

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ARBITRATION APPEAL No. 14 of 2009

STEEL AUTHORITY OF INDIA LTD.

Versus

M/S R HARANADHA REDDY A PARTNERSHIP FIRM

WITH

ARBITRATION APPEAL No. 15 of 2009

***STEEL AUTHORITY OF INDIA LTD GOVERNMENT OF
INDIA ENTERPRISE***

Versus

M/S SINGHAL ENTERPRISES HAVINGITSOFFI.

Appearance:

*Shri Ravish Chandra Agrawal - Senior Advocate with Shri Jaspreet Gulati -
Advocate for the appellants.*

*Shri Anshuman Singh, Shri S. Rao and Shri Aditya Awashty - Advocates for the
respondent*

ORDER

(Reserved on : 01.12.2025)

(Pronounced on : 20.01.2026)

Both these appeals are filed on identical grounds and involve similar questions, therefore, they are being decided by this common order. For the sake of convenience, facts are being taken from AA No.14/2009.

2. By way of this appeal, challenge is made to the order passed by the First Additional District Judge, Katni in Civil Miscellaneous Judicature Case No.7/2008 filed under Section 34 of Arbitration and Conciliation Act, 1996,

whereby the award passed by the arbitrator dated 13.12.2006 was put to challenge, whereby the arbitrator award an amount of Rs.1,54,50,330/- against the present appellant, Steel Authority of India Limited.

3. The learned counsel for the appellant has raised a singular ground that the award was passed by the arbitrator whereby the arbitrator had decided as many as 28 claims of the claimant contractor and the counterclaim had been filed by the appellant SAIL in which as many as 9 claims were made, and the arbitrator had dealt with all the 28 claims of the contractor and 9 claims of SAIL and had passed an award. However, the District Court while deciding the application under Section 34 of Act of 1996 has simply summed up the entire case in only 2 paragraphs and has simply held that nothing has been placed on record that how the award is contrary to the public policy of India and this is the only consideration made in 2 paragraphs of the impugned order passed by the District Court under Section 34 of Act of 1996. It is argued that after reproducing the arguments of the rival parties and the judgments cited by the rival parties, the consideration has been made from Paragraph 9 onwards and the order ends at Paragraph 13. Paragraphs 9 to 13 are in a single page and the entire consideration is made in Paragraphs 9 and 10 of the order passed by the District Court, which does not consider any of the claims of the rival parties, which were 37 in number. Only in 2 paragraphs which are generalized in nature, stating that nothing has been placed on record that how the award is contrary to

public policy of India, that the application under Section 34 has been rejected, which does not amount to a decision of the application, but it amounts to scuttling of the application. The District Court was under obligation to consider the grounds raised by the present appellant though maybe in brief, but some consideration had to be made to the grounds raised by the present appellant that how the said grounds did not fall within the purview of the award not being in conflict with the public policy of India, or any of the grounds as laid down in Section 34.

4. It is argued that the a number of grounds were raised by the present appellant in the memorandum of application under Section 34 of Act of 1996, but without adverting to the said grounds, the application has been scuttled in only 2 paragraphs, which cannot be said to be a speaking order. It is argued that maybe the grounds raised by the present appellant may or may not have been substantial grounds to justify setting aside of the award under Section 34 of Act of 1996, but the District Court at least was required to do their minimum of considering such grounds and then to arrive at finding that how and in what manner the grounds being raised by the present appellant do not fall within the purview of the grounds as permissible under Section 34 of Act of 1996. Therefore, it is prayed that the order of the District Court be set aside and the award be set aside, or alternatively, the matter be remanded back to the District Court to decide the matter by passing some speaking order.

5. *Per contra*, it is vehemently argued by counsel for the respondent contractor that though the order may not be a greatly speaking order, but if the grounds raised by the present appellant did not fall within the purview of grounds as permissible under Section 34 of Act of 1996, then the District Court was not required to give a detailed consideration of each and every ground, because the application under Section 34 of Act of 1996 cannot be construed to be an appeal against the award and the parties cannot proceed to challenge the award under Section 34 of Act of 1996 in an manner like appeal. It is argued that the award deserves to be upheld and no interference in the order of the District Court rejecting application under Section 34,needs to be made by this Court.

6. It is further argued by learned counsel for the respondent that this Court may consider remanding the matter back to the District Court only if this Court *prima facie* reaches to a finding that any such ground was raised by the present appellant, which has not been considered by the District Court or that some ground is made out by the present appellant, which is so substantiated that it was required to be considered by the District Court, only then this Court should consider remanding the matter back to the District Court. It is argued that in exercise of powers under Section 37 of Act of 1996, remand should not be made as a matter of course, but remand should be made only as a matter of exception. Therefore, these appeals be rejected.

7. Heard.

8. In the present case, an agreement was entered into between the parties for the work of raising of limestone from Koteshwar Limestone Mines by deploying mechanical and earth moving machines and transporting the same to the railway siding and loading the same into railway wagons, including disposal of reject and overburden etc. to the approved dump sites within a period of 4 years. There was a time extension vide order dated 05.12.1996 extending the original period of agreement dated 10.04.1990 up to 23.02.1997 and then again extensions were granted up to 16.04.2000. Thereafter, on account of disputes and differences between the parties, the matter was subjected to arbitration proceedings and the sole arbitrator took up the claims of the contractor and counterclaims of the appellant. The contractor made as many as 28 claims in his claim filed before the arbitrator. The arbitrator took up the claims and so also the counterclaims, which were as under:-

The claimant preferred 28 Nos. of claims as detailed below:-

i.	Fixation of electricity charges at the time of first connection as per provision of the agreement	Rs.50,95,624
ii.	Excess recovery towards electricity charges up to the month Sep' 1993	Rs.16,53,892
iii.	Refund of cost of electric meter	Rs.2,62,625
iv.	Excess recovery demand charges	Rs.25,65,462
v.	Claim for waiver of minimum demand charges of electricity during the original contract period and supplementary	Rs.14,25,257

vi.	Waiver of minimum demand charges of electricity during the labour strike	Rs.1,12,848
vii.	Claim for refund of higher electricity charges recovered for dewatering at Gairtalai block	Rs.74,899
viii.	Refund of interest against outstanding store dues	Rs.9,62,500
ix.	Claim for release of excess amount recovered for store materials supplied by the respondent	Rs.22,61,381
x.	Refund of interest recovered against outstanding dues	Rs.1,10,204
xi.	Claim for refund of amount recovered towards plaster shooting	Rs.2,14,707
xii.	Claim for refund of amount recovered towards removal of inter burden	Rs.3,08,702/-
xiii.	Claim for payment of incentive as per Clause 18 of supplementary agreement	Rs.4,57,406
xiv.	Claim for extra cost involved in manual loading instead of mechanized loading	Rs.1,58,27,200
xv.	Claim for bulk density as per original agreement	Rs.2,30,24,074
xvi.	Claim for escalation	Rs.26,09,115
xvii.	Claim for refund of amount deducted for voluntary separation scheme for workers	Rs.4,93,095
xviii.	Claim for expenditure incurred on removal of overburden waste materials	Rs.3,75,49,052
xix.	Refund of amount recovered towards demurrage	Rs.1,72,465
xx.	Claim for extra involved in Marwa block	Rs.74,80,148
xxi.	Claim for refund of penalty imposed against quality control	Rs.33,82,254
xxii.	Loss of turnover	Rs.5,86,05,203
xxiii.	Claim for idling charges for equipments and workers during strike period of 18-04-96 to 18-10-96	Rs.2,66,26,200

xxiv.	Compensation against under utilization of labour and machinery	Rs.6,18,67,500
xxv.	Loss of overhead and wages/salary for workers during the agreement period	Rs.35,52,703
xxvi.	Idling charges of works and crew members during strike period from 18-04-06 to 18-10-96	Rs.10,14,900
xxvii.	Refund of Security deposit	Rs.18,74,899
xxviii.	Claim for bank commission charges to Renew Bank guarantee	Rs.7,46,533

The present appellants had made the following counter claims:-

2.1	Dewatering charges	Rs.7,72,141.78
2.2	Demurrage and withdrawal of indent for Rly wagons	Rs.17,954.60
2.3	Whartage	Rs.
2.4	Changed size	Rs.20,150.00
2.5	Energy charges	Rs.17,014.00
2.6	Liquidated damages	Rs.1,06,83,883.04
2.7	Statutory liability	Rs.1,87,182.00
2.8	Failure to remove interburden (off grade and rejected)	Rs.3,13,790.00
2.9	Interest	Rs.24,90,827.00

9. The arbitrator made a consideration of the aforesaid claims and counterclaims of the parties and then allowed 13 claims of the contractor, whereas rejected his remaining claims. The arbitrator also allowed 5 claims made in counterclaim, but rejected 4 claims made in the counterclaim by the appellant. In this manner, the arbitrator awarded an amount of Rs 1.62 crores to

the contractor, but after deducting the amounts awarded in counterclaim to the tune of Rs.8.28 lakhs, the net award of Rs.1,54,50,330/-was passed, that was put to challenge by the present appellant before the District Court by filing application under Section 34 of Act of 1996 and in the said application submitted before the District Court, the appellant raised the following grounds:-

I. For that the said Award is contrary to the public policy of India and is bad in law and facts.

II. For that the said Award is contrary to law and it deals with a dispute not contemplated and/or not falling within the terms of the submission to arbitration.

III. For that the Sole Arbitrator erred in noting that SAIL had granted extension of time without invoking the liquidated damages clause and such finding is absolutely contrary to the letters on record;

IV. For that the Sole Arbitrator erred in awarding a net award of Rs. 1,54,50,330 (Rupees One Crore Fifty four Lakhs Fifty thousand Three hundred Thirty only) in favour of the claimant Messrs. R.H. Reddy and also erred in awarding interest at the rate of 10% (Ten Percent) per annum to the claimant.

V. For that the Sole Arbitrator erred in awarding Rs. 16,03,563 (Rupees Sixteen Lakh Three thousand Five hundred Sixty three only) in respect of Claim no. (i) of the claimant and failed to appreciate that the claimant was not entitled to recovery by re-working energy in the manner purported to be allowed.

VI. For that the Sole Arbitrator failed to appreciate that the respondent (SAIL) was entitled to recover energy charges as per the terms of the contract and there was no proof of recovery established before the Arbitrator.

VII. For that the Sole Arbitrator erred in awarding Rs.21,046 (Rupees Twenty one thousand Forty Six only) in respect of Claim no. (vii) of the claimant and failed to appreciate that the question of the respondent recovering electricity charges at a higher rate did not arise since the electricity charges were to be

recovered at the rate charged by M.P. E.B. as per the terms of the contract.

VIII. For that the Sole Arbitrator erred in awarding Rs.5,97,084 (Rupees Five Lakh Ninety seven thousand Eighty four only) in respect of Claim no. (viii) of the claimant and failed to appreciate that the claimant for refund of interest on stored materials (such as, diesel, lubricants, conveyor belt etc.) was in accordance with the terms of the contract and the Sole Arbitrator erred in holding that it does not appear to be justified.

IX. For that the Sole Arbitrator after holding that the claimant of interest of one party is balanced by the claim of interest by the other party, erred in holding that the recovery of interest by SAIL at the rate of 18.5% (Eighteen point five percent) was not justified.

X. For that the Sole Arbitrator erred in awarding Rs. 5,99,850 (Rupees Five Lakh Ninety nine thousand Eight hundred Fifty only) in respect of Claim no. (ix) of the claimant and failed to appreciate that the claimant had accepted the recovery made by SAIL as per the terms of the contract and there was no evidence to show that the excess recovery of 25% was higher by any standard, as wrongly held.

XI. For that the Sole Arbitrator had no reason to arbitrarily decide that 50% of the recovery amount was to be refunded to the claimant and such finding is contrary to the terms of the contract.

XII. For that the Sole Arbitrator erred in awarding Rs.11,27,835 (Rupees Eleven Lakh Twenty seven thousand Eight hundred Thirty five only) in respect of Claim no. (x) of the claimant and failed to appreciate that the claimant was not entitled to refund of interest charged on the outstanding dues and erred in holding that such recovery by SAIL was not justified, even though the contract allowed the same. The finding of the Arbitrator is contrary to the terms of the contract and the supplementary agreement between the parties.

XIII. For that the Sole arbitrator in awarding Rs,98,113 (Rupees Ninety eight thousand One hundred eleven only) in respect of Claim no.(xi) of the claimant and failed to appreciate that SAIL was entitled to recover the cost of plaster shooting and erred in holding that the claimant was not responsible for the same. Further, the Learned Arbitrator erred in holding that

there was no proof that the contract was executed by SAIL. If there was no plaster shooting reducing the size of the offered size boulder the same could not be crushed by the claimant.

XIV. For that the Sole Arbitrator failed to appreciate that SAIL, was entitled to recover the costs of plaster shooting since the claimant failed and neglected to carry out such work and the work was carried out by SAIL

XV. For that the Sole Arbitrator erred in awarding Rs.4,78,241 (Rupees Four Lakh Seventy eight thousand Two hundred Forty one only) in respect of Claim no. (xii) of the claimant and failed to appreciate that the claimant failed to keep Mining Surface Clean and that the SAIL was entitled to make deduction in lieu of non-removal of inter-burden.

XVI. For that the Sole Arbitrator erred in holding that the work of removing "inter burden" was composite part of the claimant's responsibilities under the contract and the cost thereof had been included in the rate quoted by the claimant for the work and as such SAIL was entitled to deduct the cost of removal of the same from the bills of the claimant in lieu of non-removal by the claimant. For that the Sole Arbitrator erred in holding that SAIL had failed to produce any evidence of any expenditure incurred by them for removing the overburden and failed to appreciate that the manner in which the deductions from the bills were made was not arbitrary but on agreed basis. For that the Sole Arbitrator erred in holding that this claim was clearly barred by limitation and merely because a dispute was sought to be raised by the claimant could be a reason for holding that the claim was not barred by limitation. For that the Sole Arbitrator erred in law in coming to such conclusion.

XVII. For that the Sole Arbitrator erred in awarding Rs.2,11,972 (Rupees Two Lakh eleven thousand Nine hundred Seventy two only) in respect of Claim no. (xiii) of the claimant and failed to appreciate that the claimant was not entitled to any incentive as admittedly the claimant had never loaded full risk and as such, there was no factual basis for allowing such claim and the same was contrary to the terms of the contract.

XVIII. For that the Sole Arbitrator erred in awarding Rs.1,65,12,556 (Rupees One OneCrore Sixty five Lakh Twelve thousand Five hundred Fifty six only) in respect of Claim no.7 of the claimant and failed to appreciate that it was due to the failure of the claimant to use sufficient mechanical devices that

manual labour had to be used and that SAIL could not be held responsible for the same. For that the Sole Arbitrator erred in holding that the claimant was entitled to Rs.15.03 (Rupees Fifteen point three) per cubic metre extra for the total quantity loaded by the claimant or that such quantity was 413115.021 Cubic Metre.

XIX. For that the Sole Arbitrator erred in awarding Rs.62,04,988 (Rupees Sixty two Lakh Four thousand Nine hundred Eighty eight only) in respect of Claim no. (xiv) of the claimant and failed to appreciate that even though no escalation was allowed for the earlier period merely because the contract was extended (on the same terms), the claimant was entitled to escalation and erred in holding that considering the impact of the revised rate, the claimant was entitled to payment at a base rate of Rs.258.83 (Rupees Two hundred Fifty eight and paise Eighty three) per Cu.M. instead of contractual rate of Rs.244.22 (Rupees Two hundred Forty four and paise Twenty two) per Cu. M.

XX. For that the Sole Arbitrator erred in awarding Rs. 13,99,951 (Rupees Thirteen Lakh Ninety Nine thousand Nine hundred Fifty one only) in respect of Claim no. (xvi) of the claimant and failed to appreciate that even though no escalation was allowed for the earlier period merely because the contract was extended (on the same terms), the claimant was entitled to escalation and erred in holding that considering the impact of the revised rate, the claimant was entitled to payment at a base rate of Rs.258.83 (Rupees Two hundred Fifty eight and paise Eighty three) per Cu.M. instead of contractual rate of Rs.244.22 (Rupees Two hundred Forty four and paise Twenty two) per Cu. M.

XXI. For that the Sole Arbitrator erred in awarding Rs.24,17,491 (Rupees Twenty Four Lakh Seventeen thousand Four hundred Ninety one only) in respect of Claim no. (xviii) of the claimant and failed to appreciate that the claimant was not entitled to refund of alleged extra expenses for removal of overburden and erred in holding that SAIL had committed total failure of contract and erred in holding that it was proved beyond doubt that the claimant had removed excess amount of overburden which the respondent was supposed to remove without any evidence to support such allegations.

XXII. For that the Sole Arbitrator erred in awarding Rs. 14,59,066 (Rupees Fourteen Lakh Fifty nine thousand Sixty six only) in respect of Claim no.xxvii of the claimant and failed to appreciate that SAIL was entitled to with hold the said Security Deposit. The Sole Arbitrator erred in coming to a conclusion that merely because extensions had been granted by SAIL without insisting on Liquidated Damages barred SAIL from recovering such damages.

XXIII. For that the Sole Arbitrator erred in holding that there was no dispute regarding the raising of the LD prior to the filing of the counter claim or that as such it was not tenable for SAIL to make such a claim

XXIV. For that the Sole Arbitrator erred in holding that the claim for liquidated damages was belated or that it was neither proper nor justified

XXV. For that the Sole Arbitrator erred in holding that that claimant was entitled to refund of the said Security Deposit

XXVI. For that the Sole Arbitrator ought to have rejected the said claim in as much as SAIL was entitled to forfeit the Security Deposit in terms of the contract by invoking the irrevocable Bank guarantee executed in its favour.

XXVII. For that the Sole Arbitrator erred in entertaining claim no. xxviii for Rs.60,000 (Rupees Sixty thousand only) since the question of paying commission or renewal charges also did not arise in the facts of the case and there was never any agreement to refund or pay bank charges between the parties. The purported award of such claim is de hors the provisions of the contract.

XXVIII. For that the Sole Arbitrator even after allowing the counter claim Nos. 1 to 5 made by SAIL on account of de-watering, demurrage were failed to change in line in lump sum stand and energy charges respectively, the Learned Arbitrator erred in rejecting the remaining claims.

XXIX. For that the Sole Arbitrator erred in rejecting the claim No. 6 made by SAIL on account of Liquidated Damages for short performance of the work of the claimant and failed to appreciate that SAIL was entitled to such payment in terms of the contract between the parties,

XXX. For that the Sole Arbitrator erred in holding that the imposition of LD was an afterthought on part of SAIL, made at

a belated stage and erred in holding that the claimant was not solely responsible for their (admitted) short performance.

XXXI. For that the Sole Arbitrator erred in rejecting relating to remaining of removal of inter burden and erred in holding that the SAIL had failed to prove the same.

XXXII. For that the Sole Arbitrator erred in rejecting the claim No. 9 for interest and on the basis of that, the dues of the contractor was more than the dues of the claimant (SAIL) and such finding is contrary to law.

XXXIII. For that the said Award is contrary to section 31(3) of the Arbitration and Conciliation Act 1996, as it does not state the reasons for many of the decisions given therein.

XXXIV. For that the said Award is bad in law and facts as it has many discrepancies regarding calculation and/or comprehension of the scope and effect of the dispute.

XXXV. For that the award is against the terms of the contract, and is patently illegal.

XXXVI. For that the Award is contrary to the general usages of the trade applicable to the Transaction.

XXXVII. For that the Award is against the provisions of Section 28(3) of the Arbitration and Conciliation Act 1996, as it is not decided in accordance with the terms of the contract.

XXXVIII. For that the Award is bad in law as there was failure by the arbitrator to deal with all the issues that were presented before him

XXXIX. For that the Award is patently unfair, unreasonable and erroneous and the Arbitrator has not taken in to consideration specific terms of the contract, rendering the award wholly wrong and perverse and based on wrong interpretation of the terms of the contract.

XL. For that the Award is patently illegal with a perverse finding and can be challenged.

XLI. For that the Award suffers gross infirmity as the Contractor did not prove the damage allegedly suffered by them through any evidence at all.

XLII. For that the Learned Arbitrator by making misinterpretation of the clauses of the Contractor of plain and clear language has exceeded the jurisdiction beyond the terms

of the Contract. Hence, the Award is liable to be set aside on these grounds.

XLIII. For that the Learned Tribunal violated the Public Policy of India by making an Award in violation of the clear and express terms of the Contract and law laid down in this regard by the Apex Court.”

10. From a perusal of the aforesaid grounds taken by the appellant in its application under Section 34, it is clear that the appellant had raised specific ground in respect of each and every claim allowed or disallowed of the rival parties by the arbitrator. Detailed pleadings were made regarding the rate of interest and regarding the costs of material, which has been disallowed by the arbitrator, regarding the cost of removing inter burden, etc. Each and every claim dealt with by the arbitrator was subject matter of challenge by the appellant before the District Court.

11. The District Court has considered the claim in the manner that in paragraphs 1 to 8 the District Court has quoted the facts and judgments submitted by the rival parties and the consideration of District Court starts from paragraphs 9 and ends in paragraphs 11, which are as under:-

“9. इस मामले में दोनों पक्षों के तर्कों एवं प्रकरण के अवलोकन से यह स्पष्ट है कि पिटीशनर/आवेदक ने अनावेदक के आवेदन पर कान्ट्रेक्ट जोकि चार वर्षों के लिये हुआ था कई बार अवधि बढ़ाई है। तर्क के दौरान भी पिटीशनर/आवेदक की ओर से अनावेदक के आवेदन या समयावधि बढ़ाने के संबंध में अपनी ओर से दी गई स्वीकृति के संबंध में ऐसे किसी बिन्दु पर ध्यान आकर्षित नहीं कराया गया है जिससे यह प्रगट हो कि वह अपने जिन काउंटर क्लेम को सील आर्बिट्रेटर द्वारा बिना किसी आधार के निरस्त करना कह रहा है या वह अनावेदक के जिन क्लेम को सील आर्बिट्रेटर द्वारा अवैध रूप से स्वीकार करना कह रहा है उसका आधार क्या है। पिटीशनर द्वारा यह नहीं बताया जा सका है कि उसके जो काउंटर

क्लेम निरस्त हुए हैं उसके संबंध में उसने कभी उत्तरदाता/अनावेदक को सूचित किया था या उस संबंध में कोई मांग उसके अवधि बढ़ाने के आवेदन पर की थी।

10. लिखित तर्क के साथ पिटीशनर ने अनावेदक के जो क्लेम सील आर्बिट्रेटर द्वारा मंजूर किये गये हैं और पिटीशनर के जो काउंटर क्लेम सील आर्बिट्रेटर द्वारा निरस्त किये गये हैं उनका विस्तृत विवरण देते हुए उस संबंध में आर्बिट्रेटर द्वारा लिये गये निष्कर्षों के आधार का लिखित विवरण भी प्रस्तुत किया है। अभिलेख के अवलोकन से उक्त निष्कर्ष किसी भी प्रकार से हस्तक्षेप योग्य प्रतीत नहीं होते। एवार्ड से भी कहीं कोई गलती होना नहीं पाया गया और न ही एवार्ड इस प्रकार का पाया गया है जो क्षेत्राधिकार रहित माना जा सके।

11. उपरोक्त आधार पर प्रश्नाधीन एवार्ड को निरस्त किये जाने के संबंध में इस पिटीशन में लिये गये समस्त आधार सारहीन हैं।”

12. The scope of Section 34 of Act of 1996 are as under:- “

“34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

*(2) An arbitral award may be set aside by the Court only if—
(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—*

(i) a party was under some incapacity, or

*(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force;
or*

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

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

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

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

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a

request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

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

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

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

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

13. It has been held by the Hon’ble Supreme Court, in the case of ***Navnirman Development Consultants (India) (P) Ltd. v. District Sports Complex, Pune, (2017) 8 SCC 603*** that in what manner the factual and legal controversies are to be decided. Though the aforesaid judgement is in the matter of an appeal under Section 37 of Act of 1996, but it has been held that in what manner the Court needs to consider the matter so that this will enable the Superior Court to examine the legality of the decision in its appellate jurisdiction. The Hon’ble Supreme Court held as under:-

“13. In our considered view, in order to appreciate the factual and legal controversy involved in the lis, the least which was expected of was that the order which decides the lis between the parties should have contained the brief facts of the case so as to

know as to how the factual controversy arose and the grounds on which the action is impugned, the stand of the parties impugning and defending the action, the submissions of the parties in support of their stand, legal provisions, if any, applicable to the controversy involved in the lis, and lastly, the brief reasons as to why the case of one party deserves acceptance or rejection, as the case may be.

14. This enables the superior court to examine the legality of the decision in its proper perspective in its appellate jurisdiction.”

14. In the case of ***Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani***, (2024) 7 SCC 218, it has been held that power of remand is there under Section 37 of Act of 1996, but that has to be exercised only in exceptional cases. It has been held that remand can be made in cases where there is summary disposal of petition under Section 34 without consideration of the case on merits. The Hon’ble Apex Court held as under:-

“28. The provisions of the CPC have not been made applicable to the proceedings before the learned arbitrator and the Court under Sections 34 and 37 of the Arbitration Act. The legislature's intention is reflected in Section 19(1) of the Arbitration Act, which provides that an Arbitral Tribunal is not bound by the provision of the CPC. That is why the provisions of the CPC have not been made applicable to the proceedings under Sections 34 and 37(1)(c). We are not even suggesting that because the provisions of the CPC are not applicable, the appellate court dealing with an appeal under Section 37(1)(c) is powerless to pass an order of remand. The remedy of an appeal will not be effective unless there is a power of remand vesting in the appellate authority. In the Arbitration Act, there is no statutory embargo on the power of the appellate court under Section 37(1)(c) to pass an order of remand. However, looking at the scheme of the Arbitration Act, the appellate court can exercise the power of remand only when exceptional circumstances make an order of remand unavoidable.

29. There may be exceptional cases where remand in an appeal under Section 37 of the Arbitration Act may be warranted. Some of the exceptional cases can be stated by way of illustration:

(a) Summary disposal of a petition under Section 34 of the Arbitration Act is made without consideration of merits;

(b) Without service of notice to the respondent in a petition under Section 34, interference is made with the award; and

(c) Decision in proceedings under Section 34 is rendered when one or more contesting parties are dead, and their legal representatives have not been brought on record.”

15. In case of **ONGC v. Western Geco International Ltd., (2014) 9 SCC**

263, it has been considered as to what would be the public policy of India. It has been held that one of the important and fundamental points to the policy of Indian law is the principle that a Court must apply its mind to the attendant facts and circumstances while taking a view one way or the other. The Hon'ble Apex Court held as under:-

“35. What then would constitute the “fundamental policy of Indian law” is the question. The decision in ONGC [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression “fundamental policy of Indian law”, we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a “judicial approach” in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that

its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

36. *In Ridge v. Baldwin [1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL)] , the House of Lords was considering the question whether a Watch Committee in exercising its authority under Section 191 of the Municipal Corporations Act, 1882 was required to act judicially. The majority decision was that it had to act judicially and since the order of dismissal was passed without furnishing to the appellant a specific charge, it was a nullity. Dealing with the appellant's contention that the Watch Committee had to act judicially, Lord Reid relied upon the following observations made by Atkin, L.J. in R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd. [(1924) 1 KB 171 : 1923 All ER Rep 150 (CA)] : (KB p. 205)*

“... Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.”

37. *The view taken by Lord Reid was relied upon by a Constitution Bench of this Court in Associated Cement Companies Ltd. v. P.N. Sharma [AIR 1965 SC 1595] wherein Gajendragadkar, C.J. speaking for the Court observed : (AIR p. 1601, para 14)*

“14. ... In other words, according to Lord Reid's judgment, the necessity to follow judicial procedure and observe the principles of natural justice, flows from the nature of the decision which the Watch Committee had been authorised to reach under Section 191(4). It would thus be seen that the area where the principles of natural justice have to be followed and judicial approach has to be adopted, has become wider and consequently, the horizon of writ jurisdiction has been extended in a corresponding measure. In dealing with questions as to whether any impugned orders could be revised under Article 226 of our Constitution, the test prescribed by Lord Reid in this judgment [1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66 (HL)] may afford considerable assistance.”

38. *Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated *audi alteram partem* rule one of the facets of the principles of natural justice is that the court/authority deciding the*

matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury principle [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest.”

16. In the case of ***Associate Builders v. DDA, (2015) 3 SCC 49***, it has been held by the Hon’ble Apex Court that what can be the tests of public policy of India, which would be as under:-

- “(i) Compliance with the statutes and judicial precedence,*
- (ii) Need for judicial approach,*
- (iii) Natural justice compliance,*

(iv) *Wednesbury* reasonableness, justice, morality.

The Hon'ble Supreme Court held as under :-

19. When it came to construing the expression “the public policy of India” contained in Section 34(2)(b)(ii) of the Arbitration Act, 1996, this Court in *ONGC Ltd. v. Saw Pipes Ltd.* [(2003) 5 SCC 705 : AIR 2003 SC 2629] held : (SCC pp. 727-28 & 744-45, paras 31 & 74)

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

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

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

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 that:

- (i) a party was under some incapacity, or
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.

(2) The court may set aside the award:

(i)(a) if the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties,

(b) failing such agreement, the composition of the Arbitral Tribunal was not in accordance with Part I of the Act,

(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

(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.

(B)(1) The impugned award requires to be set aside mainly on the grounds:

(i) there is specific stipulation in the agreement that the time and date of delivery of the goods was of the essence of the contract;

(ii) in case of failure to deliver the goods within the period fixed for such delivery in the schedule, ONGC was entitled to recover from the contractor liquidated damages as agreed;

(iii) it was also explicitly understood that the agreed liquidated damages were genuine pre-estimate of damages;

(iv) on the request of the respondent to extend the time-limit for supply of goods, ONGC informed specifically that time was extended but stipulated liquidated damages as agreed would be recovered;

(v) liquidated damages for delay in supply of goods were to be recovered by paying authorities from the bills for payment of cost of material supplied by the contractor;

(vi) there is nothing on record to suggest that stipulation for recovering liquidated damages was by way of penalty or that the said sum was in any way unreasonable;

(vii) in certain contracts, it is impossible to assess the damages or prove the same. Such situation is taken care of by Sections 73 and 74 of the Contract Act and in the present case by specific terms of the contract.”

20. *The judgment in ONGC Ltd. v. Saw Pipes Ltd. [(2003) 5 SCC 705 : AIR 2003 SC 2629] has been consistently followed till date.*

21. *In Hindustan Zinc Ltd. v. Friends Coal Carbonisation [(2006) 4 SCC 445] , this Court held : (SCC p. 451, para 14)*

“14. The High Court did not have the benefit of the principles laid down in *Saw Pipes* [(2003) 5 SCC 705 : AIR 2003 SC 2629] , and had proceeded on the assumption that award cannot be interfered with even if it was contrary to the terms of the contract. It went to the extent of holding that contract terms cannot even be looked into for examining the correctness of the award. This Court in *Saw Pipes* [(2003) 5 SCC 705 : AIR 2003 SC 2629] has made it clear that it is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.”

22. *In McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , this Court held : (SCC pp. 209-10, paras 58-60)*

“58. *In Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] this Court laid down that the arbitral award can be set*

aside if it is contrary to (a) fundamental policy of Indian law; (b) the interests of India; or (c) justice or morality. A narrower meaning to the expression 'public policy' was given therein by confining judicial review of the arbitral award only on the aforementioned three grounds. An apparent shift can, however, be noticed from the decision of this Court in ONGC Ltd. v. Saw Pipes Ltd. [(2003) 5 SCC 705 : AIR 2003 SC 2629] (for short 'ONGC'). This Court therein referred to an earlier decision of this Court in Central Inland Water Transport Corpn. Ltd. v. BrojoNathGanguly [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103] wherein the applicability of the expression 'public policy' on the touchstone of Section 23 of the Contract Act, 1872 and Article 14 of the Constitution of India came to be considered. This Court therein was dealing with unequal bargaining power of the workmen and the employer and came to the conclusion that any term of the agreement which is patently arbitrary and/or otherwise arrived at because of the unequal bargaining power would not only be ultra vires Article 14 of the Constitution of India but also hit by Section 23 of the Contract Act, 1872. In ONGC [(2003) 5 SCC 705 : AIR 2003 SC 2629] this Court, apart from the three grounds stated in Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , added another ground thereto for exercise of the court's jurisdiction in setting aside the award if it is patently arbitrary.

59. Such patent illegality, however, must go to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the court. Where the arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute would come within the purview of Section 34 of the Act. However, we would consider the applicability of the aforementioned principles while noticing the merits of the matter.

60. What would constitute public policy is a matter dependent upon the nature of transaction and nature of statute. For the said purpose, the pleadings of the parties and the materials brought on record would be relevant to enable the court to judge what is in public good or public interest, and what would otherwise be injurious to the public good at the relevant point, as contradistinguished from the policy of a particular Government. (See State of Rajasthan v. BasantNahata [(2005) 12 SCC 77] .)"

24. In DDA v. R.S. Sharma and Co. [(2008) 13 SCC 80] , the Court summarised the law thus : (SCC pp. 91-92, para 21)

“21. From the above decisions, the following principles emerge:

(a) An award, which is

(i) contrary to substantive provisions of law; or

(ii) the provisions of the Arbitration and Conciliation Act, 1996;

or

(iii) against the terms of the respective contract; or

(iv) patently illegal; or

(v) prejudicial to the rights of the parties;

is open to interference by the court under Section 34(2) of the Act.

(b) The award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality.

(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

(d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

With these principles and statutory provisions, particularly, Section 34(2) of the Act, let us consider whether the arbitrator as well as the Division Bench of the High Court were justified in granting the award in respect of Claims 1 to 3 and Additional Claims 1 to 3 of the claimant or the appellant DDA has made out a case for setting aside the award in respect of those claims with reference to the terms of the agreement duly executed by both parties.”

25. J.G. Engineers (P) Ltd. v. Union of India [(2011) 5 SCC 758 : (2011) 3 SCC (Civ) 128] held : (SCC p. 775, para 27)

“27. Interpreting the said provisions, this Court in ONGC Ltd. v. Saw Pipes Ltd. [(2003) 5 SCC 705 : AIR 2003 SC 2629] held that a court can set aside an award under Section 34(2)(b)(ii) of the Act, as being in conflict with the public policy of India, if it is (a) contrary to the fundamental policy of Indian law; or (b) contrary to the interests of India; or (c) contrary to justice or morality; or (d) patently illegal. This Court explained that to hold an award to be opposed to public policy, the patent illegality should go to the very root of the matter and not a trivial illegality. It is also observed that an award could be set aside if it is so unfair and unreasonable that it

shocks the conscience of the court, as then it would be opposed to public policy.”

17. In case of *M.B. Patel & Co. v. ONGC, (2008) 8 SCC 251* and *M.B. Patel & Co. v. ONGC, (2008) 8 SCC 251*, it has been held that award in contravention of terms and agreement is impermissible. In the present case, a ground was taken that the award has been passed contrary to terms of agreement, but that has not been considered by the District Court at all.

18. In the case of *ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705*, the Hon’ble Supreme Court considered the expression “public policy of India” in great detail and held that it should be given a wider and not a narrow meaning and held that award can be set aside if it is

(i) contrary to fundamental policy of India of interest of India or justice or morality to it is patently illegal

(ii) it is unfair and unreasonable that it shocks the conscience of the Court, though illegality of a trivial nature can be ignored.

19. However, it is settled that the scope of enquiry in proceeding under Section 34 is to consider whether any of the grounds mentioned in Section 34(2) exist for setting aside the award and the grounds are specific. Though the proceedings as a civil suit are not required to be followed, but what is basic requirement is there should be a reasoned consideration of the grounds raised in the application under Section 34. As contradicted to that, the consideration in the present case as laid down in paragraphs 9 and 10 of the impugned order of

the District Court is that the initial agreement was for 4 years, which has been extended from time to time and nothing has been placed before the Court that how the arbitrator has allowed the claim of the contractor, which can be said to be in an illegal manner. The District Court has said that the claims based in counterclaim do not seem to have been agitated earlier and also that the Court is in complete agreement with the findings of the arbitrator, which are self-speaking and do not require any interference.

20. Such a non-speaking order passed in course of proceedings under Section 34 cannot be upheld by this Court, because there is no reasonable consideration of the grounds raised by the appellant in the application under section 34. Though there may not be requirement of having a discussion like a judgment in civil suit, but each and every ground raised must have had some consideration, in at least a couple of lines to show reasoning of the Court that how the ground raised does not fall within the purview of the grounds as enumerated in Section 34(2) of the Act of 1996.

21. Therefore, this Court deems it to be a fit case to remind the matter back to the arbitrator to decide the application under Section 34 by passing a reasoned and speaking order.

22. It is also required to be considered that the remand is to be made to which Court. Now, the Commercial Courts have been constituted in the State of Madhya Pradesh as per the Commercial Courts Act, 2015 and the jurisdiction of

Katni is with the Commercial Court at Jabalpur. As per Section 10 of Commercial Courts Act 2015, jurisdiction in respect of arbitration matters is with the Commercial Courts where the subject matter of arbitration is commercial dispute of specified value. Therefore, now the present application under Section 34 of Act of 1996 would have to be decided by the Commercial Court, Jabalpur.

23. Consequently, the matter is remanded back to the District Court to decide the application under Section 34 afresh. It is directed that upon receipt of record of this case by the District Court at Katni, the file shall be transferred to the appropriate Commercial Court for decision in accordance with law. The record of the case be immediately transmitted back to the District Court at Katni. Thereafter, the file be transferred to the Commercial Court, Jabalpur. The parties are directed to appear before the Commercial Court, Jabalpur on **16.2.2026**, and thereafter, as may be directed by the said Court.

24. The appeals are **disposed of** in the above terms.

(VIVEK JAIN)
JUDGE