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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 09.04.2025***

\+ FAO (COMM) 92/2025, CM APPL. 21392/2025 (Ex.), CM APPL. 21393/2025 (Delay of 128 Days) & CM APPL. 21394/2025 (Delay of 57 days in re-filing)

UNION OF INDIA ...Appellant

Through: Mr. Rajesh Kumar and Mr. Kamaldeep, Advocates with Mr. Chain Singh, AE in person.

versus

M/S GLOBAL ENTERPRISES ...Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present appeal under Section 37 of the **Arbitration and Conciliation Act[1], 1996** challenges the **judgment[2] dated 10.09.2024** passed by the learned District Judge, Commercial Court-01, Patiala House Courts, New Delhi. The impugned judgment was rendered in a petition filed under Section 34 of the A & C Act challenging the **Arbitral Award[3] dated 09.08.2021**.

2. Shorn of all details, the learned counsel for the Appellant, at the outset, states that the present challenge is three-fold. ***Firstly***, the

[1] A & C Act
[2] Impugned judgement
[3] Award

appointment of the Arbitrator was not as per the procedure laid down in the Arbitration Agreement, in so far as the Arbitrator did not hold the requisite qualifications as spelled out in the agreement. ***Secondly***, the Arbitrator was appointed by the **Delhi International Arbitration Centre**[4] on an application moved by the Respondent and no consent for such appointment was taken from the Appellant and the same is in complete violation of the mandate of Section 12(5) of the A & C Act. ***Thirdly***, challenge to the merits of the Award, insofar as, the Appellant herein contends that the Arbitrator has passed the Award in a mechanical and whimsical manner, without due application of mind.

3. With respect to the **first contention**, it would be apposite to refer to the contents of the Petition under Section 34 of the A & C Act. Suffice it to say that, this contention was never raised by the Appellant therein. Apart from that, it would be relevant to refer to the communication/ application dated 28.08.2020, which was addressed to the Arbitrator by the Appellant, wherein the Appellant stated as follows: -

> "Dear Sir,
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> **1.** This is with reference to your appointment as Ld Arbitrator by DIAC, which has come to knowledge of this office on receipt of your E-mail dated 10 Aug 2020 through which your letter of acceptance dated 10 Aug 2020 was also received. This mail and its enclosure was opened and printed in this office on 17 Aug 2020. This is also with reference to the hearing on 26 Aug 2020 through video conferencing.
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> **2.** In this regard, it is submitted that the Arbitration Clause at Srl Page No. 205 of Contract Agreement stipulates certain qualification viz Degree in Engineering or equivalent or having passed Final/Direct Final Examination of Sub-Division-II of Institution of Surveyors (India) for appointment as Arbitrator. Keeping such qualification requirement in view, the claimant vide their letter No ME/CA-CEDZ19/2014-15/Arbitrator/002

[4] DIAC

DT 19 Feb 2020 had approached the coordinator, Delhi International Arbitration Centre (DIAC) by suggesting name of some suitable prospective Arbitrators for appointment of Arbitrator to adjudicate the subject dispute.

3. This office is not in receipt of any such appointment letter appointing the Arbitrator. Therefore, it is construed from your letter of acceptance dated 10 Aug 2020 that your appointment has been made as arbitrator by DIAC to adjudicate this case.

4. However we have a doubt on your qualification as required in the Arbitration clause. It is therefore requested to apprise us whether you fulfil the qualification criteria.

5. If however your qualification is not as per the requisite qualification requirement, we shall request you to demit the office by resignation, so that a new Arbitrator fulfilling the qualification criteria is appointed by the DIAC.

6. This aspect was pointed out during the hearing on 26 Aug 2020 also through video conferencing attended by Shri Subhash Kumar, Dir (Contracts) of this office.

7. It is therefore requested to decide this application first before proceeding further with the adjudication of the subject arbitration case."

4. The said application under Section 13 of the A & C Act filed by the Appellant, before the learned Arbitral Tribunal, was considered and rejected *vide* order dated 16.10.2020, with costs. The Appellant chose not to challenge the same. The Appellant, thereafter, proceeded with the arbitration proceedings, which culminated in the Award dated 09.08.2021.

5. As already mentioned hereinabove, the ground regarding the alleged lack of educational qualification of the Arbitrator was not raised in the Petition filed under Section 34 either, as provided under Section 13(5) of the A & C Act, however, the same is sought to be strenuously argued as the primary challenge in the present appeal.

6. Considering the fact that the Appellant, in the first instance, never challenged the order dismissing the objection in respect to the educational qualification of the Arbitrator, the Appellant is precluded

from raising it in the present proceeding. This, coupled with the aspect of the complete absence of pleadings to this effect in the proceedings under Section 34 of the A & C Act, would only add fuel to the necessary fire for rejecting this particular contention.

7. With respect to the **second prong** of the challenge, in relation to the alleged incorrect mode of appointment of the Arbitrator by the DIAC, at this stage in proceedings under Section 37 of the A & C Act, it is perplexing as to how this contention can be raised at all. The proceedings have run the entire gauntlet of the arbitration as well as proceedings under Section 34 of the A & C Act. To permit the Appellant to raise any objection of this nature, in the opinion of this Court, would be nothing short of a complete travesty of the law and borders on the abuse of process of this Court.

8. We would also deem it necessary to mention here that this aspect too, was never raised in the proceedings under Section 34 of the A & C Act. It is thus, apparent, that the Appellant never challenged the entire process by which the arbitration proceedings were commenced, and is only seeking to raise the same in the present proceedings. This, in our opinion, is clearly impermissible.

9. We now come to the **third and final argument** of the Appellant. This argument, it may be noted, appeared to be somewhat half-hearted on the part of the Appellant. We had, along with the counsel for the Appellant, gone through each of the claims and the conclusion thereof. It is reiterated that the argument in respect of these conclusions by the Appellant was that the same lacked reasoning and were whimsical and mechanical. In view of the same, we deem it appropriate to set out herein the relevant portions: -

"**24.** Findings:
The claimant towards non payment of agreed portion of the final bill had claimed Rs.11,53,886.03 which is inclusive of interest from 1.2.2017 to 1.3.2020 calculated @ 18% p.a. The said claim was revised to Rs.22,21,007.75. The revision was on account of:

(i) Provision of angle Iron for Dholpur stone wall cladding in Living Accommodation and in MP Hall & Dinning Hall; (ii) Provision of Kota stone flooring on roof over PCC and screed bed in lieu of mud phuska brick tiles in MP Hall and dining hall and living accommodation; and (iii) Provision of shaft covering by translucent corrugated sheet with MS frame, fixing of MS door in shaft opening in living accommodation and covering of AC fans on roof by translucent sheet in MP Hall and dining hall and living accommodation, which was transferred to the agreed portion of the final bill and also that the interest was calculated upto 31.12.2020. The claim is therefore. for the aforesaid 3 items revised by a sum of Rs.5,60,480.82.

The interest re-calculated by the claimant upto 31.12.2020 in my view is not justified. Therefore. the revised claim works out to Rs. 17,14,366.85 (11,53,886.03+5,60,480.82) which is inclusive of interest as originally calculated from 1.2.2017 to 1.3.2020.

The delay in submission of final bill by the claimant is attributable to the respondent. The respondent ought to have made payment within 6 months.

I therefore, allow a sum of Rs. 17,14,366.85 for the revised claim No. 1 towards the agreed portion of the final bill.

25. Now coming to the non-agreed portion of the final bill, it is the case of the claimant that it executed number of changes in execution of work as per respondent's directions. Some of the AIPs for changes were initiated by GE but still have not been approved by the Competent Authority. It is the case of the claimant that same changes were executed at site, no AIP/Dos have been prepared so far. It is the case of the claimant that payment up to 80% were alleged various RAR (9^{th} to 15^{th}) which are enclosed as Annexure: C-11 at Pages 71 to 34.

26. I now take up the claims preferred by the claimant for which no DO have been issued:

(i) Provision of Transformer fencing.
The claimant submits that it carried out fencing work around the Transformer under close supervision, direction and knowledge

of the ground executive including the GE. The claimant also intimated to GE about the work done by it vide its letter No. MES/CA-CEDZ-19/2014-15/067 dated27.4.2016 with a request to issue necessary DO. As per the claimant, it incurred expenditure of Rs. 1,32,250/-. The said letter is Annexure: C- 14 on pages 107 and the details of the change are provided on page 154 of the final bill, Annexure A. It is admitted by the claimant that the scope of work did not include fencing of Transformer.

As per the respondent the said work was carried out by the claimant at his own due to his personal relations with the user with intent to oblige them. The case of the respondent is that the said additional work was never ordered by it and therefore, it has disputed the claim of the claimant,

It is the case of the claimant that it was asked to secure the Transformer by putting the fencing. The work, minor in nature, was done by the claimant during the course of execution of the contract. At no stage did the respondent ask the contractor not to do the work of fencing around the Transformer. The respondent, however, enjoyed the benefits of fencing around the Transformer for the reason that it was also necessary for security purpose. The claimant's claim for Rs. 1,32,250/- is. therefore, allowed.

(ii) Lights at Three gates (total 11 lights).
The claimant admits that it provided gate lights at the request of the "user". It has also admitted that there was no provision for providing gate light in the contract document. The claimant's case is that it carried out under the supervision. direction and knowledge of the ground executive including the GE of the respondent. The claimant has placed the details of the extra work at page 155 of the final bill, Annexure: A and submits that it incurred an expenditure of Rs.49,374/-.

The respondent has disputed the claim and has submitted that the claimant carried out the work in his personal capacity, due to his personal relations with the user with the intent to oblige them and that the respondent did not order execution of the said additional work.

The work in question has been done by the claimant lawfully for the respondent; it has not been done or intended to be done gratuitously and the benefit of the work done by the claimant has been enjoyed by the respondent. There is no material on record placed by the respondent to show that it did not accept the work done by the claimant or that it did not enjoy the fruit of

the work done by the claimant.

I am in agreement with the respondent and the claimant is not entitled to the sum of Rs.49,374/-. During the course of arguments the respondent submitted that if the claimant desires it can take back the lights for which it would have no objection. While I decline the sum of Rs.49,374/- for the said additional work, it is open to the claimant to take back the lights without causing any damage to the property within a period of 15 days from this award.

(iii) Additional work of Supply and fixing Udaipur green on staircase rise, tread and cills instead of Kota stone.

As per the claimant instead of mirror polished Kota stone it provided Udaipur Green for tread and riser of staircase and Cills of windows.

The claimant's case is that the financial effect of the change of work is Rs.10,29,488.75, details whereof are given on page 156-158 of the final bill, Annexure: A.

The respondent's case is that the said change of additional work was never ordered by it and it has denied the said claim of the claimant while submitting that it was carried out by the claimant in its personal capacity due to his personal relation with users with intent to oblige them. It is not disputed by the respondent/counter claimant that the claimant provided Udaipur Green for tread and riser on staircase and sills of windows instead of minor polished kota stone. The respondent has also not disputed that the claimant incurred an expenditure of Rs.10,29,488.75. The work would not have concluded without providing for staircase riser tread and sills under the work contract. I find no reason why the claimant would incur an expenditure of Rs.10,29,488.75 gratuitously. The said work done by the claimant is bonafide and has been enjoyed by the respondent/counter claimant and also by its users therefore in my view the claimant is entitled to be compensated to the cost of Udaipur green on staircase riser, tread and sills instead of polished kota stone incurred by it. I, therefore, allow the sum of Rs.10,29,488.75 towards the said expenses.

(iv) Increase in size of Alumn. Windows to 1500 x 2400mm instead of 900 x 1200mm in MP Hall Building and Single Living Accommodation building.

It is the case of the claimant that the respondent initiated AIP

and issued DO to make provision for increase in size of windows from 900x1200mm to 2400x1500mm in the MP Hail and Dinning Hal: and one additional window near lift ride letter of the Chief Engineer No. 82773/P/247/E8 dated 20.11.2017. It is the case of the claimant than the amount of DO was reduced due to incorrect evaluation of DO which resulted in to less payment to it and hence claimed Rs.2,79,947.29 for the said additional work. It is also submitted by the claimant that the size of the window got varied due to the claimant requiring to complete the incomplete work already executed by previous contractor who left the opening of window more than shown in drawing and during execution it was decided to provide bigger size of window according to the window opening lift by the previous contractor. The details of change have been provided on page 159-167 of the final bill Annexure: A.

The respondent admits that the DO was issued which is DO No. 23(P) and has claimed that the DO was signed by the claimant as a token of acceptance and a sum of Rs. 1,578,289.85 was claimed in the 16th RAR dated 28.9.2017. A sum of Rs. 1,57,000/- has been paid to the claimant. The claimant has not led any evidence to show that the amount of DO was reduced due to incorrect evaluation of DO resulting in less payment to it. Therefore the claim for a sum of Rs. 2,79,947.29 is not accepted and is declined.

(v) Supply and maintenance of Ashoka Trees.

The claimant has claimed Rs. 1,38,000/- for planting and maintenance of 30 Ashoka Trees. It is admitted by the claimant that the scope of work in contract does not cater for plantation of trees but he was asked for plantation of 30 Ashoka Trees and he intimated the same to the respondent vide letter No. MES/CA-CEDZ.19/2014-15/079 dated 7.4.2017 which is Annexure C-6 (page 53& 54) and details are mentioned on page 168 of the final bill, Annexure A.

As per the respondent the planting of 30 Ashoka Trees is not disputed but the respondent has denied that it ordered the said additional work. As per the respondent Trees were planted by the claimant due to his personal relations with users with intent to oblige them and has disputed the claim.

I find that plantation of trees by the claimant was not authorized by the respondent and it did not form part of the scope of work under the contract. There seems to be force in the case of the respondent that the trees were planted by the claimant of its own accord and to please the users. Therefore, the claimant is not

entitled to Rs. 1,38,000/- for the said work.

(vi) Watch & Ward expenses from 1.5.2016 to 15.5.2017.

The Garrison Engineer(P) West of the respondent/counter claimant vide letter No. 8387/CEDZ. 19/2014-15/306/EA dated 6.5.2015 (Annexure C-4 pg. 51) has indeed mentioned that the work has been completed and taken over by the respondent/Counter Claimant. It is the case of the claimant that the assets actually remained with it resulting in day-to-day maintenance and guarding of assets for which the claimant reminded the respondent/counter claimant to take over the assets constructed and completed but the respondent failed to do so. The claimant vide letter dated 7.4.2017(Annexure C-5) intimated the Chief Engineer, Delhi Zone that the work was completed on 30.4.2016 but the building have not been taken over by the user. Again on 28.4.2017 (Annexure C-6) the claimant intimated the Executive Engineer, Delhi Zone that despite efforts the buildings have not been taken over by the user and that it would withdraw the guards and supervisor from 30.4.2017. The claimant vide letter dated 1.5.2017 (Annexure C-7) again intimated the Chief Engineer, Delhi Zone that SMS has been received from Col. Roy from Sainik Aram Ghar requesting that the staff be kept till 14.5.2017. The claimant intimated the respondent that it would withdraw the guards and supervisor from 15.5.2017, lock the premises and hand over the keys to GE(P) West. The claimant has claimed to have incurred an expenditure of Rs. 19,29,984/-. The respondent/counter, claimant did not respond to the various letters written by the claimant with regard to the assets being protected by the Guards and Supervisor. The respondent/Counter claimant has taken advantage of the fact that the assets were protected and safeguarded by the claimant to its advantage. It was for the respondent/counter claimant to take actual, physical possession and deliver its possession to the user i.e. Sainik Aram Ghar which it failed to do. To my mind, the claimant is entitled to compensation of Rs. 19,29,984/- as it, cannot be considered to be a gratuitous act. It is a bonafide act of the claimant. I, therefore, award the sum Rs.19,29,984/- to the claimant as watch and ward expense from 1.5.2016 to 15.5.2017.

There is nothing on record from the side of the respondent to show that it ever asked the claimant to remove the Supervisor and security guards. In fact the deployment of supervisor and security guards was to prevent theft for the benefit of the respondent. The correspondence from the user of the respondent to the effect that the contractor is threatening to remove the supervisor and the security guard and the communication of the

claimant giving dead line to remove the supervisor and security guard itself show that the respondent was in complete know of the fact that the facility was secured by the supervisor and the security guards. The respondent having enjoyed the benefit of the deployment of the supervisor and the security guards cannot deny its liability to compensate the claimant.

(vii) Supply of Labour & other expenses for cleaning and re-white washing of site for inauguration by Defence Minister & Making of Inauguration stone and fixing at site.

I take two claims together and the claimant has claimed a sum of Rs.9,87,216/- with regard to supply of labour and other expenses and also for making Inauguration Stone and fixing at site.

The claimant has claimed the said sum for preparing the facility for the inauguration by then Defence Minister.

It is not the case of the respondent/counter claimant that it did not invite the Defence Minister to inaugurate the facility. The respondent/counter claimant stated that the work was carried out by the claimant due to its personal relations to the user to oblige them. In the rejoinder filed by the respondent dated 20.11.2020 the respondent has stated that the cleaning and white washing was done by the claimant, due to poor quality of work/material. The respondent/counter claimant while issuing Completion Certificate, has, mentioned about the defects that patches were found in rooms and living accommodation and the building was still under the defect liability period and the claimant had re-done it to make good the surface.

The respondent vide its letter dated 30.4.2016 (Annex. C-19) has stated that all defects have been rectified and shown to BOO, therefore, it is reasonable to conclude that before the Inauguration by the then Defence Minister the defects were rectified. The respondent/counter claimant has taken benefit of the work relating to supply of labour& Other expenses for cleaning and re-white washing of site for inauguration of the facility by the then Defence Minister and also for the expenses incurred for making and fixing of the Inauguration stone.

It cannot be said that the said work was done by the claimant gratuitously. The work in question has been done by the claimant lawfully for the respondent; it has not been done or intended to be done gratuitously and the benefit of the work done by the claimant has been enjoyed by the respondent. There is no material on record placed by the respondent to show that it did not accept the work done by the claimant or that it did not

enjoy the fruit of the work done by the claimant.

The claimant is entitled to be compensated for the said expenses in terms of Section 70 of the Indian Contract Act and I therefore, allow the sum of Rs.9,87,216/- to the claimant.

(viii) DG Set service & Maintenance Charges.

It is the case of the claimant that an expenditure towards DG Set service and maintenance, which was engaged after the Inauguration Facility and after the expiry of one year maintenance. The respondent/Counter Claimant has submitted that there was no written directions for the service and maintenance of DG Set and if any expenses in thatregard is incurred by the claimant, it was most likely to generate goodwill for their firm and that the respondent/counter claimant is not liable to pay for the same. After expiration of the maintenance period of one year, the claimant was under no obligation to incur any expenditure towards service and maintenance of DG set. Therefore, I disallow the claim of Rs. 28,174/-.

Claim No.2: Reimbursement of Extra Expenditure on Keeping BG Bond against retention money till now.

The claimant submitted BGB No.136GM1172710001 against retention for an amount of Rs.7,00,000/-, The claimant was required to keep fixed deposit of Rs.1,40,000/- for issue of BGB The BGB against retention money should have been released as adequate amount of retention money was available in the final bill but the same has still not been released. Due to non release of BGB the claimant was required to get BGB extended from time to time till 31 March, 2020. The claimant was made to pay the margin money for extending the BGB due to lackadaisical approach of the respondent, (Copy of bank statement - Annexure C-16, page 109 to 116 of the claim petition). The extension of BGB is due to breach of contract by respondent. The claimant claimed:

(a) Interest on margin money from the date of completion to 1.3.2020 = Rs.16,800/-;

(b) Money spent on extending BGB. = Rs.21,570/-, totaling Rs. 38,370/-.

I allow to the claimant Rs. 38,370/- towards reimbursement of extension of B.G.B.

Claim No.3 Reimbursement of Losses suffered due to restricted payment in RAR

The claimant claimed that it suffered financial losses due to non payment of due amount even after execution and completion of work. Dos were not finalized thus restricted payments were

made during execution and even after completion of work. The claimant submitted 14th RAR for Rs.50,13,812/- after completion of work but a payment of Rs.44,00,000/- was only allowed on 29.72016. Thus an amount of Rs.6,13,812/- was less paid. The claimant again submitted 15th RAR for Rs.24,70,272/- but payment of Rs. 12,00,000/- only was made on 4.1.2018. Non payment of due amount was breach of contract and the claimant claimed that it is entitled for losses suffered due to breach of contract in terms of Section 73 of The Indian Contract Act, 1872. The losses suffered due to delay in payment is as under:

Period	RAR No.	Amount Due	Delay days	Rate of intt.	Amount
29.07.2016 to 27.09.2017	14 Balance	6,13,812/-	61	18%	18464.81
28.09.2017 to 04.01.2018	15 Balance	12,70,272/-	99	18%	62107.11
		Total			80571.92

The respondent/counter claimant has submitted that the payment was restricted in respect of 14th and 15th RAR due to non availability of funds. The claimant cannot be faulted if the restricted payment was made in respect of the 14th and 15th RAR due to non availability of funds with the respondent/Counter Claimant.

I, therefore, allow the claim of Rs. 80,571.92 to the claimant.

Claim No 4-Interest on awarded amount, pendent lite and future @ 18% p.a.

The claimant has claimed interest on awarded amount, pendent lite and future @ 18% per annum. The claimant has relied upon the judgment dated 25.11.2014 of Hon'ble Supreme Court in case titled M/s Hyder Consulting (UK) Ltd. V. Governor State of Orissa through Chief Engineer, Civil Appeal No.3148/12. The Hon'ble Supreme Court in clause 6 of Section 31(7) of the Arbitration & Conciliation Act had awarded interest @ 18% per annum. The claimant has also relied upon the judgment of Delhi high Court in case titled: MMTC Ltd. V. Sineximco Pvt. Ltd. 2006 (3) ARBLR 12 Delhi wherein interest @ 12% awarded by Arbitrator has been maintained.

The respondent/counter claimant in the counter claim has claimed interest @9%.

I award interest to the claimant @ 12% per annum under Section 31(7)(a) of the Arbitration & Conciliation Act, 1996 on the sum of Rs 59,12,247.52 from 1.3.2020 till the date of award which works out to Rs 10,06,863.85. Thus the total amount receivable by the claimant is Rs 69,19,111.37. The claimant shall also be entitled to future interest @12% till the date of payment.

Claim No.5-Claim on account of additional liability of GST.
The claimant has submitted that it had no liability to payment of Goods on Service Tax [GST] under the terms of the contract. GST was made applicable on work contract w.e.f. 1.72017 upon promulgation by the legislative Act, therefore, the amount receivable by the claimant will be considered towards supply of service and is liable to tax @ 12% (6% GST AND 6% SGST). The claimant has prayed for the amount of award being enhanced by 12% payable to it by the respondent/counter claimant as part of the arbitral award

As per the claimant GST was applicable w.e.f. 1.7.2017 by way of legislative Act. Therefore, the amount receivable by the claimant will be considered towards supply of service and is liable to tax 12% (6% GST & 6% SGST). The claimant has prayed the amount of award being enhanced by 12% towards GST.

The respondent/counter claimant has submitted that all existing practices have been subsumed by GST and has further submitted that the claimant has not submitted requisite details and applicable tax to substantiate its claim towards payment of GST by the respondent/counter claimant.

To my mind payment it is the statutory liability of the respondent to pay GST (6% GST & 6% SGST). The claimant is entitled to reimbursement from the respondent/counter claimant upon production of receipts of payment towards GST.

Claim No.6-Cost of Arbitration.
It is the case of the claimant that it was compelled to resort to arbitration: had to engage, technical consultation and paid fee towards preparation of the entire claim, right from the letter to the Engineer-in-Charge for appointment of Arbitrator, statement of claim, pleadings and defence, rejoinder and for hearing of the case in future before this Tribunal. The expenses also included travelling, hotel stay, food bill; Engineer consultants etc. beside administrative cost, typing, stationery, printing etc. as per the claim the consultation fee varied from 3 persons to 5 persons. The claimant has not placed on record details of the amount

towards its claim for cost of arbitration.

The respondent/counter claimant has submitted that no documentary proof has been submitted by the claimant to support its case for cost of arbitration. However, the claimant is entitled to the cost of arbitration which is quantified Rs. 5,00,000/- to the claimant towards cost of arbitration."

10. The Ld. Single Judge has, in the impugned judgment, made a prefatory reference to the judgments of the Hon'ble Supreme Court and the law governing challenge to the Award by way of Section 34 petition. After doing so, the Ld. Single Judge has examined the various claims and held that, under Section 34, a Court cannot sit as a Court of Appeal over the proceedings and is only supervisory in nature and that there was no scope for interfering with the findings of the Ld. Arbitral Tribunal by re-appreciating the evidence or findings or by reconsidering all the conclusions arrived at.

11. It is settled law that the scope of an appeal filed under Section 37 of the A & C Act is narrower than the scope of proceedings under Section 34 of the A & C Act. The Hon'ble Supreme Court in ***C & C Constructions Ltd. v. IRCON International Ltd.***[5] observed that:

"**27.** As far as scope of interference in an appeal under Section 37 of Arbitration Act is concerned, the law is well settled. In the case of *Larsen Air Conditioning and Refrigeration Company v. Union of India* in paragraph 15, this court held thus:

"15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the Tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground" [ref : Associate

[5] 2025 SCC OnLine SC 218

> Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."
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> (emphasis added)
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> **28.** In the case of *Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking* in paragraph 18, this court held thus:
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> > "18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163: (2019) 2 SCC (Civ) 293], is akin to the jurisdiction of the court under Section 34 of the Act. [Id, SCC p. 167, para 14:"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision."] Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act."
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> **29.** Considering the limited scope of interference, as laid down by this Court, we find absolutely no merit in the appeal and the same is accordingly dismissed."
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> ***(emphasis supplied)***

12. Similarly, the Hon'ble Supreme Court in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[6] held that:

> "**11.** Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.
>
> **12.** It is pertinent to note that an arbitral award is not liable to be

[6] 2024 SCC OnLine SC 2632

interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

13. In paragraph 11 of *Bharat Coking Coal Ltd. v. L.K. Ahuja*, it has been observed as under:

> "11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."

14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

15. In Dyna *Technology Private Limited v. Crompton Greaves Limited*, the court observed as under:

> "24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34

> is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.
>
> 25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of *MMTC Limited v. Vedanta Limited*, it has been held as under:

> "14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

18. Recently a three-Judge Bench in *Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking* referring to *MMTC Limited* (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to

reverse the findings of the arbitral tribunal.

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CONCLUSION:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It 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 has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

(emphasis supplied)

13. Evidently, the first two contentions sought to be canvassed stringently by the Appellant are clearly in violation of the extremely narrower boundaries set by the judgments of the Hon'ble Supreme Court. Resultantly, these contentions are rejected outright for the reasons stated earlier and also due to these contentions being an attempt to expand the scope of challenge in an appeal filed under

Section 37 of the A & C Act.

14. As regards the challenge on merits and the factual findings of the Ld. Arbitrator, we are of the view that the Arbitral Award dated 09.08.2021 contains sufficient reasoning to withstand the challenge and does not suffer from the vice of being unreasoned or whimsical.

15. Resultantly, the present appeal along with pending application(s), if any, is dismissed with no orders as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 09, 2025/AK/sm/er