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APHC010084012022

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

THURSDAY, THE 8th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE D RAMESH

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

COMMERCIAL COURT APPEAL NO: 8 OF 2022

Between:

1. RASHTRIYA ISPAT NIGAM LIMITED, Visakhapatnam Steel Plant, Visakhapatnam-530031, represented by Its Deputy General Manager (Mktg), RINL, Visakhapatnam Steel Plant, Marketing Department, Visakhapatnam-'530031.

...Petitioner

AND

1. VALENCY INTERNATIONAL TRADING PVT LTD, A company incorporated in Singapore, having a Corporate Office at 10, Anson Road, 17-23, International Plaza, Singapore-079903,

2. Mr Mathew Gearing, Sole Arbitrator, Allen and Overy, 9th Floor, Three Exchange Square, Central Hong Kong.

...Respondents

Aggrieved by the Order and Decree passed by the Hon'ble Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam in

CA.O.P.No. 12/2017 (old AOP No. 512/2014) dt.22.02.2021 the present COM.CA of 2022

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to condone the delay of 182 days in representing the above COMCA No. 8 of 2022 to pass

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to Suspend the operation of the order and decree passed in CA.O.P.No. 12/2017 (old AOP No. 512/2014) dt.22.02.2021 on the file of the Hon'ble Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam and the Award dt. 19-12-2014 of the Arbitral Tribunal and to pass

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Pleased to expedite the hearing of COMCA No. 8 of 2022 and fix a date for hearing and pass

Counsel for the Petitioner: V SUBRAHMANYAM

Counsel for the Respondents: SAI SANJAY SURANENI Counsel for the Respondents:.

The Court made the following order:

THE HONOURABLE SRI JUSTICE D.RAMESH

AND

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

COMMERCIAL COURT APPEAL NO: 8 OF 2022

ORDER: *(Per Hon'ble Sri Justice A. Hari Haranadha Sarma)*

Introductory:-

[i] This is an appeal filed under Section 13 of Commercial Courts Act r/w Section 37 of the Arbitration and Conciliation Act, 1996. The challenge in this appeal is against the orders dated 22.02.2021 passed in CAOP No.12 of 2017 by the Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam *[For short 'the Commercial Court'],* in terms of Section 34 of the Arbitration and Conciliation Act, 1996.

[ii] The unsuccessful petitioner before the Commercial Court is before this Court.

2. Heard Sri. V. Subrahmanyam, learned counsel for the appellant and Sri O.Manohar Reddy, assisted by Sri Sai Sanjay Suraneni, learned counsel for the respondents on record.

3. The proceedings before the learned Commercial Court in terms of Section 34 of Arbitration and Conciliation Act, 1996, were initiated questioning the award dated 19.12.2014 passed by the learned Arbitrator

i.e., the 2nd respondent. The claimant before the learned Arbitrator is the 1st respondent herein.

4. The 1st respondent raised a dispute in relation to two contracts for sale and purchase of Wire Rod Coils and Rebars, which were given effect to by the agreement of Sale and Purchase i.e., Contract No.014, dated 26.08.2010 and contract No.017 dated 04.10.2010. By invoking the arbitration clause vide Clause 11, the dispute was referred to arbitration, and the arbitral proceedings were thereafter conducted by the Tribunal constituted pursuant to the arbitration clause 12. Both the parties are participated before the learned arbitrator.

Case of claimant before the Arbitrator *[the 1st respondent herein]***:-**

5. [i] Pursuant to each of the Contracts, the respondent/Rashtriya Ispat Nigam Limited / appellant herein *[for short RINL]* agreed to sell and the claimant agreed to buy 10,000 metric tonnes ("MT") (+/-5%) of WRC and 3,000 MT (+/-5%), of rebars.

[ii] In respect of Contract 014, the contractual quantity of WRC was to be comprised of different sizes as follows: 5.5MM (8,000 MT), 6.0MM (300MT), 6.5MM (1,300 MT) (SAE 1008), 6.5MM (400 MT) (SAB 1010).

[iii] In respect of Contract 017, the contractual quantity of WRC was to be comprised of a slightly different mix of sizes as follows: 5.5MM (5,000 MT), 6.0MM (2,000 MT), 6.5MM (3,000 MT).

[iv] In respect of Contract 014, the contractual quantity of rebars was to be comprised of different sizes as follows: 16MM (1,000 MT), 20MM (1,000 MT), 25MM (1,000 MT), length 12 meters (+/-250 MM).

[v] In respect of Contract 017, the contractual quantity of rebars was to be comprised of a slightly different mix of sizes as follows: 16MM (1,500 MT), 20MM (1,000 MT), 25MM (500 MT), length 12 meters (+/-250 MM).

[vi] Under Contract 014, 3,709.37 MT of WRC and 2,976.80 MT of rebars was delivered to three vessels on 29 and 30 October. It is common ground that the delivery of rebars was complete (within the contractual tolerance).

[vii] The respondent received payment in full for the quantities delivered under two of the four LCs.

[viii] No deliveries were made under Contract 017.

[ix] The respondent wrote to the claimant/1st respondent purporting to terminate the Contract 017 on 06th November.

[x] The respondent encashed the bank guarantee of USD 78,000 for Contract 017 on 16 November.

[xi] The respondent wrote to the Claimant purporting to terminate Contract 014 on 30 November. The Respondent subsequently encahsed the bank guarantee of USD 78,000 for Contract 014.

[xii] The termination opted by respondent is repudiatory.

[xiii] The Claimant entitled for damages for the breach of each Contract.

6. (i) The respondent denied the allegation that it has wrongfully terminated Contract 014 and Contract 017 and opposed the entitlement of claimant to any relief on the alleged breach of each Contract.

(ii) The grounds canvassed for the termination were as follows:-

(a) The Claimant failed to take delivery of the Cargo within the laycan period of 9 to 23 October.

(b) The claimant failed to procure the LCs and Bank guarantee within the time frame stipulated under Contract 014.

(c) The claimant failed to nominate suitable vessels for shipment.

7. The core questions before the Arbitrator were whether the respondent was entitled to terminate the contracts and whether the claimant was entitled to damages, and If so, to what quantum. The learned Arbitrator considered Contract 014, the validity of termination, the grounds on which the termination was effected and the justification for such termination.

8. The reasoning given by the learned Arbitrator for not accepting the grounds urged for termination is as follows:-

[i] The claimant nominated three vessels, M V Jindal Veruna, M V Hanjin Santos and M V Hemsu Centurion, for which cargo was shipped. The respondent delivered approximately 3,700 MT WRC and the full quantity of rebars (within the contractual tolerance) to the said three vessels between 29 to 30 October, which beyond the laycan period.

[ii] As noted, the Claimant also made various nominations (and in respect of all but one of the vessels, the nominations were repeated) of six separate vessels for which cargo was not shipped: (1) MV SCI Prestige; (2) MV Ocean Prologue; (3) MV Nedlioyd Hunshu; (4) MV Kotapuri; (5) MV Tiger Star; (6) MV Seruwila.

[iii] Vessels 1 to 5 listed above are container vessels. The sixth vessel, M V Seruwila is a break-bulk vessel. There is a dispute as to whether the M V Seruwila complies with the requirement in Clause 5.2 of the Terms and Conditions to nominate a vessel which is not more than 25 years old. It is common ground that this vessel was 28 years old at the relevant time. It is also common ground that the other five vessels complied with the age requirements, or at least the Respondent has offered no evidence to suggest any of the other five did not comply with an age restriction on vessels contained In Clause 5.2.

[iv] The nominations for vessels 1 to 5 amounted to 6,250 MT of WRC. Once the partial deliveries on 29-30 October taken into account, these nominations would have been sufficient to meet the minimum outstanding quantity of 5,790.63, MT. It is therefore not necessary to deal with the Respondent's argument that the M V Seruwila did not comply with Clause 5.2 because the Claimant's nominations of vessels 1 to 5 would have been sufficient to take the remaining contractual quantity.

[v] Clause 5.5 of the Terms and Conditions provides that: "*The SELLER shall communicate acceptance/non-acceptance within next working day and with reasons in case of non-acceptance. However, the SELLER is not obliged to consider any nomination of the vessel unless financial arrangement is made by the BUYER as agreed.*"

[vi] The conduct demonstrates that the Respondent did not respond to any of the nominations of vessels 1 to 3 until 21 October. The effect of the second email sent on 21 October (timed at 5.38 pm) is that the respondent indicated that it was prepared to effect delivery in containers and asked for a last delivery date of 30 October. However, even this communication does not reference any of the Claimant's earlier nominations in respect of vessels 1 to 3, or purport to accept or reject any of them. In the Tribunal's judgment, it is not therefore a compliant response for the purposes of Clause 5.5. In respect of vessels 4 to 5, the respondent failed to respond to the nominations at all. The respondent, therefore, failed to respond validly to all

of the nominations, i.e. indicating acceptance or reasons for non-acceptance within the "*next working day*" as required by Clause 5.5 of the Terms and Conditions.

9. With regard to the second ground that, the claimants failed to produce LCs and bank guarantee within the stipulated time under contract No.014, the reasoning given by the learned Arbitrator is as follows -

As set out above, neither party insisted on the original dates for provision of the LCs or the bank guarantee. The Tribunal has found that the claimant had made appropriate financial arrangements after the original dates, with the consent of the respondent. Therefore, the respondent cannot terminate Contract 014 on this ground.

10. The reasoning given by the learned Arbitrator with regard to the ground No.3 that *the Claimant failed to nominate suitable vessels for shipment* is that, the reference to suitable vessels to be a reference to break-bulk and not container vessels. The container vessels comply with the terms of contract 014. The Respondent cannot therefore terminate on this basis.

11. Aggrieved by the Award dated 19.12.2014 passed by the learned Arbitrator, the appellant herein /RINL approached the Commercial Court.

12. The grounds on which the award passed by the learned Arbitrator is disputed before the Commercial Courts are as follows:-

(i) The findings are given on matters which are not referred.

(ii) The vessels mentioned in the award are proposed for acceptance by the petitioner.

(iii) (2) Vessels were rejected because of the age being 25 and the same is not considered.

(iv) The findings that material was ready at the Port were not correct.

(v) The findings in relation to lapse of the claimant in nominating vessel are not correct.

(vi) Learned Arbitrator failed to consider that there shall be only final nomination but not the proposals.

(vii) The termination of contract was proper and the defects of the Claimant that led to termination of contract.

(viii) Learned Arbitrator taken domestic pressure into consideration. While calculating the damages taking international price is not proper.

(ix) Awarding interest is also not proper.

(x) Evidence on record is ignored.

(xi) The learned arbitrator ought to have noted that termination of contract is valid. Forfeiture of the EMD is also justified.

Findings of the Commercial Court :-

13. Learned Commercial Court formulated the following points for consideration:

> "1) Whether the petitioner i.e.. Rashtriya Isptat Nigam Limited, Visakhapatnam Steel Plant, Visakhapatnam could establish the grounds mentioned in sub-section (2) of Sec.34 of the Arbitration and Conciliation Act, 1996 for setting aside the Arbitral Awards dated 19.12.2014 rendered by the learned Arbitrator?
>
> 2) Whether the Impugned award dated 19.12.2014 rendered by learned Arbitrator suffers from any illegality, inherent infirmities, or error of law apparent on the face of the Award and liable to be set aside?"

14. The learned Commercial Court addressed the matter at length, with reference to legal and factual position, as well as the arguments advanced by both sides, including the scope of interference in terms of Section 34 of the Arbitration and Conciliation Act. The learned Commercial Court found that,

[i] the learned Arbitrator is the sole judge to assess the veracity, quality and sufficiency of evidence.

[ii] Merely because a different view or conclusion is possible, the arbitral award cannot be set aside while exercising the jurisdiction under Section 34 of the Act.

[iii] The arbitrator has dealt with the issue extensively by relying on the evidence adduced by both parties coupled with the documents and that the contract contains certain express terms of requirement of a vessel. The contract did not expressly prohibit the container vessels and that the arbitrator observed that Contract 014, the vessels must be break-bulk rather than container vessels, and as per the record, the seller [appellant] did not respond to any of the nomination of the vessels 1 to 3 until 21st October.

[iv] The seller/ petitioner before the Commercial Court [appellant] failed to respond to the validity of all the nominations, indicating acceptance or reasons for non-acceptance within the next working day, as contemplated under clause (5) of the terminations conditions.

[v] The nomination of the vessel 1 to 5 commenced on 12th October, after appropriate arrangements in place. By the repeated nominations, the claimant complied its obligations to nominate the vessels to take delivery of Cargo. But the seller/appellant failed to respond to the nominations as contract provides.

[vi] Touching the point relating to Bank guarantee, learned Commercial Court observed that the seller/ appellant did not raise any objection with regard to non-submission of Bank guarantee letter of credit by the date originally stipulated. But on the other hand extended time and accepted the same and also supplied part of the contracted Cargo, as such the seller/ appellant had no right under the law to terminate the contract.

15. Heard both sides extensively.

Arguments in the appeal:-

16. [i] Learned counsel for the appellant-RINL would submit that learned Commercial Court erred in appreciating the propriety and sustainability of the award and the grounds urged by the appellant with regard to terminating the contract are not properly appreciated.

[ii] The claimant failed to take the delivery within the time.

[iii] The claimant failed to produce LC and Bank guarantee within the time.

[iv] The claimant failed to nominate the proper vessels for shipment.

17. Answering the same, Sri O.Manohar Reddy, learned senior counsel assisted by Sri Sai Sanjay Suraneni, learned counsel on record for the respondent, would submit that all the grounds urged by the appellant have

been duly considered sufficiently and categorically dealt with by the learned Arbitrator as well as the learned Commercial Court. Hence, no interference is warranted.

18. Perused the material available on record. Thoughtful consideration is given to the arguments advanced.

19. Now the points that arise for consideration in the light of the *facto matrix* narrated above are:-

1. Whether the Orders dated 22.02.2021 passed by the learned Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam, in C.A.O.P. No.12 of 2017, are sustainable in-law or require any interference?

2. What is the result of the appeal?

Legal position:-

20. Before adverting to the discussion and answering the point framed, this Court finds it proper to refer to the observations of the Hon'ble Apex Court in ***Ramesh Kumar Jain Vs.*** **Bharat Aluminium Co. Ltd.** (BALCO)[1], vide paras 27 to 35, with regard to scope of powers under sections 34 and 37 of the Arbitration and Conciliation Act, 1996, which read as follows:-

[1] 2025 SCC Online SC 2857

"**27.** The Arbitration and Conciliation Act, 1996 avows to provide a speedy, cost-effective & efficacious mode of alternative dispute resolution with a policy of minimal judicial intervention. The same is apparent from the legislative intent explicitly mandated under section 5 of A&C Act which envisages an embargo upon the judiciary to interfere in arbitral proceedings save in circumstance expressly stipulated under Part I of the Act. Hence, it is clear that judicial interference is circumscribed with only exception being the statutorily mandated remedies which we find under section(s) 34 and 37 of the A&C Act.

28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In *ONGC Limited.* v. *Saw Pipes Limited*[14], this court held that an award can be set aside under Section 34 on the following grounds:"(a) contravention of 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."

29. When it comes to section 37 of the A&C Act it provides for a limited appellate remedy against an order either setting aside or refusing to set aside an arbitral award passed by civil court in exercise of its power under section 34. This court in *MMTC Ltd.* v. *Vedanta Ltd.*[15], at Paragraph 14 observed that interference with an order made under section 37 cannot travel beyond the restrictions laid down in section 34. Further in *Konkan Railway Corporation Limited* v. *Chenab Bridge Project Undertaking*[16] this court at Paragraph 18 observed that the scope of appellate scrutiny under section 37 is necessarily co-extensive with the parameters mandated under section 34 of the Act and hence the said provision does not enlarge the jurisdiction of the appellate court.

Even this court has observed in *Hindustan Construction Company Limited* v. *National Highways Authority of India*[17], wherein one of us (Justice Aravind Kumar) was part of the bench at Paragraph 26 that the standard of scrutiny of an arbitral award is very narrow and it is not the judicial review of an award. Further in Paragraph 27 it was observed that awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with lightly. This Court has also observed in *Larsen Air Conditioning and Refrigeration Company* v. *Union of India*[18] at Paragraph 15 that the scope of interference in exercise of appellate power under section 37 is even narrower to review the findings of the awards, if it has been upheld or substantially upheld under section 34. Hence, it is very well settled that arbitral awards are not liable to be set aside merely on the ground of erroneous in law or alleged mis-appreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section(s) 34 & 37. It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under section(s) 34 and 37. This court in *Punjab State Civil Supplies Corporation Limited* v. *Sanman Rice Mills*[19], at Paragraph 12 observed that even when the arbitral awards may appear to be unreasonable and non-speaking that by itself would not warrant the courts to interfere with the award unless that unreasonableness has harmed the public policy or fundamental policy of Indian law. It might be a possibility that on re-appreciation of evidence, the courts may take another view which may be even more plausible but that also does not leave scope for the courts to reappraise the evidence and arrive at a different view. This court in *Batliboi Environmental Engineers Limited* v. *Hindustan Petroleum Corporation Limited*[20] held that the arbitrator is generally considered as ultimate master of quality and quantity of evidence. Even an award which is based on little or no evidence would not be held to be invalid on this score. At times, the decisions are taken by the arbitrator acting on equity and such decisions can be just and fair therefore award should not be overridden under section 34 and 37 of the A&C Act on the ground that the approach of the arbitrator was arbitrary or capricious.

30. Hence, in the light of the aforesaid discussion, we would deal with the submissions made by the learned senior counsels on behalf of the parties. But

there is yet another aspect that warrants our attention before delving into the analysis of submission and that is the setting aside of the impugned order by the High Court by placing reliance on the ground of "patent illegality" therefore, it becomes imperative to understand the true import of the said term before we move further.

31. Prior to 2015 amendment, the ground of "patent illegality" emerged as result of judicial interpretation in *ONGC Ltd.* (supra) while interpreting "public policy" mandated under section 34(2)(b)(ii) of A&C Act wherein this court for the first time read patent illegality as a sub-ground to set aside the award on the broader purport of "public policy". In Paragraph 22 of the decision this court observed : *Therefore, in a case where the validity of award is challenged, there is no necessity of giving a narrower meaning to the term "public policy of India". On the contrary, wider meaning is required to be given so that the "patently illegal award" passed by the arbitral tribunal could be set aside.*" This court went on to illustrate what would constitute patent illegality at Paragraph 22 and we extract the same for easy reference:

> *"……Take for illustration a case wherein there is a specific provision in the contract that for delayed payment of the amount due and payable, no interest would be payable, still however, if the arbitrator has passed an award granting interest, it would be against the terms of the contract and thereby against the provision of Section 28(3) of the Act which specifically provides that "Arbitral Tribunal shall decide in accordance with the terms of the contract". Further, where there is a specific usage of the trade that if the payment is made beyond a period of one month, then the party would be required to pay the said amount with interest at the rate of 15 per cent. Despite the evidence being produced on record for such usage, if the arbitrator refuses to grant such interest on the ground of equity, such award would also be in violation of sub-sections (2) and (3) of Section 28. Section 28(2) specifically provides that the arbitrator shall decide ex aequo et bono (according to what is just and good) only if the parties have expressly authorised him to do so. Similarly, if the award is patently against the statutory provisions of substantive*

law which is in force in India or is passed without giving an opportunity of hearing to the parties as provided under Section 24 or without giving any reason in a case where parties have not agreed that no reasons are to be recorded, it would be against the statutory provisions. In all such cases, the award is required to be set aside on the ground of "patent illegality"."

32. In *Associate Builders* v. *Delhi Development Authority*[21], this court attempted to filter out what contemplated patent illegality in paras 42.1 to 42.3 under the following three subheads : firstly, contravention of the substantive law of India; secondly, contravention of the Arbitration Act itself and thirdly, contravention of Section 28(3) of the Arbitration Act which mandates the Arbitral Tribunal to decide the case in accordance with the terms of the contract, taking into account the usages of the trade applicable to the transaction. With regard to the third sub-head Justice R.F. Nariman, observed by stating that : *if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of term of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.*

33. In 2015, by way of the Arbitration and Conciliation (Amendment) Act a new sub-section (2A) to section 34 of A&C Act was inserted which in addition to statutorily recognizing the 'patent illegality' ground for setting aside a domestic arbitral award made it an independent and distinct ground from 'public policy' under section 34. The proviso to the newly inserted clause further 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".* The legislative intent behind insertion of this proviso was to avoid excessive intervention to arbitral award by the courts under the ground of 'patent illegality'. However, the Amendment clarified that "an erroneous application of the law" or "re-appreciation of evidence" does not fall under patent illegality. Hence, the courts are not to treat every factual error or every divergent interpretation as an illegality. The illegality must be of a kind that strikes at the heart of the award's validity. For instance, if an arbitrator ignores a binding precedent or a clear prohibition in the contract, that may be patent illegality. Likewise, a finding

based on no evidence at all can be said to be perverse and thus patently illegal. But where there is some evidence and a reasonably plausible inference has been drawn by the arbitrators, the courts should ordinarily refrain themselves from supplanting the views arrived by the arbitrator as that would be the true import of the legislative intent inherent in the Amendment Act.

34. Thereafter, this court elucidated the meaning of the expression 'patent illegality' in *Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*[22] while taking into consideration the amendment act of 2015 and held it as a glaring, evident illegality that goes to the root of the award. This includes : (a) an award deciding matters outside the scope of the arbitration (beyond the contract or submission); (b) an award contradicting the substantive law of India or the Arbitration Act itself; (c) an award against the terms of the contract; and (d) an award so unreasoned or irrational that it manifests an error on its face.

35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts. A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference. However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence.

Analysis and reasoning:

21. The facts not in dispute are :-

1. Appellant and 1st respondent entered into agreement of sale contract 014 and 017 dated 26.08.2010 and 04.10.2010 respectively. The obligations common are : 1) the claimant shall furnish bank guarantee and EMD by the respective dates. 2) Letters to be opened on the respective dates. 3) The appellant has to deliver the material by the agreed date of respective contract.

2. In respect of contract number 14, 3709.37 MT of WRC, 2,976.80 MTS of rebars were delivered with an outstanding quantity of 5,790.63 MT of WRC. Under Contract 017 no deliveries were effected.

3. The appellants received full payment under Letter of Credit.

4. Bank guarantees are also furnished and encashed.

5. Appellant terminated contract 017 and contract 014, on 06.11.2010 and 30.11.2010 respectively and also encashed the Bank guarantee.

22. The grounds raised by the appellant herein are that the impugned award suffers from patent illegality, shocks the conscience, and that the learned Arbitrator has taken into consideration matters beyond the scope of the arbitration, thereby resulting in grave injustice. Age of the vessel was more than 25 years and the Letter of credit could not be opened in accordance with the terms and conditions.

23. Nominations made by the claimant are referred by the learned arbitrator with reference to material. As rightly observed that there is no specific contractual stipulation is brought to the notice of either arbitrator or the Commercial Court that nominated vessels should be break bulk vessels and the container vessels are prohibited. It is also relevant to note that the two or three partial deliveries are effected in respect of contract 014 through the container vessels. The said aspect has been considered by the Arbitrator as well as the Commercial Court in the orders under challenge.

24. The objection raised with regard to the appreciation of evidence by the learned Arbitrator is not tenable, as no patent illegality or other ground warranting interference has been made out, when the same is examined with reference to scope of power under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, as specifically explained by the Hon'ble Apex Court recently in ***Ramesh Kumar Jain***'s case *(cited 1 supra)*, which does not permit the kind of probe which the appellant now expects this Court to undertake. The other objection that the Arbitrator went beyond the scope of reference is also found not acceptable as the reference to the Arbitrator itself is the breach of contract and the consequential damages arising from the non-supply, etc. Therefore, this Court finds that the Orders dated 22.02.2021 under challenge passed by the learned Commercial Court does not warrant any interference. Consequently present appeal is liable to be dismissed. Point No.1 framed is answered accordingly.

Point No.2:-

25. In **the result,** appeal is dismissed. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE D. RAMESH

JUSTICE A. HARI HARANADHA SARMA

Date: 08 .10.2026
Pnr

Speaking	No	Reasoned	Yes
Reportable	No	Non-reportable	Yes

THE HONOURABLE SRI JUSTICE D.RAMESH

AND

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

COMMERCIAL COURT APPEAL NO: 8 OF 2022

08.10.2026

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