IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 483 OF 2018
WITH
NOTICE OF MOTION NO.1066 OF 2018

Mahaguj Collieries Ltd. ...Petitioner
(Original Respondent)

Versus

Adani Enterprises Ltd. ...Respondent
(Original Claimant)

Mr. Sanjay Jain, *a/w Ms. Sneha Phene, Mr. Jayendra Kapadia, Ms. Anupreeta Bhat & Mr. Indraneel Nanoti, for the Petitioner.*

Mr. Ashishchandra Rao, *a/w Ms. Ria Dalwani, Ms. Urja Thakkar & Ms. Aditi Rai i/b Economic Laws Practice, for the Respondent.*

CORAM: **SOMASEKHAR SUNDARESAN, J.**
RESERVED ON: **APRIL 9, 2026**
PRONOUNCED ON: **JUNE 25, 2026**

JUDGEMENT:

Context and Factual Background:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, ("***the Act***") impugning an Arbitral Award dated February 1, 2018, ("***Impugned Award***") by which, a Learned Arbitral Tribunal

has directed the Petitioner, Mahaguj Collieries Limited ("***Mahaguj***") to pay a sum of Rs. ~32.79 Crores to the Respondent, Adani Enterprises Limited ("***Adani***"), which as the lead member of a consortium along with PT Bara Jaya Utama, an Indonesian Company, had been appointed as a Mine Developer-cum-Operator ("***MDO***") to mine coal from the Machhakata coal block in the State of Odisha ("***Coal Block***").

2. The Impugned Award is a partial award passed, invoking Section 31(6) of the Act, in disposal of an application filed by Adani on behalf of the MDO under Section 17 of the Act seeking interim relief. Mahaguj is a 60:40 joint venture between the Maharashtra State Power Generation Company Limited and the Gujarat State Electricity Corporation Limited, the State-owned power generation companies in Maharashtra and Gujarat respectively. Each promoter of Mahaguj generates power through thermal power plants. Mahaguj was incorporated as a joint venture company, on November 1, 2006, to avail of the Government Company Dispensation Scheme under the Coal Mines (Nationalisation) Act, 1973 for captive mining of coal. The Coal Block was allotted by the Ministry of Coal in the Central Government.

3. Mahaguj floated a tender on February 19, 2008 to engage a coal mining service provider to undertake exploration, development and mining of coal at the allocated Coal Block. The MDO had the lowest bid and was issued a letter

of intent by Mahaguj on May 20, 2009. The MDO furnished a performance bank guarantee dated August 19, 2009 for a sum of Rs. 150 crores to secure the performance of the its obligations. Eventually a Coal Mining Services Agreement dated May 6, 2010 ("***CMSA***") was executed with retrospective effect from November 30, 2009 ("***Effective Date***"). The "commencement date" i.e. fulfilment of conditions precedent was agreed to be by expiry of 24 months of the Effective Date i.e. by November 30, 2011. Commencement of coal production was meant to be achieved in 12 months of the Commencement Date i.e. by November 30, 2012

4. The MDO sought extension for the Commencement Date from November 30, 2011 to March 31, 2013 in order to complete the conditions precedent that had to be achieved. This was eventually extended and a new commencement date was fixed for October 30, 2012 thereby, shifting the date for commencement of coal production to October 30, 2013.

5. Meanwhile the Supreme Court was dealing with public interest litigation over the allocation of coal blocks by the Government of India. Eventually, by a judgement dated August 25, 2014 and an order dated September 24, 2014, the Supreme Court outlawed the allocation of coal mining rights in respect of over 200 coal blocks which included the Coal Block allocated to Mahaguj to be developed and operated by the MDO. Over two

years later, by letter dated November 26, 2016, the MDO contended that it was impossible to perform the CMSA and invoked arbitration proceedings.

6. An Application under Section 17 of the Act was filed by the MDO on May 10, 2017 ("***Section 17 Application***") along with the Statement of Claim. The Section 17 Application sought reimbursement of expenses incurred by the MDO under the CMSA. The core contention in the Section 17 Application was that the MDO had spent various monies under the CMSA, all of which were in its capacity as an agent of Mahaguj, and that Mahaguj had in fact admitted to such expenses having been incurred. Pleadings in the Section 17 Application were completed by January 4, 2018.

7. At a hearing held on January 5, 2018, the MDO pressed for an interim award under Section 31(6) of the Act. The MDO showed evidence of actual payments having been made for the amounts in which it desired a partial award and that the CMSA was incapable of being performed. The parties filed written submissions in the matter by January 15, 2018. Mahaguj contended that the Section 17 Application contained no reference to any admission by Mahaguj and that foundational pleadings necessary for a partial award under Section 31(6) of the Act were lacking. Incurring of expenses and the question of who should bear the burden of the CMSA becoming incapable of performance, Mahaguj contended, were triable issues that needed evidence to

be led and adjudication of the claim for the sections invoked in the Indian Contract Act, 1872 ("***Contract Act***"), to be applied. Mahaguj relied on pleadings in the Section 17 Application, which referred to the amount expended by the MDO as an "investment", from which, the MDO contended it was entitled to reap benefits.

8. On February 1, 2018, the Impugned Award was passed directing Mahaguj to pay a sum of Rs. ~32.79 crores to the MDO, primarily holding that the CMSA was indeed incapable of being performed. The Learned Arbitral Tribunal held that Mahaguj had admitted to the MDO having incurred expenditure under the CMSA way above the amount claimed, placing significant reliance on a letter dated November 17, 2014 ("***November 2014 Letter***") from Mahaguj to the Union Coal Ministry, setting out the sums spent by MDO. This, to the Learned Arbitral Tribunal's mind, constituted an admission and necessitated Mahaguj having to give up the "benefits" it had earned under the CMSA. The Learned Arbitral Tribunal treated the Section 17 Application as an Application under Section 31(6) of the Act and held that the substance of the Application must be seen, and not the nomenclature. It went on to pass the Impugned Award.

9. It is against this backdrop that submissions were made before this Court by Mr. Sanjay Jain, Learned Advocate on behalf of Mahaguj and Mr. Vikram

Nankani, Learned Senior Advocate on behalf of MDO. The matter was first heard last year, but due to the significant efflux of time since the hearing, the matter was heard afresh on April 9, 2026 by consent of the parties and judgement was reserved afresh. I have considered the submissions made by the respective advocates for the parties. I have considered the material on record with their assistance and their oral and written submissions.

Analysis and Findings:

10. At the heart of the challenge mounted by Mahaguj, is the contention that serious triable issues exist and that the Learned Arbitral Tribunal ought not to have passed the Impugned Award with summary judgement. Whether evidence ought to have been led before the Learned Arbitral Tribunal instead of relying primarily on the November 2014 Letter, treating it as a written admission by Mahaguj, is to be considered.

11. While Mahaguj had contended that the Section 17 Application was misconceived inasmuch as it sought final relief in an interim application and that too in a case that needed adjudication, the MDO had contended that the nominal share capital of Mahaguj and the fact that no revenue-generating activity had been undertaken by Mahaguj after the cancellation of the Coal Block allocation created a serious apprehension that Mahaguj would not honour the final award. In the course of hearing the Section 17 Application, the

MDO made an oral submission to have the amount claimed paid over to the MDO and this found favour with the Learned Arbitral Tribunal – not as an interim measure that would be subject to the final outcome but as a final outcome in the form of a partial award to the extent of the amount awarded. Therefore, the Impugned Award is not one that secures the amount of expenses incurred but an award that grants an entitlement of the MDO to the amount awarded, which has been adjudicated as being payable by Mahaguj to the MDO.

12. Against this backdrop, I have carefully examined the contents of the Impugned Award and the provisions of the CMSA. Now, bearing in mind the scope of review under Section 34 of the Act, it is clear that it is not open to the Section 34 Court to conduct a second trial or treat the proceedings as an appeal for purposes of assessing whether an arbitral award is unsustainable. What is equally noteworthy is that the Impugned Award is not a product of a trial for the present proceedings to be a second trial. However, the Impugned Award, although dispositive of the Section 17 Application, is a partial award passed invoking the power of the Learned Arbitral Tribunal under Section 31(6) of the Act. Therefore, the standard to be applied is the standard under Section 34 of the Act.

13. Indeed, the scope of review under Section 34 of the Act is now well known across multiple judgements including ***Dyna Technologies***[1], ***Konkan Railway***[2], and ***OPG Power***[3] (to just identify a few). While the absence of reasons could lead to an arbitral award being assailed as perverse due to the absence of a judicial approach, the Section 34 Court has to be very careful to give a free play in the joints to the Learned Arbitral Tribunal when examining if there are discernible implicit reasons that would otherwise justify the arbitral award, and minimise the interference. Even errors in application of the law that do not cut to the root of the matter cannot lead to interference with an arbitral award. One plausible view of the Arbitral Tribunal cannot be substituted by another plausible view that appeals more to the Section 34 Court. However, if the errors of law and the manner of arriving at findings that cut to the root of the matter are found, or if reasoning adopted is such that no reasonable judicial mind would have taken such a view, a case for interference would be made out.

14. It is with the aforesaid standard in mind that I have examined the Impugned Award to assess the challenge laid to it.

1 *Dyna Technologies Private Limited v. Crompton Greaves Ltd* – ***(2019) 20 SCC 1***
2 *Konkan Railway Corporation Ltd. v. Chenab Bridge Project Undertaking* - ***(2023) 11 SCR 215***
3 *OPG Power v. Enoxio* – ***(2025) 2 SCC 417***

15. There can be no quarrel that the performance of the CMSA is an impossibility after the Supreme Court had directed cancellation of allocation of the Coal Block, along with over 200 other coal blocks. Likewise, the fact that it was Mahaguj that endorsed the expenditure incurred by the MDO in the November 2014 Letter, cannot be quarrelled. The question to ask is whether in terms of the CMSA, a summary judgement could have been rendered on the need to direct reimbursement of amounts expended by the MDO or whether any such direction would necessitate a trial to be conducted and the CMSA having to be interpreted with evidence being led.

16. Towards this end, it would be necessary to examine the CMSA. First, a summary of what was claimed and awarded would be appropriate. The payments that are contentious for purposes of adjudication by the Learned Arbitral Tribunal primarily relate to amounts paid towards land acquisition by the MDO – both for the Coal Block and for rehabilitation and resettlement in relation to the land acquired for coal mining. Other payments such as payments to the Central Electricity Supply Utility in Odisha and to the East Coast Railways, the Water Resources Department and the like had also been sought to be claimed, taking the total claim in Section 17 application to Rs. ~44.78 Crores, but what is awarded is primarily the amount said to have been paid towards land acquisition.

17. Therefore, what the CSMA stipulated as the agreed position between the parties in relation to land acquisition would be instructive. Clause 5.2(b) of the CSMA is worthy of extraction, and is set out below:

> *5.2 MDO's Responsiblities*
>
> *(b) Land Acquisition and R&R*
>
> *The MDO shall be responsible for undertaking all land acquisition in accordance with the Land Acquisition Plan, and the resettlement and rehabilitation of people and property displaced from the Mine site in accordance with Applicable Law and as per the terms of this Agreement. The MDO shall be liable to pay for and acquire land on behalf of MGCL as required by and in accordance with the Land Acquisition Plan/Mine Plan and Mine Schedule. All activities incidental to the acquisition of land for the Coal Block/Mine shall be carried out by the MDO on behalf of MGCL Notwithstanding the above, MGCL shall at all times be the sole lessee under the Mining Lease in respect of the land acquired for the Coal Block. All surface and mining rights with respect to the land acquired and the Coal Block shall vest solely with MGCL. The MDO shall pay for any Claim made against MGCL for failure on the MDO's part to fulfill its obligations in regard of rehabilitation and resettlement. The MDO shall be required to reimburse all expenses incurred by MGCL towards land acquisition and R & R at actuals on production of appropriate documentary evidence by MGCL.*
>
> *Acquisition of land shall be done by the MDO in three phases in the span of ten years each in accordance with the Land Acquisition Plan. The MDO shall pay for the land acquired and MGCL shall reimburse the MDO the costs incurred for acquiring the land per the Land Acquisition Plan as a part of the Coal Mining Service Fee, in accordance with Clause 10.2.*

> ***First Phase: The land acquisition for the First Phase shall be completed prior to the Commencement Date.*** *All land acquisitions for the First Phase shall be approved by a committee which will be constituted by MGCL,* ***The cost of the land acquired for the First Phase, the costs for R & R for the First Phase and Approvals shall be audited by an independent chartered accountant firm appointed by MGCL within one (1) month of the Commencement Date.*** *The Parties hereto acknowledge that* ***such audited cost will form the basis of computation of any payments to be made to the MDO or any amounts recoverable, from the Project or the land, by the MDO in the event of prior termination of this Agreement.***
>
> ***Second Phase & Third Phase: The land for the Second Phase and Third Phase shall be acquired in accordance with the Land Acquisition Plan****. The costs of land acquisition and R&R for the Second Phase and the Third Phase* ***shall be reviewed and audited by an independent chartered accountant firm and the MDO shall reimburse to MGCL all the expenses of such audit****. The independent chartered accountant firm shall be appointed by MGCL within one month of the end of the Operating Year during which such land acquisition had taken place.* ***The land acquisition and R & R costs incurred for the Second Phase and Third Phase by the MDO in an Operating Year as determined pursuant to the audit by the independent chartered accountant firm shall be reimbursed by MGCL as part of the Coal Mining Service Fee*** *in accordance with Clause 10.2.2 Method 1 sub-clause (f).*
>
> ***[Emphasis Supplied]***

18. A plain reading of the foregoing would indicate a few clear pointers, namely:

A] The MDO was to pay for the land acquisition. Even expenses incurred by Mahaguj in the process of land acquisition would be reimbursed by the MDO to Mahaguj;

B] However, the title to the land for the Coal Block would always be that of Mahaguj. The payments were therefore to be made by the MDO on *behalf of* Mahaguj; and

C] The recoupment of such expenditure on land acquisition incurred by the MDO would be through payment of the Coal Mining Service Fee under the CMSA; and

D] The monetary resources expended by the MDO was meant to be audited and such audited data would form the *basis* of any *payments to be made to the MDO* by Mahaguj in the event of earlier termination of the CMSA.

19. The term "Work" and "Scope of Work" to be carried out by the MDO as set out in the CMSA is defined to mean all the work required to be undertaken at the Coal Block in order to mine the coal and deliver the washed coal derived from such mining to the thermal power stations designated by Mahaguj in accordance with the terms of the CMSA. In consideration of the coal so delivered, a Coal Mining Service Fee was payable by Mahaguj to the MDO.

20. The Coal Mining Service Fee is the fee payable per tonne of washed coal to be calculated under clause 10.2 of the CMSA. Clause 10 deals with the Coal Mining Service Fee and any adjustments thereto, linked to the quality specifications, as if this was coal to be acquired in the market. The amounts payable towards the Coal Mining Service Fee has been fixed on the basis of a formula that would vary on a phase-wise and year-wise manner and the provisions are quite akin to purchase of coal, although the CMSA itself provides that the title to the coal and to the land for the Coal Block would belong to Mahaguj.

21. Moreover, Clause 9 of the CMSA provides for a "*take-or-pay and serve-or-provide*" obligation with a 10% deviation being permitted in the committed offtake and the committed delivery. If there had been a shortfall in offtake of coal by a margin of more than 10%, Mahaguj would need to pay as if the coal had been acquired. If there had been a shortfall in supply of the coal mined from the Coal Block by a margin of more than 10%, the MDO was required to procure coal from the market and deliver the same. In other words, the CMSA's pricing provisions are akin to any coal acquisition contract that one would engage in with a third party, even while title to the coal under the CMSA was indicated as vesting in Mahaguj.

22. Likewise, as already noticed above, although title to the land constituting the Coal Block was meant to belong to Mahaguj, it was the MDO that was to pay for the land acquisition, under the CMSA. Even if Mahaguj were to incur any expense towards land acquisition, the MDO was to reimburse Mahaguj. The recoupment of the amounts so expended was to be through the Coal Mining Service Fee, which would indicate that embedded in the Coal Mining Service Fee were elements of pricing that would recoup such expense incurred by the MDO.

23. Therefore, to my mind, any reasonable reading of the CMSA would indicate that to adjudicate the claim for reimbursement of expenses as claimed by the MDO, the CMSA would need to be interpreted, and in aid of interpretation as to what the parties intended and how they acted, evidence would need to be led. On the face of it, the CMSA does not lend itself to summary judgement, and instead, points to the need for the Learned Arbitral Tribunal to have conducted adjudication.

24. Against this backdrop, how the Learned Arbitral Tribunal went about rendering the Impugned Award as a conclusive and summary partial award merits consideration. Since Mahaguj had raised an issue of jurisdiction, contending that the disputes raised by the MDO would fall within the ambit of Section 27(1) of The Coal Mines (Special Provisions) Act, 2015, ("***New Coal***

Act"), a special legislation that was introduced primarily to deal with the fallout of the Supreme Court judgement cancelling allocation of coal blocks, the Learned Arbitral Tribunal considered that provision and ruled that it would not lack jurisdiction in adjudicating the disputes. Indeed, on this count, I see no reason to find fault with the Learned Arbitral Tribunal inasmuch as Section 27 of the New Coal Act provides for a tribunal under that law to adjudicate disputes between new allottees of the coal blocks and the earlier allottees (such as Mahaguj) whose allocations had been cancelled by the Supreme Court. The dispute in hand being between an earlier allottee (Mahaguj) and the MDO, a third party, it cannot be said that the disputes would have fallen within the jurisdiction of the tribunal created under the New Coal Act.

25. The Learned Arbitral Tribunal then primarily placed significant reliance on the November 2014 Letter written by Mahaguj to the Union Coal Ministry confirming expenses incurred by the MDO in the course of operating under the CMSA. The Learned Arbitral Tribunal treated this letter as an admission of expenses incurred by the MDO and went on to direct that such admitted expenses would need to be paid over by Mahaguj. There are multiple references in the Impugned Award to the amounts awarded by the Learned Arbitral Tribunal as expenses and the claim granted as a direction to reimburse such expenses. Yet, the Learned Arbitral Tribunal has also simply

stated that by a conjoint reading of Section 56 and Section 65 of the Contract Act, Mahaguj ought to be called upon to give up the benefits it had gained from a contract that has become impossible to perform and thereby void. Therefore, effectively, the Learned Arbitral Tribunal has treated the expenses incurred by the MDO as a benefit gained by Mahaguj, directing that the benefits ought to be taken out from Mahaguj.

26. In view of a conjoint reading of Section 56 and Section 65 of the Contract Actby the Learned Arbitral Tribunal, these provisions are extracted below:

> ***56. Agreement to do impossible act.—***
>
> *An agreement to do an act impossible in itself is void.*
>
> ***Contract to do act afterwards becoming impossible or unlawful.—***
>
> *A contract to do* ***an act which, after the contract is made, becomes impossible****, or, by reason of some event which the promisor could not prevent, unlawful,* ***becomes void when the act becomes impossible*** *or unlawful.*
>
> ***Compensation for loss through non-performance of act known to be impossible or unlawful.—***
>
> *Where* ***one person has promised to do something which he knew****, or, with reasonable diligence, might have known,* ***and which the promisee did not know****,* ***to be impossible or unlawful, such promisor must make compensation to such promisee for any loss*** *which such promisee sustains through the non-performance of the promise.*

> ***65. Obligation of person who has received advantage under void agreement, or contract that becomes void.—***
>
> *When an agreement is discovered to be void, or* ***when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it****, to the person from whom he received it.*
>
> ***[Emphasis Supplied]***

27. Before analysing the aforesaid provisions, since the manner of adjudication is what can be examined under Section 34 of the Act, how the Learned Arbitral Tribunal has dealt with the invocation of these provisions may be fruitfully noticed, and is extracted below:

> *6.* ***The dispute between the Claimant and the Respondent arose as the allocation of the Coal Block was cancelled by the Supreme Court*** *vide its judgment date 25.9.2014 and order dated 24.8.14 in the case of Manohar Lal Sharma vs. The Principle Secretary & Ors. [W.P. (Crl.) 120 of 2012] and* ***the execution of the project became an impossibility in the estimation of the Claimant****. The Claimant invoked Arbitration proceedings,* ***making claims w.r.t. the money that it had already spent in furtherance of the CMSA, while the Respondent denied its liability to reimburse the same to the Claimant. That is in essence the crux of the contractual disputes between the Claimant and the Respondent.***
>
> *11. At the cost of repetition,* ***it is pertinent to mention few basic and admitted facts in the present case****. The Claimant and the Respondent had entered into a Coal Mining Services Agreement (CMSA) for the development of the Machhakata & Mahanadi Coal Block project on 6.5.2010.* ***The Claimant in pursuance of the CMSA had incurred certain expenses, details of which have already been mentioned earlier,***

which it had paid either to the Respondent or to various other agencies, on behalf of the Respondent. ***The factum of payment of these amounts are not in dispute****, as both the* ***proof of payments have been produced by the Claimant*** *and the* ***Respondent has also not denied the same for many of these heads of payment****. Respondent has although taken a ground that these were made without their consent.* ***The fact of cancellation of the Coal Block by the Supreme Court Of India is also not in doubt, which made the execution of the CMSA an impossibility****.*

12. ***On a conjoint reading of Sec. 56 and Sec. 65 of the India Contract Act, 1872, and taking into account the Supreme Court Judgment/Order****, it becomes clear that in the present case,* ***the execution of CMSA has become impossibility*** *and that the* ***Respondent had received advantages****, which* ***it is now legally bound to restore to the Claimant.***

13. This issue has another limb. We have perused the records of the case and we find merit in the submissions made by the Claimant that ***the Respondent in its letter dated 17.11.2014 has made an admission with regard to the expenses incurred by the Claimant****. In the letter of said date, the* ***Respondent itself had informed*** *the Ministry of Coal, Government of India,* ***that the MDO (the present Claimant) had incurred an expenditure of Rs. 201.80 Crores in development of the Coal Block****. The* ***reply of the Respondent to the letter dated 17.11.2014 that, firstly, it is not an admission****, and secondly, presuming it was,* ***why was the Claimant only claiming 32.79 Crores (for land acquisition)*** *out of 201.80 Crore* ***is weak and unconvincing****. The Claimant in its statement Of Claim has made a* ***claim of higher amount****, and the same* ***shall be adjudicated at the time of final hearings in the matter****.*

19. Therefore, in conclusion of the second issue, ***since the factum of the signing of Coal Mining Services Agreement between the Claimant and the Respondent is not disputed****, the* ***payments made and expenses incurred by the Claimant under CMSA is not disputed*** *and the* ***cancellation of Coal Block Allocation by Supreme Court is also undisputed****, therefore,* ***this Tribunal is hereby partially allowing the relief prayed by***

the Claimant and is directing the Respondent to make payment of Rs. 32,79,60,605/-, the sum which has been paid by the Claimant to IPCOL, IDCO and LAO for the purpose of land acquisition for the Coal Block project. Let this payment be made by the Respondent to the Claimant within a period of 4 months from today.

20. The adjudication of the claims with respect to the rest of the sum of money paid by the Claimant shall be considered at the time of final arguments in a consolidated manner.

21. Lastly, with regard to the ground of limitation raised by the Respondent, we make it clear that since we are passing the present Interim Award on the strength of the admission of the Respondent with regard to the expenditure incurred by the Claimant, the issue of limitation and all other legal and factual issues raised by both the sides are kept open, to be adjudicated at the time of final arguments.

[Emphasis Supplied]

28. The aforesaid extracts constitute the exhaustive crux of the summary analysis by the Learned Arbitral Tribunal. This has to be tested for its invocation of Sections 56 and 65 of the Contract Act having been pressed into service to issue the direction to Mahaguj to pay the awarded amount to the MDO. Such test has to be within the scope of review under Section 34 of the Act – essentially to examine if the Learned Arbitral Tribunal has taken a view that is impossible for any reasonable person to take, for it to be perverse; and whether such perversity cuts to the root of the matter.

29. Remarkably, the Impugned Award contains no analysis of Sections 56 and 65 of the Contract Act – they are summarily invoked without applying the

ingredients of the provisions to the facts of the case. Equally, there is no analysis of the provisions of the CMSA to analyse and indicate the nature of the agreement between the parties, as to how they had contracted to share the risk apportionment between them in the event of the CMSA getting terminated or becoming void.

30. As already stated above, the finding that the CMSA has become void is an accurate one. One cannot have an agreement to mine coal from the Coal Block when the Supreme Court has outlawed the allocation of the Coal Block. Therefore, the CMSA became impossible to perform upon the cancellation of allocation by the Supreme Court. Thereby, the CMSA became void within the scope of Section 56 of the Contract Act. However, to attract the element of compensation in relation to any promise that has become impossible to perform, as provided for under Section 56 of the Contract Act, the necessary ingredients are that the promisor knew and the promisee did not know, that the promise was impossible to perform. If such ingredients are met, the promisor must make compensation to the promisee for any loss sustained through the non-performance of the promise.

31. Therefore, necessarily, to invoke Section 56, the promise in question ought to have been spelt out. Then the knowledge of the promisor that the promise was an impossibility, and the absence of knowledge of the promisee

about the impossibility must be shown. It is then that a case for compensation would be made out. Moreover, the very fact that Section 56 of the Contract Act provides for compensation for any loss sustained, there would be a need to assess the loss sustained and a fair assessment of how to compensate for such loss. In my judgement, the aforesaid standard would necessitate examining evidence and assessing what the parties contracted and what the promisor knew about the impossibility or illegality of performance and what the promisee did not know about such impossibility or illegality. Likewise, evidence of loss suffered would need to be led and the compensation amount would have to be arrived at based on empirical evidence. Section 56 of the Contract Act, therefore, in my opinion does not lend itself to a summary judgement in the facts of this case.

32. Section 65 of the Contract Act, which has also been invoked obliges a person who has received an advantage under a contract that becomes void, to restore such advantage or to make compensation for it to the person from whom he received it. Towards this end, the contract (in this case, the CMSA) needs to be examined and applied to the factual matrix, to return a finding as to whether an advantage has been received. The Impugned Award essentially deals with monies paid by the MDO to the State of Odisha and its instrumentalities towards land acquisition. Now, the CMSA obliges the MDO to make these payments although title to the land acquired would vest in

Mahaguj. The means of recouping the expenditure incurred is through the intricate mechanism for computing the Coal Mining Service Fee.

33. While the payment made by the MDO towards land acquisition is evidently an expenditure made, whether it translates into an "*advantage*" gained by Mahaguj is a question of fact. If the CMSA had actually imposed the obligation to pay for land acquisition on Mahaguj but the MDO had paid, it would have constituted an advantage that Mahaguj had gained by the MDO having done something that Mahaguj was meant to do. On the other hand, the CMSA explicitly provides that land acquisition would be paid for by the MDO. The CMSA provides that even if Mahaguj expended something towards land acquisition, the MDO would need to reimburse Mahaguj. The costs paid towards land acquisition were factored into the Coal Mining Service Fee to be computed in terms of a detailed formula contracted between the parties. The risk of paying the land acquisition costs and the rewards in the form of the Coal Mining Service Fee were essential elements of the CMSA.

34. Against this backdrop, the summary judgement in the Impugned Award, without even an analysis of these provisions of the CMSA and without any evidence being led as to what was whose advantage, is inexplicable. Even Section 65 provides for restoration of an advantage or making compensation for the advantage received. Compensation would necessarily entail

assessment, which would entail evidence being led. For the Impugned Award to be sustainable, the advantage being received should be writ large in such a manner that no further adjudication is necessary, warranting disposal of a Section 17 Application by way of a partial and conclusive award of the amounts spent towards land acquisition. The Impugned Award is silent on how such advantage is writ large.

35. Not only is an Arbitral Tribunal the last word on interpretation of evidence, but also its interpretation of contract must not be lightly disturbed unless and until the view taken by the Arbitral tribunal in an arbitral award impugned is of a nature that would be totally untenable and not amenable to any reasonable reading thereby placing it in the realm of the perverse. In this case, no evidence was tested and no assessment of advantage gained or loss sustained or compensation payable was made. Every rupee spent towards land acquisition was simply asked to be paid over by Mahaguj to the MDO without anything further to be done. The provisions of the CMSA were not tested to be interpreted nor were the provisions of the Contract Act, summarily invoked by a "conjoint reading", analysed for how their ingredients were attracted.

36. The summary, conclusive and sweeping manner in which the issue has been dealt with in Paragraph 12 of the Impugned Award (extracted again

below), in my respectful opinion, does not lend itself to a reasonable and rational means of adjudicating the dispute:

> *12. On a conjoint reading of Sec. 56 and Sec. 65 of the India Contract Act, 1872, and taking into account the Supreme Court Judgment/Order, it becomes clear that in the present case, the execution of CMSA has become impossibility and that the Respondent had received advantages, which it is now legally bound to restore to the Claimant.*
>
> *[Emphasis Supplied]*

37. Therefore, in my opinion, the summary judgement in the Impugned Award calls for interference even in the framework of the narrower confines of intervention under Section 34 of the Act.

38. There is another element that should be touched upon. Mahaguj has contended that the MDO itself has referred to the expenses incurred towards land acquisition as an "investment" in its pleadings but the Learned Arbitral Tribunal has awarded it variously as a loss sustained by the MDO and an advantage gained by Mahaguj by the "conjoint reading" of Sections 56 and 65 of the Contract Act.

39. The Learned Arbitral Tribunal has repeatedly referred to the claim by the MDO as a reimbursement of expenses incurred by the MDO. The evidentiary basis for the summary judgement is the November 2014 letter from Mahaguj communicating to the Union Coal Ministry that the MDO had

spent a sum of Rs. ~201 crores under the CMSA. This is seen by the Learned Arbitral Tribunal as an admission by Mahaguj.

40. The Learned Arbitral Tribunal invoked Order XII Rule 16 of the Code of Civil Procedure, 1908 to hold that where admissions of fact have been made, whether orally or in writing, the Court may at any stage, on an application by a party or on its own motion, make such order or pass such judgement as it deems fit, without waiting for determination of other issues between the parties. The November 2014 Letter in the view of the Learned Arbitral Tribunal is a clear, unambiguous and unequivocal admission by Mahaguj that expenses were indeed incurred by the MDO in the development of the Coal Block.

41. What is evident is that the Learned Arbitral Tribunal too found the November 2014 Letter to be one of the MDO having incurred expenses. This is a reasonable reading of the November 2014 Letter, but only as an admission of expenses incurred by each party when the Union Coal Ministry was assessing the impact of the cancellation of the Coal Block. How this would translate into an admission of *advantage* gained by Mahaguj (for Section 65 of the Contract Act) or *loss* sustained (for Section 56 of the Contract Act) is unclear from any reading of the Impugned Award.

42. In Paragraph 13 of the Impugned Award (extracted above), the Learned Arbitral Tribunal simply held that Mahaguj's contentions that such letter did not constitute an admission that such amount is amenable to a partial award and does not constitute an admission was "*weak and unconvincing*". There is nothing to show what weakness and absence of reason and logic is perceived, for it being unconvincing.

43. It is one thing if Mahaguj had made an admission that it had gained any advantage by reason of the amounts paid by the MDO towards land acquisition. The CMSA shows that such payment was made as required under the agreement. The Learned Arbitral Tribunal has held that the MDO did not have any direct commercial dealing with the Ministry of Coal or any instrumentality of the Government of India. Therefore, by implication, by the Learned Arbitral Tribunal's reasoning, any expense incurred by the MDO would need to be reimbursed. What advantage Mahaguj got out of such payments surely warranted examination of evidence, and a trial of the quantum of loss sustained, and that too if it could be shown that the MDO made a promise that it did not know was illegal but Mahaguj accepted the promise with knowledge of it being illegal. None of this lends itself to a summary partial award.

44. Section 31(6) of the Act is noteworthy since the Learned Arbitral Tribunal has based its reason for making a partial award on this provision:

> *(6) The **arbitral tribunal may**, at any time during the arbitral proceedings, **make an interim arbitral award** **on any matter** with respect to which it may make a final arbitral award.*
>
> ***[Emphasis Supplied]***

45. Indeed, an interim award may be made in respect of any matter when nothing further is needed to be done to hold up judgement on that issue. In other words, other elements of the arbitration proceedings would not need to delay pronouncement upon a matter on which the Arbitral Tribunal is convinced and has formed judgement. However, that does not mean that the judgement formed in this process does not have to withstand the scrutiny to which any arbitral award would be subjected. The reliance upon Section 31(6) by the Learned Arbitral Tribunal was essentially to treat the Section 17 Application as an application under Section 31(6), and thereby award the amounts covered by the Section 17 Application, in the form of a partial award.

46. Indeed, the provisions of Clause 5.2 in the CMSA governing land acquisition (*extracted above*) uses the expression "*on behalf of*" in relation to payments made by the MDO. I have already dealt with these provisions above as to how the parties had contracted a scheme in the CMSA for recovery of these amounts to be factored into the Coal Mining Service Fee, such that even

if Mahaguj incurred any expense, it was the MDO that would have to reimburse such expense since this was factored into the Coal Mining Service Fee. This lends itself, *prima facie*, to being consistent with the MDO's pleading about such expenditure being an investment to be recovered on by way of the Coal Mining Service Fee. Be that as it may, the CMSA also has Clause 12.8 and Clause 39.2, which Mahaguj invoked to contend that the MDO was not an agent of Mahaguj. These provisions are extracted below:

> *Clause- 12.8 MDO an Independent Contractor-*
>
> *It is expressly understood that the MDO is an independent contractor and that the MDO's Employees are not servants, agents, or employees of MGCL. The actual performance of the Work shall be carried out by the MDO under the supervision and direction of MGCL without however reducing MDO's obligations under the Agreement, MGCL shall at all times have access to the operations and Work performed hereunder by the MDO. Any review of the Work/ supervision undertaken by MGCL. shall not discharge the MDO from its obligation to performs the Work in accordance with the terms of this Agreement.*
>
> *Clause 39.2- No Partnership, Agency or Employment*
>
> *Nothing in this Agreement constitutes or shall be deemed to constitute a partnership between the Parties or the appointment of one Party as the agent of the other, or the employment of one Party by the other, for any purpose whatsoever. Other than as expressly provided by this Agreement, no Party has the authority or power to bind the other to contract in the name of, and create a liability against, the other in any way or for any purpose.*
>
> *[Emphasis Supplied]*

47. Even a plain reading of these provisions would indicate the need to test these positions and subject the CMSA to interpretation in reliance upon evidence led by the parties. How Clause 5.2 of the CMSA would need to be reconciled with Clause 39.2 of the CMSA needed analysis and adjudication that is entirely missing in the summary judgement rendered in Impugned Award.

48. Therefore, in my opinion, it would be necessary to quash and set aside the Impugned Award. Needless to say, nothing in this judgement is an adjudication on the merits of the matter. The issue of whether the amounts paid towards land acquisition by the MDO stood automatically treated as a loss sustained by the MDO or an advantage gained by Mahaguj is a dispute for which the arbitration agreement between the parties would subsist and would be amenable to arbitration afresh if the parties so desire.

49. Before parting with the judgement, I must state that I do not find it necessary to delve into interpreting the New Coal Act. Suffice it to say, that legislation was introduced specifically to deal with the fallout of the Supreme Court judgement outlawing over 200 coal block allocations. The Coal Block was one of those and is in fact placed in Schedule I of the New Coal Act. Disputes, if any, between any new allottee of the Coal Block and Mahaguj would form subject matter of resolution by the tribunal constituted under that

legislation. Mr. Jain too did not press this facet of the matter in any material manner in the hearing. Suffice it to say, in my view the Learned Arbitral Tribunal is not wrong in holding its jurisdiction did not stand ousted by the New Coal Act.

50. With the aforesaid observations, the captioned Petition is ***allowed***, setting aside the Impugned Award, which is a rather cryptic and summary judgement even in a jurisdiction that entitles the Learned Arbitral Tribunal to render final judgement on a part of the cause of action without waiting for completion of the entire arbitration.

51. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]