbitrator as well as the Section 34 Court. Accordingly the award passed by the Sole Arbitrator was against the public policy of India.

(iv) Learned Senior Counsel for the appellant further submitted that the respondent firm was initially unregistered and was represented by two partners and even at the time of filing of the statement of claim, the claim petition was accompanied by a partnership deed relating to 2015 indicating that the firm was unregistered and had two partners.

(v) A specific objections was raised in light of the bar contained in Section 69 (3) of the Indian Partnership Act 1932 that the claim petition was barred and in order to overcome the said legal hurdle, the respondent firm introduced another partnership deed of the year 2018 indicating that the firm was registered and had three partners. Thus, the aforesaid fact clearly indicated the misrepresentation and fraudulent practice adopted by the respondent firm which vitiated the entire contract and thus the respondent could not be permitted to reap the benefit of their ill conceived action and this aspect of the matter, which amounted to a patent illegality, has not been considered by the Commercial Court while dismissing the Section 34 petition.

(vi) Lastly, it was submitted that the Commercial Court has merely reproduced the submissions of the respective parties but has failed to give its own reasons while rejecting the petition under Section 34 of the Act of 1996 which in effect renders the judgment dated 15.12.2025 as non reasoned and non speaking and on this ground alone the judgment dated 15.12.2025 deserves to be set aside and the matter deserves to be remanded to the Commercial Court for a decision afresh.

(vii) In support of his aforesaid submissions, learned Senior Counsel has relied upon the following decisions:- **Commissioner, Corporation of the City of Bangalore, Bangalore v. S. Ranganayaki Setlur, 1993**

SCC OnLine Kar 78, **Bai Pani Vankar v. Patel Madhabhai Galabhai, 1952 SCC OnLine Bom 126**, **Chitradhar Gogoi v. Lalit Chandra Gogoi, 1973 SCC OnLine Gau 22**, **Maulvi Issa Qureshi v. District Judge, (1996) 5 SCC 731**, **Nachimuthu Gounder v. Manikavalli, 1996 SCC OnLine Mad 255**, **Amar Kaur v. Sadhu Singh, 1960 SCC OnLine Punj 139**, **Mohd. Laiquiddin v. Kamala Devi Misra, (2010) 2 SCC 407**, **Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1**,**Ajay Madhusudan Patel v. Jyotrindra S. Patel, (2025) 2 SCC 147.**

4. Per contra, Shri Arohi Bhalla, learned Senior Counsel duly assisted by Shri Sunil Kumar Singh for the respondent refuted the aforesaid submissions of the appellant and made the following submissions.

(i) It was urged that in the instant cause the claim petition was filed by a partnership firm. Even though the technical Rules of C.P.C. may not be applicable to Arbitral proceedings but neverthless the broader principles do apply. In this case, it would reveal that the partnership firm which had initiated the Arbitral proceedings had living partners who were alive all along till the date of institution and even during the entire arbitral proceedings.

(ii) Even on the first date fixed by the Sole Arbitrator, admittedly one of the partners, namely Shiv Kumar Verma alongwith the counsel for the firm, had appeared in person and filed the Vakalatnama.

(iii) Time was granted to the firm to file its statement of claim and on the date of preparation and swearing of the claim petition, Shiv Kumar Verma a partner had signed the statement of claims on behalf of the firm. On account of outbreak of COVID-19 Pandemic, the proceedings before the Sole Arbitrator was deferred. Upon easing of the circumstances, the proceedings resumed before the Sole Arbitrator and the statement of claim was filed by the counsel for the firm, who on the said date of filing of the Settlement of Claim was not aware of the fact that Shiv Kumar Verma one of the parties of the firm had expired.

(iv) It was further pointed out that this ground was not taken by the appellant in the statement of defence. The respondent firm at the time of filing its rejoinder, before the Sole Arbitrator, brought the said facts on record, at the first give opportunity, hence it cannot be said that there was any concealment on behalf of the claimant/respondent.

(v) Even otherwise, the tenor and texture of the objection raised by the appellant before the Sole Arbitrator was not in the nature of the proceedings being non-est rather it was in the nature of seeking abatement of the proceedings by broadly, imputing the consequence of non substitution, in terms of Order XXII C.P.C., which was clearly not applicable.

(vi) It was also urged that the submission which has been raised by the learned Senior Counsel before this Court, was raised for the first time but even otherwise in light of principles contained in Order XXX Rule 4 C.P.C., the objections raised by the learned Senior Counsel does not hold water and must fail.

(vii) Learned Senior Counsel for the respondent further submitted that the issue regarding non impleadment of necessary and proper party must also fail for the reason that clear finding had been recorded by the Sole Arbitrator as well by as the Section 34 Court, indicating that the contract was between the appellant and the respondent. The termination order was issued by the appellant and the Bank guarantee were confiscated by the appellant. The non-payment for the goods delivered was also an obligation of the appellant, hence the appellant cannot shirk from its responsibility once the award has been passed against it.

(viii) Learned Senior Counsel for the respondent also urged that there was no fraud or creation of any cartel as alleged by the appellant. It was submitted that the tender was floated by the appellant. A corrigendum was issued by the appellant, changing certain condition of the tender on account of the fact that the items which were sought to be tendered were highly sophisticated and scientific in nature and there was only one original equipment manufacture (OEM) in the world and thus the

experience certificate which were available was common, as each bidder was deriving the experience from one common OEM and this was known to the appellant.

(ix) It was further urged that three separate firms put in their bid. One was the respondent and two others were private limited companies which had separate identity in law. Merely because the experience certificate was common with the three bidders, as all three derived the same through one OEM, hence it cannot be said that there was any misrepresentation or any fraudulent activity especially when the appellant knew that there was only one OEM in the world for the tendered items and this fact had led the appellant to issue the corrigendum.

(x) It was further submitted that all the bids were screened by the appellant and the bid of the respondent was found favourable. The appellant held negotiation with the respondent which led the respondent to reduce the prices and thereafter the work order was issued which was duly and faithfully executed by the respondent. When it came for the appellant to make the payment frivolous efforts were made to scuttle the payment, which led to the termination of the contract on 22.06.2018 in a mala fide manner.

(xi) The contract which was terminated was in contravention of the conditions of contract and without providing any opportunity to the respondent. This aspect of the matter was duly considered by the Sole Arbitrator and its findings are based on the evidence led by the respective parties. Thus finding based on appreciation of evidence cannot be said to be bad nor an award can be set aside on the ground that the Sole Arbitrator has come to a wrong conclusion, as it is not in the domain of Section 34 Court to reappraise the evidence. The findings of fact recorded by the Sole Arbitrator on the basis of evidence available on record are immune from challenge before the Section 34 Court and even this Court in appeal, would not enter into the forbidden arena of

reappraisal of evidence, as the scope of 37 of the Act of 1996 is even more narrow than the jurisdiction of the Section 34 Court.

(xii) Learned Senior Counsel for the respondent further submitted that the plea of the bar of Section 69 of the Partnership Act, 1932 is also misconceived inasmuch as it is the admitted case that on the date of institution of the statement of claim the respondent firm was duly registered. Moreover, the bar contained under Section 69(3) of the Partnership Act is not applicable to arbitration proceedings. Thus, the submission in this regard advanced by the learned senior counsel for the appellant that the claim petition suffered from the vice of the embargo contained in Section 69(3) of the Partnership Act, is erroneous and must be turned down.

(xiii) Learned Senior Counsel for the respondent submitted that the issues raised by the appellant before the Commercial Court, in their petition under Section 34 of the Act of 1996, was duly considered by the Commercial Court and after discussing the same and noticing width of its jurisdiction under Section 34, the same were turned down and it cannot be said that the order passed by the Commercial Court does not contain its independent reasons or that the order is non reasoned and non speaking.

(xiv) Thus, the award as well as the judgment of the Section 34 Court does not require any interference in this appeal and it must be dismissed. In support of his submissions, learned Senior Counsel for the respondent has relied upon the following decisions:- **Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218**, **Sumer Singh Galundia v. Jeevan Singh, 2022 SCC OnLine SC 2496**,**Upper India Cable Co. v. Bal Kishan, (1984) 3 SCC 462**, **Shivappa v. Shantavva, 2026 SCC OnLine SC 1566**, and **U.P. State Highways Authority Vs. Abhijeet Meerut Karnal Toll Road Limited, MANU/UP/1635/2026**.

5. The Court has heard the learned senior counsel for the parties and also perused the material on record.

6. At the outset it will be relevant to draw the perimeter of the scope of proceedings under Section 34 and 37 of the Act of 1996 to enable this Court to remain within the bounds of jurisdiction and examine the contentions of the respective parties. This Court in **M/s Abhijeet Meerut Karnal** (supra) had considered its earlier decision of **UCM Coal Company Limited v. Adani Enterprizes Ltd. 2025 SCC OnLine All 7608** wherein the boundaries of the Section 34 and Section 37 of the Act of 1996 were delineated with the aid of the leading decisions of the Apex Court on the said subject which have been noticed by this Court.

7. Moreover, the Apex Court in **Ramesh Kumar Jain v. Bharat Almunium Company Ltd. 2025 SCC OnLine SC 2857** had the occasion to consider the meaning of expression 'patent illegality' and with the aid of its earlier decision in **Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131**, the Apex Court explained the same in paragraph 34 to 36 which reads as under:-

> "34. What is clear, therefore, is that the expression “public policy of India”, whether contained in Section 34 or in Section 48, would now mean the “fundamental policy of Indian law” as explained in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to “Renusagar” understanding of this expression. This would necessarily mean that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] .
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> 35. It is important to notice that the ground for interference insofar as it concerns “interest of India” has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. This again would be in line with paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.
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> 36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of

> Indian law, as understood in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as understood in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , and paras 28 and 29 in particular, is now done away with."

8. The Apex Court recently in **Jan De Nul Dredging India (P) Ltd. v. Tuticorin Port Trust, (2026) 3 SCC 186** reiterated the scope of proceedings under Section 34 and appeal under Section 37 of the Act of 1996. The relevant paras 35 to 37 are being reproduced hereinafter for ready reference:-

> "35. The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.
> 36. In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the appellate court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The appellate court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The appellate court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement.
> 37. Undoubtedly, in the case at hand, the award of the Arbitral Tribunal is not contrary to any substantive provision of law or any provision of the Act. Yet, it has been disturbed by the appellate court, apparently by giving a different interpretation of the clauses of the licence agreement which jurisdiction was not vested in it. Ordinarily, the interpretation given by the Arbitral Tribunal, as affirmed by the court in exercise of powers under Section 34 of the Act ought to have been accepted."

9. Having noted the contours of the jurisdiction to be exercised by this Court in terms of Section 37 of the Act of 1996, now the stage is set to examine the contention of the respective parties.

10. Noticing the first submission advanced by the learned Senior Counsel for the appellant regarding the proceedings before the Sole Arbitrator to be a nullity, as the statement of claim dated 01.04.2021 filed before the Sole Arbitrator on 26.06.2021, by the counsel for the claimant/respondent herein, on behalf of dead person, being a nullity, is being examined for which certain timelines are important:-

- **12.01.2021:-** The Sole Arbitrator was appointed by the High Court in exercise of power under Section 11(6) of the Act of 1996.
- **20.03.2021:-**was the first date fixed by the Sole Arbitrator and on the said date, the counsel for the claimant firm alongwith Shiv Kumar Verma (partner of the respondent) appeared before the Sole Arbitrator and Vakalatnama on behalf of the firm was filed before the Sole Arbitrator. On the said date, two weeks' time was granted to the claimant to file its statement of claim with an advance copy to the appellant (respondent before the Sole Arbitrator) who could file its defence within three weeks thereafter and the next date fixed was 01.05.2021.
- **01.05.2021:-** On account of a lock down imposed due to COVID-19 Pandemic, the matter was adjourned and the parties were required to appear on 29.05.2021. Since the lock down continued, hence the next date was fixed for 26.06.2021.
- **26.06.2021:-** The counsel for the respondent (claimant before the Sole Arbitrator) appeared and filed the statement of claim dated 01.04.2021, before the Sole Arbitrator. A copy of the statement of claim had been sent to the appellant through speed post on 01.04.2021. The representative of the appellant before the Sole Arbitrator denied having received a copy of the statement of the claim. Hence, the claimant before the Sole Arbitrator undertook to serve another copy of the statement of claim in the office of the appellant and four weeks' time was granted to the appellant to file its statement of defence.

- **31.07.2021:-** On behalf of appellant, learned counsel filed its Vakalatnama before the Sole Arbitrator and prayed for three weeks' time to file the statement of defence. Time was granted and the next date fixed was 21.08.2021.

- **21.08.2021:-** The appellant before the Sole Arbitrator filed an application under Section 16 of the Act of 1996.

- **07.11.2021:-** The application moved by the appellant under Section 16 of the Act of 1996 was dismissed by the Sole Arbitrator and the appellant was granted further three weeks' time to file its statement of defence.

- **28.11.2021:-** Once again the appellant sought time to file its statement of defence. Time was extended by the Sole Arbitrator fixing 05.12.2021.

- **05.12.2021:-** Again an adjournment was sought by the appellant which was allowed and as a last opportunity time was granted to file the statement of defence.

- **19.12.2021:-** Once again a new counsel appeared on behalf of the appellant and filed his Vakalatnama and further three weeks' time was sought to file the statement of defence.

- **09.01.2022:-** Finally the statement of defence dated 07.01.2022 was filed and several objections were taken as part of its defence which included the objections regarding non implement of the State of U.P. through U.P. Police Technical Services Lucknow, as a party. The appellant in para-4 of its statement of defence had raised a plea regarding the bar contained in Section 69 of the Partnership Act of 1932 and in para-5 it raised the plea that the statement of claim was not signed by an authorized person nor the verification was in order and thus the statement of claim was not properly instituted and the claim petition was liable to be dismissed in limine. This fact apart, other pleas taken were on merits of the claim.

- **11.02.2022:-** The respondent filed its replication dated 11.02.2022. In the replication, it was stated that the partner of the claimant firm namely Shiv Kumar Verma had expired on 26.04.2021. Thereafter, an application was moved by the appellant dated 26.05.2022 praying for the proceedings to be dismissed as having abated.

- **17.04.2022:-** In light of the pleadings filed before the Sole Arbitrator, issues were framed and *inter alia* issue No.4 was to the effect whether the claim petition was filed by a duly authorized partner of the firm. This issue no.4 was dealt with by the Sole Arbitrator who decided the same against the appellant holding that the objections raised by the appellant that the claim petition was filed on behalf of dead person was not maintainable and it was turned down.

11. If this aspect of the matter is seen in light of the timelines noticed above, it would reveal that it is an undisputed fact that the claimant before the Sole Arbitrator was a partnership firm. The partner of the firm Shiv Kumar Singh alongwith his counsel had appeared before the Sole Arbitrator on 20.03.2021. Time was granted to the claimant to file its statement of claim fixing 01.05.2021 as next date. It is also not disputed that the statement of claim was prepared and signed on 01.04.2021. It is also not disputed that the date fixed before the Sole Arbitrator was 01.05.2021. The said date was postponed on account of the lock down imposed in light of COVID-19 Pandemic. The next date fixed was 29.05.2021 and the said date again was postponed on account of lock down, fixing 26.06.2021. It is on this fixed date i.e. 26.06.2021 that the counsel for the firm only appeared before the Sole Arbitrator and filed the statement of claim dated 01.04.2021.

12. Apparently, on 01.04.2021 the partner who had signed the statement of claim was alive. It is also not disputed that on the first date fixed by the Sole Arbitrator both, the partner Shiv Kumar Verma and the said counsel appearing on behalf of the firm were present and had filed

the Vakalatnama, before the Arbitrator. Since two dates which were fixed i.e. 01.05.2021 and 29.05.2021 fell during lock down and were adjourned and the statement of claim came to be filed on 26.06.2021 and in this interregnum one of the partners of the firm namely Shiv Kumar Verma died on 26.04.2021. Thus, the position that emerges is that on the date of preparation and signing of the statement of claim Shiv Kumar Verma the partner was alive but on the date of submission of the said statement of claim before the Sole Arbitrator, the said partner had died.

13. In this background, it would be seen that the claim petition came to be filed on behalf of a firm. The firm is a collective name of its partners. Even if one partner had died but the remaining partner were alive, which fact came to be informed while filing the replication and once the claimant was a partnership firm, hence, borrowing the principles of Order XXX C.P.C., the proceedings were to go on and it would not abate.

14. Though the provisions of C.P.C. are not strictly applicable to arbitration proceedings as provided in Section 19 of the Arbitration & Conciliation Act 1996 yet for the purposes of noticing the fact that if a particular situation of this nature would arise before a Civil Court where the provisions of C.P.C. are applicable with all its rigors then whether the proceedings would abate.

15. In this regard, it would be relevant to consider Order XXX Rule 4 C.P.C. and it is being reproduced hereinafter:-

ORDER XXX

Suits By or against firms and persons carrying on business in names other than their own

1.xxxxx
2.xxxxx
3.xxxxx

(4). Rights of suit on death of partner.— (1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872), where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise effect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors."

16. Applying the aforesaid provisions to the situation at hand, where the proceedings were initiated by a firm, then upon the death of one partner, the legal heirs are not required to be impleaded, nor in its absence the suit would abate.

17. Now, at this stage Section 99 C.P.C. may also be noticed which is being reproduced hereinafter:-

> "**99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.**— No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder [or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:
> [Provided that nothing in this section shall apply to non-joinder of a necessary party.]"

18. Thus the position obtained in law would be that where in civil proceedings covered by Order XXX and Section 99 C.P.C. a suit filed by a firm would not abate and any error of incorrect filing or minor defect not touching the jurisdiction, relating to filing of the plaint, would only be a curable defect as it does not impact the jurisdiction nor it causes any prejudice, hence, such a ground would not affect the final judgment.

19. Thus, for the same reasons, in an Arbitral proceedings, where the rules of C.P.C. are not strictly applicable and in such circumstances where the appellant has not been able to express or demonstrate any serious prejudice caused and the said plea raised did not have any bearing on the merits, hence, the plea raised by the appellant that the statement of claim was bad or non-est for being instituted with some irregularity does not come to the aid of the appellant.

20. It will be worthwhile to notice that the specific issue raised by the learned Senior Counsel for the appellant is relatable to a procedural irregularity and whether such irregularity had an impact on the merits of the matter or affecting the jurisdiction of the Sole Arbitrator could not be demonstrated as to leading the proceedings to be non-est. Moreso, the learned Senior Counsel could not establish any prejudice caused to the appellant affecting the right to contest except for the submission that on

the date of submission of the statement of claim one partner who had signed the claim petition earlier was not alive.

21. This Court in **Abhijeet Meerut Karnal Toll** (supra) had the occasion to consider a similar proposition where in Arbitral proceedings certain documents were alleged to have been taken on record and without allowing a party to file any document in response and at a stage when the arguments were over and the said party had also taken a plea that the Arbitral Tribunal had not afforded an opportunity and yet gave its findings on the basis of such documents, for which the aggrieved party was not granted a chance to rebut. This Court after taking note of Section 19 of the Act of 1996 in paras-88 to 90 and 93 to 97 and 99 held as under:-

> "88. In this regard, it can unhesitantly be said that the Arbitral Tribunal is not bound by any technical rules of procedure and it has the right to formulate its own procedure subject to adherence to the principles of natural justice and providing equal treatment to the parties.
> 89. In the instant case, apparently, the Arbitral Tribunal held a clarificatory hearing on 17.11.2016 and after taking note of the objections of UPSHA, it clearly held that the documents were being taken on record, subject to its relevancy and admissibility, which was to be considered while dealing with the merits of the issues, to which the said documents related. In absence of any prohibition in law and certainly no embargo was placed by the parties, while agreeing on the procedure to be followed during the proceedings, hence, it cannot be said that the Arbitral Tribunal did not possess the jurisdiction or authority to hold a clarifactory hearing and to prime facie consider whether the documents filed after conclusion of arguments, could be taken on record.
> 90. Furthermore, once an order was passed by the Arbitral Tribunal on 05.01.2017, that it was taking the said documents on record, then at that stage, it was open for UPSHA to have raised objections both in context of its relevancy and admissibility. At this very stage UPSHA could have sought leave to file documents in rebuttal in case it desired to bring some documents on record.
> 93. In this backdrop, merely to submit that the documents were taken on record without adjudicating the relevancy and admissibility of the said documents, may be a procedural infraction, but how it affected the merits of the matter or went to the roots of the matter could not be visibly demonstrated especially when hearing was given before taking the documents on record and there was no procedural embargo which prevented the Arbitral Tribunal to take the documents on record at a subsequent stage. Thus, for the aforesaid reasons, the first facet of the issue relating to procedural irregularity does not impress this Court.
> 94. Now, the other facet which requires consideration is as to whether any prejudice has been caused to UPSHA, for the alleged procedural irregularity. If examined in the aforesaid backdrop of facts, it can unequivocally be said that neither UPSHA pleaded any consequent failure of justice nor it could demonstrate as to how UPSHA has been prejudiced by taking the documents on record.

> 95. If any procedural irregularity which impacts the jurisdiction of the Arbitral Tribunal to try the matter before it or it has the impact of violating principles of natural justice which is occasioned with a failure of justice, can definitely be looked into and in a befitting case, can even be a ground for setting aside the award provided it can be established that one party due to such procedural irregularity was unable to present its case effectively and in its entirety. This particular ingredient is completely missing in the instant case.
> 96. The learned Senior Counsel for UPSHA could not demonstrate as to how the said three documents merely by being taken on record at a subsequent stage prejudiced UPSHA. It also could not be demonstrated as to which documents in rebuttal was proposed to be submitted by UPSHA and such opportunity was asked for but refused or ignored.
> 97. Not every procedural irregularity can have the effect of vitiating an award nor would it permit the Court under Section 34 or this Court under Section 37 of the Act of 1996 to interfere. It will also be relevant to notice that Section 5 of the Arbitration and Conciliation Act, 1996 clearly proscribes judicial intervention in arbitral proceedings, except in limited cases.
> 99. Thus, the issue of procedural irregularity as raised by learned Senior Counsel for UPSHA does not impress this Court to intervene in appeal for setting aside the award, accordingly, the first submission on behalf of UPSHA relating to procedural irregularity is turned down."

22. The Apex Court in **Upper India Cable Company and others** (supra) had an occasion to consider whether in respect of a firm, upon death of a party whose legal heirs are not substituted, in such a situation whether the proceedings would abate. In this context the Apex Court in paras-10 and 11 held that the questions of not substituting legal heirs does not arise and the relevant portion reads as under:-

> "10. Therefore, we posed a question to the learned counsel for the respondent whether on the death of a proper party whose heirs and legal representatives are not substituted and when no relief was claimed against such a party would the suit or appeal abate more so when the parties against whom relief is claimed is very much there and is prosecuting its appeal. Learned counsel for the respondent had no specific reply to this question except saying that “if the firm is abolished and some new firm is created the plaintiff may not take any notice of it”. We are at a loss to understand “abolition are creation of firms”.
> 11. The position boils down to this that two of the partners who were appellants along with the firm in the second appeal before the High Court died pending the appeal. It is nobody case that the heirs and legal representatives of the deceased partners joined the firm or they were entitled to be taken in as partners in place of the deceased partners as partners in the firm. Therefore, the question to be answered is whether on the death of two of the proper or formal parties impleaded in their capacity as partners by the plaintiff along with the firm, in absence of substitution of heirs and legal representatives the appeal abates? The answer is in the negative. Therefore, the question of substituting heirs and legal representatives of the two proper formal parties does not arise and the death has no impact on the proceeding. The appeal cannot abate. Therefore, the High Court was in error in disposing of the appeal as having abated."

23. The Apex Court in **Sumer Singh Gulandia** (supra) considering a similar issue relating to substitution of a party in case of a firm, in paras 8 to 11 held as under:-

> "8. There is no gainsaid that where two persons have sued in the name of a partnership firm and if one of such persons dies during the pendency of the proceedings, it is not necessary to join the legal representatives of the deceased as a party to such proceedings, which shall continue in accordance with law. In other words, the death of one of the partners does not foreclose the continuation of the civil proceedings initiated by the firm. In this view of the matter, the death of Shiv Singh Galundia could not be a valid reason to declare the First Appeal to have abated.
> 9. Further, the legal representatives of the deceased - Shiv Singh Galundia had already applied for their impleadment in substitution of the deceased and there was no reason for the High Court to decline such a prayer when the application was moved in time without any other legal impediment in accepting their prayer.
> 10. It also appears to us that the High Court has completely misconstrued the view taken by this Court in AVK Traders v. Kerala State Civil Supplies Corporation Limited, (2013) 15 SCC 217. This Court in para 12 of the said decision has held as under:
> "12. We are in this case faced with a situation of a registered partnership firm, consisting of only two partners, filing a suit when both the partners were alive and during the pendency of the suit, one of the partners died and legal heir of the deceased partner did not show any interest either in the assets of the firm or in the liabilities and had refused to join as a partner. The question is, on dissolution of the partnership firm on the death of the partner, could the suit already filed be proceeded with by the remaining so-called partner? We notice that the subordinate court has allowed that prayer possibly bearing in mind the principle laid down in Order 22 Rule 10 CPC, which deals with the procedure in case of assignment before the final order of the suit. Rule 10 refers to "devolution of any interest" during the pendency of the suit. In such a case, the court can grant leave to prosecute the suit against the person to or upon whom such interest has been devolved. Admittedly, the partner who died is none other than the father of the appellant and the other sole surviving heir is his sister. The sister is admittedly not interested in joining the firm and, therefore, she is not taking over the assets and liabilities of the firm. Therefore, there has been a complete devolution of interest in favour of the appellant. Under the circumstances, the subordinate court had allowed the amendment and permitted the appellant to proceed with the suit, granting necessary amendment, which, according to the subordinate court, was necessary for a proper and effective adjudication of real dispute between the parties. The High Court, in our view, by taking a hypertechnical approach held that if such a prayer is allowed, the same would alter the nature and character of the suit. In our view, such a stand cannot be countenanced considering the peculiar facts and circumstances of the case."
>
> [emphasis applied]
> 11. Para 13 of the above-mentioned judgment cannot be said to have held the suit would stand abated in the event of death of one of the partners where the partnership firm comprises two partners. What this Court has observed is that where one of the several partners dies in the suit instituted in the name of the partnership firm "as compared to when one of the two partners of the partnership firm dies", the decree so granted

> would not be executable even if the partnership firm succeeds in the suit. It does not mean that the suit stands abated."

24. Thus, in light of the aforesaid discussion and the dictum of the Apex Court as noticed above, this Court finds that procedural irregularities which do not impact the merits of the matter cannot be a ground to set aside a judgment/an award. In Arbitral proceedings where the Rule of C.P.C. are not strictly applicable in such cases merely by raising an issue of procedural irregularity would not vitiate the award unless it is established that the said issue of procedural irregularity was raised at the first given opportunity and the same led to substantial prejudice which impacted the jurisdiction of the Arbitral Tribunal or the case on merits.

25. As far as the decision cited by the learned Senior Counsel for the appellant in **S. Ranganayaki Setlur** (supra), **Patel Madhabhai Galabhai** (supra), **Chitradhar Gogoi** (supra), **Maulvi Issa Qureshi** (supra), **Nachimuthu Gounder** (supra) and **Amar Kaur** (supra) all decisions are relatable to individual parties and is not in context with a partnership firm which is governed by the provisions of Order XXX C.P.C. and more so they are not in context with Arbitral proceedings where provisions of C.P.C. are not strictly applicable. Thus, the said decisions do not come to the aid of the appellant.

26. In the instant case the crux of the submission was that on the date of presentation of the statement of claim, the partner who had signed the claim petition was dead (even though on the date of signing of the statement of claim the said partner was alive). In this view and taking note of the provisions of Order XXX C.P.C., it would reveal that the issue of substitution in terms of Order XXII C.P.C. is not attracted nor the consequence for non-substitution as provided in Order XXII such as abatement are also not attracted. The plea raised before the Sole Arbitrator was in context of abatement and not that the statement of claim was void or that the arbitrator did not have the jurisdiction to entertain it. Thus, it would be seen that it was merely a technical objection which was raised before the Sole Arbitrator which did not

impact the merits of the claim or the jurisdiction of the Sole Arbitrator. Moreover, the appellant also could not establish any prejudice which may have been caused for entertaining the statement of claim. Accordingly, the first submission of the learned Senior Counsel for the appellant does not impress this Court and is accordingly turned down.

27. The next submission advanced by the learned Senior Counsel for the appellant was in context with non-joinder and misjoinder of necessary and proper parties. In this regard, it was submitted that the appellant was merely a facilitator and the contract was actually between the State of U.P. through Uttar Pradesh Police Technical Services and the respondent, and in absence of the State of U.P. which was a necessary party, the claim could not have been allowed.

28. As far as this submission is concerned, the record would indicate that the tender inviting bids for the purposes of supply of specialized equipment for setting up of Forensic Science Laboratory was floated by the appellant. The screening of the bids was done by the appellant. The appellant shortlisted the eligible bidder and also entered into negotiations with the bidder. It was the appellant who had finally selected and issued the work order, and the correspondence also took place between the appellant and the respondent. The termination order dated 22.06.2018 was also issued by the appellant and thus it is seen that right from floating the tender till the issuance of termination letter, the entire chronological sequence of events giving rise to a cause of action was between the appellant and the respondent. Hence, it cannot be said that the proceedings were faulty on account of non-impleadment of the State who was a necessary party.

29. It will also be relevant to notice that the aforesaid chronology which has been delineated above is not in dispute. It may be true that the appellant did not undertake the exercise for itself, rather it was done for the Uttar Pradesh Police Technical Services who were interested in setting up a Forensic Science Laboratory at Varanasi, but the fact

remains that this aspect was completely outsourced to the appellant who undertook the exercise and it is a separate legal entity.

30. As far as the privity of contract is concerned, that was between the appellant and the respondent. There was no privity of contract between the respondent and Uttar Pradesh Police Technical Services, which may be an arm of the State of U.P. itself. Nevertheless, the appellant is a Government Corporation which has its separate legal identity and has full freedom to contract and even though the State of U.P. may have its deep and pervasive control, but that by itself will not amount to creating a privity of contract between the State/Uttar Pradesh Police Technical Services and the respondent.

31. The reliance placed by the learned Senior Counsel on the decision of the Apex Court in the case of **Cox and Kings Limited** (supra) and **Ajay Madhusudan Patel** (supra) would reveal that in the aforesaid cases, the Apex Court was considering the issue of group of companies doctrine.

32. The Apex Court in **Cox and Kings** (supra) though approved the applicability of group of companies doctrine, but it is not as if the said doctrine applies universally to all corporations. Before its applicability, there are certain tests which have to be mustered successfully and further, the burden of proving the same is also on the party which invokes the said doctrine. The Apex Court clearly stated that for applying the group of companies doctrine, the court, the tribunal, or the authority will have to consider that all the factors which have been considered and noticed by the Apex Court in the case of Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises Pvt. Ltd., (2022) 8 SCC 42, must be found to be existing and in paragraphs 93 to 97, 100, 101, 103 held as under:-

> **"93.** Moreover, since the companies in a group have separate legal personality, the presence of common shareholders or Directors cannot lead to the conclusion that the subsidiary company will be bound by the acts of the holding company. The statements or representations made by promoters or Directors in their personal capacity would not bind a company. Similarly, the mere fact that the two companies have common shareholders or a common Board of Directors will not constitute a sufficient ground to conclude that they are a single economic entity. The

single economic entity or the single economic unit theory imposes general enterprise liability on the corporate group. In D.H.N. Food Distributors Ltd. v. Tower Hamlets London Borough Council [D.H.N. Food Distributors Ltd. v. Tower Hamlets London Borough Council, (1976) 1 WLR 852 (2) (CA)] , Lord Denning held that a group of three companies should be treated as a single economic entity on the basis of two factors : first, the parent company owned all the shares of the subsidiary companies to the extent that it controlled every movement of the given subsidiary companies; and second, all the three companies in the group virtually acted as partners and could not be treated separately. Thus, the determination of whether two or more companies constitute a single economic entity depends upon the concerted efforts of the companies to act in pursuance of a common endeavour or enterprise.

94. From the above discussion, we can infer that entities within a corporate group have separate legal personality, which cannot be ignored save in exceptional circumstances such as fraud. The distinction between a parent company and its subsidiary is fundamental, and cannot be easily abridged by taking recourse to economic convenience. [Bank of Tokyo Ltd. v. Karoon, 1987 AC 45 : (1986) 3 WLR 414 (CA)] Legally, the rights and liabilities of a parent company cannot be transferred to the subsidiary company, and vice versa, unless, there is a strong legal basis for doing so.

(ii) Adopting a pragmatic approach to consent

95. In the context of arbitration law, the intention of the parties has to be derived from the words used in the arbitration agreement. While construing the arbitration agreement, it is the duty of the Court to not delve deep into the intricacies of the human mind, but only consider the expressed intentions of the parties. [Kamla Devi v. Takhatmal, 1963 SCC OnLine SC 131 : AIR 1964 SC 859; Bangalore Electricity Supply Co. Ltd. v. E.S. Solar Power (P) Ltd., (2021) 6 SCC 718] The words used in the contract reflect the commercial understanding between the parties. The intention of the parties has to be ascertained from the words used in the contract, considered in light of the surrounding circumstances and the object of such contract. [Bank of India v. K. Mohandas, (2009) 5 SCC 313 : (2009) 2 SCC (Civ) 524 : (2009) 2 SCC (L&S) 32; M. Dayanand Reddy v. A.P. Industrial Infrastructure Corpn. Ltd., (1993) 3 SCC 137]

96. An arbitration agreement encapsulates the commercial understanding of business entities as regards to the mode and manner of settlement of disputes that may arise between them in respect of their legal relationship. In most situations, the language of the contract is only suggestive of the intention of the signatories to such contract and not the non-signatories. However, there may arise situations where a person or entity may not sign an arbitration agreement, yet give the appearance of being a veritable party to such arbitration agreement due to their legal relationship with the signatory parties and involvement in the performance of the underlying contract. Especially in cases involving complex transactions involving multiple parties and contracts, a non-signatory may be substantially involved in the negotiation or performance of the contractual obligations without formally consenting to be bound by the ensuing burdens, including arbitration.

97. Modern commercial reality suggests that there often arise situations where a company which has signed the contract containing the arbitration clause is not always the one to negotiate or perform the underlying contractual obligations. In such situations, emphasis on formal consent will lead to the exclusion of such non-signatories from the ambit of the arbitration agreement, leading to multiplicity of proceedings and fragmentation of disputes. In A. Ayyasamy v. A. Paramasivam [A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386 :

(2017) 1 SCC (Civ) 79] , this Court observed that it is the duty of the Courts "to impart to that commercial understanding a sense of business efficacy". The Courts must interpret contracts in a manner that would give them a sense of efficacy rather than invalidating the commercial interests of the parties. The meaning of the contract must be gathered by adopting a common sense approach, which should "not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation". [Union of India v. D.N. Revri & Co., (1976) 4 SCC 147] Therefore, there is a need to adopt a modern approach to consent, which takes into consideration the circumstances, apparent conduct, and commercial facets of business transactions.

100. Arbitration law is an autonomous legal field. While the main purpose of corporate law and contract law is imputation of substantive legal liability, the main purpose behind the law of arbitration is to determine whether an Arbitral Tribunal has jurisdiction over the dispute arising between parties to an arbitration agreement. On the one hand, the Courts and tribunals cannot lightly brush aside the decision of the parties to not make a person or entity a party to the arbitration agreement. The fact that the non-signatory did not put pen to paper may be an indicator of its intention to not assume any rights or responsibilities under the arbitration agreement. On the other hand, courts and tribunals cannot adopt a rigid approach to exclude all persons or entities who, through their conduct and relationship with the signatory parties, intended to be bound by the underlying contract containing the arbitration agreement. The area of arbitration law not only concerns domestic law, but it also encompasses the international law, particularly when it pertains to the enforcement of international arbitral awards. Therefore, this Court ought to adopt a balanced approach without comprising (quaere compromising) on the basic principles of arbitration law, contract law, and company law to ensure that the resultant legal framework is consistent with internationally accepted practices and principles.

101. A formalistic construction of an arbitration agreement would suggest that the decision of a party to not sign an arbitration agreement should be construed to mean that the mutual intention of the parties was to exclude that party from the ambit of the arbitration agreement. Indeed, corporate entities have the commercial and contractual freedom to structure their businesses in a manner to limit their liability. However, there have been situations where a corporate entity deliberately made an effort to be not bound by the underlying contract containing the arbitration agreement, but was actively involved in the negotiation and performance of the contract. The level of the non-signatory party's involvement was to the extent of making the other party believe that it was a veritable party to the contract, and the arbitration agreement contained under it. Therefore, the Group of Companies doctrine is applied to ascertain the intentions of the parties by analysing the factual circumstances surrounding the contractual arrangements. [Gary Born, International Arbitration Law and Practice, (3rd Edn., 2021) at p. 1568.]

(iii) Group of Companies doctrine — A fact based doctrine

103. The Group of Companies doctrine is used in the context of companies which are related to each other by virtue of their being a part of the same corporate group. Since every company in a group has a separate legal personality, a contract formally entered by one member of a group will not be binding on the other members by virtue of the limited liability principle. The Group of Companies doctrine is used to bind a non-signatory company within a group to an arbitration agreement which has been signed by other member of the group. [UNCITRAL, "Settlement of Commercial Disputes : Possible uniform rules on certain issues concerning settlement of commercial disputes : Conciliation, interim

> measures of protection, written form of arbitration agreement : Report of the Secretary General" A/CN.9/WG.II/WP.108/Add.1 (26-1-2000).] The underlying basis of the Group of Companies doctrine rests on maintaining the corporate separateness of the group companies while determining the common intention of the parties to bind the non-signatory party to the arbitration agreement. In other words, the Group of Companies doctrine is a means of identifying the common intention of the parties to bind a non-signatory to arbitration agreement by emphasising and analysing the corporate affiliation of the distinct legal entities. [Gary Born, International Arbitration Law and Practice, (3rd Edn., 2021) at p. 1563.]"

33. Applying the aforesaid principles to the facts of the instant case, it would reveal that apart from taking the plea of the State being a necessary party, the appellant did not lead any evidence in this context to make the group of companies doctrine applicable in the instant case. In absence of the evidence, even the decision of the Apex Court in **Ajay Madhusudan Patel** (supra) does not come to the aid of the appellant.

34. In the aforesaid backdrop, the plea of non-joinder of party as taken by the appellant was turned down by the Sole Arbitrator, and it also did not find favour with the Section 34 Court, and for the reasons indicated, this Court does not find that the view taken suffers from any patent illegality which may persuade this Court to interfere in appeal under Section 37 of the Act of 1996. Hence, the said plea is also turned down.

35. The next submission as advanced by the learned Senior Counsel was revolving around the plea that the respondent had obtained the contract by concealing material facts and resorting to fraud, which led to manipulating the bidding process.

36. If the aforesaid plea is taken into consideration, the record before the Sole Arbitrator would reveal certain dates and timelines which are relevant for proper consideration of the aforesaid plea and is being noticed hereinafter:

(a) The tender was floated by the appellant on 02.02.2018. This was followed by a corrigendum issued by the appellant on 08.02.2018. The respondent (a partnership firm) and two other private limited companies had put in their bid. The bid was screened by a committee of the appellant.

(b) The appellant found the bid of the respondent to be favorable and entered in negotiations and thereafter finalized the bid. The appellant on 30.03.2018 issued the work order, and in pursuance thereof, the respondent supplied all 31 items to the appellant and, on its directions, it was delivered at Varanasi where the FSL was to be set up, and all the items were not only delivered but they were installed and they were functioning to the satisfaction of the appellant.

(c) There is apparently no material on record or evidence led by the appellant to indicate that there was any fault in the items so supplied. There is no material or evidence to suggest that the items which were supplied, installed, and demonstrated suffered from any malfunction; rather, on the contrary, the evidence suggests that the said items after its installation were functioning satisfactorily, and a certificate to the aforesaid effect was also issued.

(d) There is no material to suggest that the respondent had made any manipulation to rig the bid in its favor. There is no material to suggest that the Tender Screening Committee had been influenced to hold/approve the bid of the respondent.

(e) It could not be disputed by the appellant that the OEM of the tendered items was just one company manufacturing across the globe. It is also not the case of the appellant nor proved that the corrigendum was issued to tailor-make the bid for the respondent.

(f) The records indicate that a P.I.L. came to be filed before the High Court on 15.05.2018 wherein certain allegations were raised regarding the aforesaid contract, but the said PIL was dismissed as withdrawn on 28.05.2018, i.e. within 13 days of its filing.

(g) The record also suggests that some lawyer (without disclosing its credentials) made a complaint on 18.06.2018 to the State Government. The State Government on 19.06.2018 required the appellant to furnish its report by 20.06.2018.

(h) The record also indicates that a five-member Committee was constituted to look into the said allegations, and the first meeting of the

said five-member Committee was held on 20.06.2018. It is also not disputed that the appellant at no point of time was ever issued any notice nor called for any response from the respondent.

(i) The five-member Committee, which held its first meeting on 20.06.2018, submitted its report on 21.06.2018, which was forwarded to the State Government on 21.06.2018, and on 22.06.2018 the appellant issued the termination notice.

37. It is in this backdrop that the learned Senior Counsel for the respondent submitted that there was no notice issued to the respondent and a decision was taken behind the back in an arbitrary manner, whereas Condition No. 6.17 of the contract provided that the appellant would issue a 30 days prior notice before terminating the contract. It was further pointed out that the appellant constituted a five-member Committee vide letter dated 16.06.2018. It was pointed out that on 16.06.2018 there was no request nor there was material before the appellant to have constituted the committee, especially when 16.06.2018 was a public gazetted holiday (Eid-ul-Fitr).

38. It was also pointed out that the complaint made by a lawyer was on 18.06.2018, and that was addressed to the State Government, and by then the PIL which was instituted on 15.05.2018 had been dismissed as withdrawn on 28.05.2018. Hence, on the date of constituting a five-member Committee, there was no material before the appellant to have constituted such a Committee nor there was any request by the State to give its response.

39. It was also pointed out that admittedly the Committee held its first meeting on 20.06.2018 and it gave its report on 21.06.2018, and during this entire period there was no intimation to the respondent nor any response was sought from the respondent by the appellant which needless to say was *sine qua non* for validly terminating the contract as per Condition 6.17.

40. This aspect was the subject matter of the arbitral dispute and the Sole Arbitrator had framed a specific issue No. 2 in this regard. A plea of

fraud or corrupt practice is easier to plead than to establish the same. Unless a plea is established by cogent evidence, it cannot form the basis of any finding. In case if the evidence is not led or evidence is not sufficient to establish the said fact of fraud or corrupt practice till then it merely remains a plea.

41. It is in this context, if the award passed by the Sole Arbitrator is seen, it would indicate that it has noticed the relevant evidence which was exhibited before it, and it also noticed Condition 6.17 and taking the timelines and the material on record, it found that the appellant had failed to establish the respondent's involvement in any corrupt or fraudulent practice and that the appellant had not even issued a notice to the respondent calling upon him to respond and in such circumstances the termination order dated 22.06.2018 was found to be bad in law. Apparently, these are pure findings of fact, and the same have been recorded after consideration of the material and evidence on record.

42. The learned Senior Counsel for the appellant could not demonstrate any evidence which was led by the appellant and it was ignored by the Sole Arbitrator. The plea raised by the appellant that the respondent had sort of created a cartel to manipulate the bid and obtain the contract was also considered, and on the basis of evidence it was held by the Sole Arbitrator that the said plea was not proved.

43. In circumstances where a finding of fact has been returned by the Sole Arbitrator based on material evidence available on record, such a finding is immune from challenge before the Section 34 Court or in appeal under Section 37 of the Act of 1996, unless such a finding is shown to be patently illegal. The patent illegality test has already been noticed by this Court in the paragraphs hereinbefore, and this Court finds that the aforesaid plea of fraud and corrupt practice does not fit in the standards set up for upsetting a finding of fact on the ground of being patently illegal.

44. As far as the submission that the corrupt practices fall within the clause of Section 34 of the Act of 1996 as it affect the public policy of

India is concerned, it is also not made out for the reason that even if a plea of fraud and corrupt practice has been taken, yet it was to be established by evidence. Once the plea of fraud and corrupt practice itself could not be proved on the basis of evidence, then it essentially being a finding of fact and it will not permit this Court to enter into the arena of re-appreciation of evidence especially when it could not be shown that any material evidence was left out from consideration or finding is based on no evidences. Moreover, no explanation could be offered by the learned Senior Counsel for the appellant to establish the plea of formation of a cartel and if it was so then in the first place all the material was before the Tender Scrutiny Committee who scrutinized the tender but could not find any illegality or irregularity. There was no evidence to show as to how the cartel was formed especially when the appellant themselves have issued a corrigendum regarding one of the conditions of the contract and how it manipulated the bidding process leading it to be in favour of the respondent.

45. Thus, for the aforesaid reasons, the said plea of the appellant that the contract was vitiated on account of fraud and corrupt practice is not made out; consequently, the finding returned by the Sole Arbitrator, it does not fall within the patent illegality test. nor under the public policy of India test. Hence, for the aforesaid reasons, this Court is not able to persuade itself to interfere with findings of fact merely because the appellant has used the words "corrupt practice" and "fraud" but failed to establish the same in accordance with law.

46. Another ground of challenge raised by the learned Senior Counsel for the appellant was in context with some discrepancy in the partnership deed submitted by the respondent. If the aforesaid plea is taken note of, it would reveal that on the date of submitting its bid, the partnership of the respondent was not registered. However, the partnership came to be registered on 17.06.2019. The arbitration proceedings were initiated in the year 2021, and it is not disputed that on the first date of appearance before the Sole Arbitrator, the firm had already been registered. Thus, the bar contained under Section 69(3) of the Partnership Act, 1932,

apparently is not attracted and even otherwise, in light of the decision of the Apex Court in **Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society Limited, (2016) 11 SCC 313** wherein it was held that the bar under Section 69(3) of the Partnership Act, 1932 is not attracted to arbitral proceedings.

47. Lastly, considering the submission regarding the order of the Section 34 Court to be non-reasoned and non-speaking and a request for remand also does not evoke any favourable response from this Court for the reason that the scope of Section 34 of the Act of 1996 is narrow. Not every plea can be seen or can be made the subject matter of challenge unless such a finding is perverse or patently illegal, or impacts the jurisdiction of the Arbitral Tribunal or it goes to the roots of the matter.

48. In the instant appeal, all the aforesaid aspects including the substantive plea raised by the counsel for the appellants have been noticed and considered. The reasoning given by Section 34 Court may not always have to be very elaborate. Even if a plea has been taken, considered and decided in brief but with reasons which otherwise may not be incorrect, an order of remand cannot be made in a routine manner.

49. This aspect of the matter was recently considered by the Apex Court in **Shivappa** (supra) wherein it relied upon earlier decisions of the Apex Court and in paragraphs nos. 13, 14, 16 and 17, held as under:-

> "**13.** In the circumstances of the case, the question for consideration is whether the remand for reconsideration of the prayer for partition and declaration regarding Item No. '5' in the Impugned Judgment is valid in law.
>
> **14.** Before reverting to the reasons in the Impugned Judgment, a few leading precedents on the point, including the one on which the Defendant No. 2 has relied, are referred to.
>
> **14.1** In Ashwini Kumar (supra), this Court has held as follows:
>
> > "8. In our view, the High Court should not ordinarily remand a case under Order 41 Rule 23 CPC to the lower court merely because it considered that the reasoning of the lower court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself decided the appeal one way or the other. It could have considered the various aspects of the case

mentioned in the order of the trial court and considered whether the order of the trial court ought to be confirmed or reversed or modified. It could have easily considered the documents and affidavits and decided about the prima facie case on the material available. In matters involving agreements of 1980 (and 1996) on the one hand and an agreement of 1991 on the other, as in this case, such remand orders would lead to further delay and uncertainty. We are, therefore, of the view that the remand by the High Court was not necessary."

In P. Purushottam Reddy v. Pratap Steels Ltd., this Court was of the view that:

"11. It is true that a specific issue was not framed by the trial court. Nevertheless, the parties and the trial court were very much alive to the issue whether Section 16(c) of the Specific Relief Act was complied with or not and the contentions advanced by the parties in this regard were also adjudicated upon. The High Court was to examine whether such finding of the trial court was sustainable or not — in law and on facts. Even otherwise the question could have been gone into by the High Court and a finding could have been recorded on the available material inasmuch as the High Court being the court of first appeal, all the questions of fact and law arising in the case were open before it for consideration and decision."

In Zarif Ahmad(Dead) Through LRs. v. Mohd. Farooq, it was held:

"13. No doubt, Section 107 CPC empowers the appellate court to remand a case, but it simultaneously empowers the appellate court to take additional evidence or to require such evidence to be taken. Rule 24 Order 41 CPC provides that where evidence on record is sufficient, the appellate court may determine the case finally. It is not a healthy practice to remand a case to the trial court unless it is necessary to do so as it makes the parties to wait for the final decision of a case for the period which is avoidable. Only in rare situations should a case be remanded, e.g., when the trial court has disposed of a suit on a preliminary issue without recording evidence and giving its decision on the rest of the issues, but it is not so in the present case."

_____****_____*******

16. The reason for remand assigned by the High Court is that, despite a plea that the Sale Deed dated 28.06.1982 is sham and nominal, no issue was framed. We have perused the Plaint and Written Statement. Issue No. 2, excerpted supra, is a comprehensive issue regarding the partition dated 04.01.1980. Similarly, Issue No. 3 covers the sale of Item No. '5' of the Suit Schedule in favour of Defendant No. 2, whether valid or not. Therefore, the Trial Court has not decided the Suit without relevant issues being presented by the pleadings of the parties. In our view, remand is not to be adopted as a matter of ordinary course, and the Judgment of remand reflects the Appellate Court's incorrect exercise of its discretion. In the case at hand, the parties have adduced oral and documentary evidence in accordance with the burden and onus of proof fastened on them.

> At this stage, directions are given to reframe issues, adduce further evidence, and afford the parties a further opportunity to lead evidence. There were no circumstances preventing the first appellate court from deciding the points in issue. Consequently, remanding the case to the Trial Court is completely contrary to the legal principles laid down by this Court in the decisions mentioned above. The correctness or otherwise of the case of the contesting parties is appreciated from the pleadings, issues, oral and documentary evidence, and a finding can be returned instead of remitting the matter to the Trial Court. Our view may not be understood as holding that the Appellate Court, in the given circumstances, cannot provide opportunities to the parties to adduce evidence, including after accepting a prayer under Order 41 Rule 27 of the Civil Procedure Code, 1908. We express our view that such discretion for remand is exercised when imminently warranted by the circumstances of a given case.
>
> **17.** As this Court is considering whether the remand is justified, we are not examining the other contentions canvassed by both sides, which, in our view, would touch upon the merits of the matter. Hence, the findings in the Impugned Judgment vis-à-vis item No. '5' of the Suit Schedule, and the Order of remand to the Trial Court are set aside. For the said limited purpose, the appeals are restored, and we request the High Court to dispose of the Appeals on the merits."

50. Now, keeping the principles as noticed above in mind, this Court is satisfied that the plea raised by the appellant were considered by the Section 34 Court who has given its findings and even this Court in exercise of powers under Section 37 of the Act of 1996 has considered it and is satisfied that no ground for remand is made out moreso when the order passed by Section 34 Court is reasoned and is not non-speaking as alleged. Hence, this plea of remand too is turned down.

51. In light of the aforesaid discussions, this Court is satisfied that the award dated 04.02.2022 and the judgment of the Commercial Court-II, Lucknow dated 15.12.2025 do not suffer from any illegality for this Court to interfere under Section 37 of the Act of 1996; consequently, the appeal is dismissed. The award of the Sole Arbitrator dated 04.02.2023 is affirmed. In the facts and circumstances, there shall be no order as to costs.

(Jaspreet Singh,J) **(Arun Bhansali,CJ)**

October 24, 2026
Asheesh/ank

Digitally signed by :-
ALI NEWAZ KHAN
High Court of Judicature at Allahabad,
Lucknow Bench