2026:DHC:9224-DB

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

% **Date of decision: 12.10.2026**

\# **CNR No. DLHC010458872019**

\+ FAO(OS) (COMM) 336/2019

M/S J.K. INTERNATIONAL PTY LTD. .....Appellant

Through: Mr. Sanjay Bansal, Mr. Shobhit Garg, Ms. Swati Bansal, Ms. Vaishali Gupta, Mr. Manoj Pandey, Ms. Ayushi Bansal & Mr. Vivek Krishna Tiwari, Advs.

versus

THE STATE TRADING CORPORATION OF INDIA LTD. .....Respondent

Through: Mr. Sanjay Jain, Sr. Adv. with Mr. R K Watel, Ms. Tanya Aggarwal, Ms. Harshita Sukhija & Ms. Aditi Singh, Advs.

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\+ FAO(OS) (COMM) 337/2019, CM APPL. 10361/2019 & CM APPL. 59176/2024

THE STATE TRADING CORPORATION OF INDIA LTD .....Appellant

Through: Mr. Sanjay Jain, Sr. Adv. with Mr. R K Watel, Ms. Tanya Aggarwal, Ms. Harshita Sukhija & Ms. Aditi Singh, Advs.

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Through: Mr. Sanjay Bansal, Mr. Shobhit



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2026:DHC:9224-DB

Garg, Ms. Swati Bansal, Ms. Vaishali Gupta, Mr. Manoj Pandey, Ms. Ayushi Bansal & Mr. Vivek Krishna Tiwari, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE AVNEESH JHINGAN**
**HON'BLE MS. JUSTICE SHAIL JAIN**

**AVNEESH JHINGAN, J. (ORAL)**

1. These cross appeals are filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') assailing the judgment dated 28.01.2019 (hereinafter 'the impugned judgment') passed by the learned Single Judge in O.M.P. 2/2014 disposing of the petition filed under Section 34 of the Act.

2. For convenience, the facts are being taken from FAO (OS) (COMM) 337 of 2019.

**Brief Facts**

3. The brief facts are that the appellant, State Trading Corporation of India Ltd. (hereinafter 'STC') is a public sector undertaking (PSU). The respondent, M/s J.K. International Pty. Ltd. (hereinafter 'the seller') is a company registered under the laws of Australia and engaged in the export of Pulses.

3.1 On 08.07.2008, STC floated an international tender for the purchase/import of yellow peas of the current crop (2008-09) of Canadian origin. The seller was the successful bidder and the Letter of



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Award (LOA) was issued on 28.07.2008. The contract between the parties to the *lis* was executed on 31.07.2008 for the import of 1,60,000 metric tonnes (MTs) of Yellow Peas with a variation of (±) 10% at the option of the seller. The supplies were to be made in four shipments of 40,000 MTs each during September, October, November and December 2008. By an addendum dated 18.09.2008, the requirement of shipping equal quantities in each shipment was dispended with. The first two shipments for September and October 2008 were completed and are not in dispute.

3.2 The dispute arose in respect of the shipments for November and December 2008. The seller initially nominated MV Tarsus for the November 2008 shipment, at the request of STC the shipment was delayed and MV Ding Xiang Hai was thereafter nominated. The seller contended that STC failed to open the Letter of Credit (for short 'LOC') in accordance with the contractual obligations. The dispute was referred to arbitration at the instance of the seller under the aegis of the Indian Council of Arbitration. The seller claimed damages from STC for failure to open the LOC and accept the shipments for November and December 2008.

3.3 The case set up by the seller was that due to the conduct of STC the Yellow Peas had to be sold at a lower rate. STC on the other hand contended that the Government reviewed the availability of imported pulses and the prevailing prices and consequently, PSUs were not permitted to make further imports of yellow peas.

3.4 By the majority award dated 03.09.2013, the seller was awarded damages for the balance quantity of Yellow Peas i.e. 85,340 MTs calculated at the contractual price of USD 526 per MT less the market price of USD 355 per MT. The damages were quantified at USD 1,45,93,140. Counter-claims of STC were allowed to the tune of USD 1,14,382 resulting in a net amount of USD 1,44,78,758 equivalent to Rs.68,05,01,626/- at the exchange rate of Rs.47 per USD. Interest at 4% per annum was also awarded from 01.12.2009 till payment. The counter-claims are not in issue in the present appeals.

3.5 Aggrieved by the majority award, STC filed a petition under Section 34 of the Act. *Vide* judgment dated 28.01.2019, the learned Single Judge modified the award by reducing the balance quantity to be supplied from 85,340 MTs to 69,340 MTs. The learned Single Judge held the tribunal had wrongly included the additional 10% quantity while calculating damages. The contractual price of USD 526 per MT and the Agriwatch price of USD 355 per MT adopted by the tribunal were changed to USD 490 per MT being the price offered by the seller in February 2009 and USD 315 per MT, the Agriwatch price for February 2009. The damages were quantified at USD 12,134,500 equivalent to Rs.57,03,21,500/- at the exchange rate of Rs.47 per USD. The interest awarded by the tribunal was also modified. Considering the prevailing interest rates and the pendency of Section 34 petition since 2014, interest was directed to be paid at 2% from the date of pronouncement of the award and if the amount was not paid within three months, at 4% thereafter till payment. Hence, the present appeals.

**Submissions of the Parties**

4. Learned counsel for the STC contends that the impugned judgement is beyond the contours of Section 34 of the Act and is liable to be set aside. The submission is that the learned Single Judge re-appreciated the evidence and substituted the view of the tribunal with its own and modified the award.

4.1 It is submitted that the learned Single Judge disagreed with the majority award and instead of setting aside the award, proceeded to modify it without considering the view taken by the minority arbitrator. The contention is that the award of damages by the majority tribunal was not supported by the evidence and was contrary to the terms of the contract and public policy.

4.2 The submission is that even assuming there was a breach of contract by STC for the November 2008 shipment but no vessel was nominated by the seller for the December 2008 shipment and there was no occasion for STC to open the LOC for the December shipment.

5. *Per contra,* the finding of breach of contract by STC and rejection of invocation of *force majeure* by STC were upheld by the tribunal as well as by the learned Single Judge and these issues cannot be re-agitated. Reliance is on the decision of the Supreme Court in ***Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited,*** 2025 INSC 605 to fortify that the modifications made by the learned Single Judge be severed and the rest of the impugned judgment be upheld.








5.1 The argument is that the modifications made by the learned Single Judge relate to the consequential part of the quantification of damages. The submission is that the power under Section 34(4) of the Act be exercised to remit the matter to the tribunal to eliminate the grounds for setting aside the award.

5.2 It is canvassed that the cause of action arose in 2009 and remanding the matter to the learned Single Judge for fresh consideration would cause further delay.

6. Heard learned counsel for the parties at length and perused the record with their able assistance. No submissions other than those noted above were pressed.

7. Before proceeding further, it would be apposite to reproduce the findings of the learned Single Judge in paragraphs 40 and 41 of the impugned judgement:

> "40. The majority award, however, takes the surplus of 10% quantity of yellow peas, over and above the quantity agreed in the contract. The total contractual quantity was 1,60,000 MTs, out of which first two shipments for a total quantity of 90,660 MTs was made in September 2008 and October 2008. The third and fourth lot would, therefore, have to be treated as 69,340 MTs (1,60,000 MTs - 90,660 MTs) and not 69,340 MTs +16,000 MTs i.e.,10% of 1,60,000 MTs, as has been done by the Tribunal. The optional quantities are additional in nature and ought not to form the basis for damages. Further the final negotiations conducted in February 2009 showed that the seller was willing to sell for 30% lesser price. The Seller had sold unshipped quantity to third parties and demanded damages on the basis of the revenue it lost from the said



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transactions. However, instead of the sale price to the third parties, the Agriwatch prices were taken by the Tribunal to be the standard. Thus, the damages ought to be determined by taking into consideration USD 490 as the agreed sale price minus the per MT price as per Agriwatch for calculating the loss to the seller. The Tribunal has erred in taking the contractual price of USD 526 and subtracting the same by the Agriwatch price of November. The negotiations having continued till February 2009, the prices of November, 2008 could not have been considered. Thus, the damages payable would be as under:

| | | | |
|---|---|---|---|
| **A** | Price agreed to by the seller in February 2009 | = | USD 490 |
| **B** | Agriwatch price in February 2009 | = | USD 315 |
| **C** | Difference (between A and B) | = | USD 175 |
| **D** | Balance quantity of yellow peas to be shipped | = | 69340 MT |
| **E** | Damages payable USD 175 x 69340 MT | = | 12,134,500 USD |
| **F** | Exchange rate applicable as per the Tribunal | = | INR 47 |
| **G** | Amount in Indian Rupees (12134500 x 47) | = | Rs.57,03,21,500/- |

41. Considering the globally prevalent interest rates as also the fact that the present OMP has been pending since 2014, the interest payable would be 2% from the date of pronouncement of award. The awarded amount be now paid within three months, failing which interest at the rate of 4% on the sum awarded would be payable upon the expiry of three months till date of payment."

## Analysis

8. Section 2(1)(f) of the Act defines 'international commercial arbitration' (hereinafter referred to as 'ICA') and includes a commercial legal relationship where at least one of the parties is a body corporate incorporated in a country other than India. In the present case, the seller

is a company incorporated under the laws of Australia and the arbitration is an ICA. Clause 21 of the contract provides that the seat of arbitration is New Delhi and that the contract is governed by Indian law. Section 2(2) of the Act provides that Part I shall apply where the place of arbitration is in India. Reference in this regard be made to the following judgements of the Supreme Court:

8.1 In ***Balaji Steel Trade v. Fludor Benin S.A.,*** (2026) 5 SCC 802 it was held:

> "25. Section 2(1)(f) of the 1996 Act defines 'international commercial arbitration' as arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is a foreign national, whether that party is an individual, a body corporate, an association or body of individuals or a foreign Government. Respondent 1 being a company incorporated under the laws of Benin, the present dispute squarely falls within the ambit of international commercial arbitration. Once this characterisation is made, Section 2(2) of the Act becomes immediately relevant, for it stipulates that Part I shall apply only where the place of arbitration is in India, thereby mandating that Part I stands excluded where the parties have chosen a foreign seat."

8.2 In ***Amway (India) Enterprises (P) Ltd. v. Ravindranath Rao Sindhia,*** (2021) 8 SCC 465 held:

> "16. In this view of the matter, the argument that there is no international flavour to the transaction between the parties has no legs to stand on. Indeed, an analysis of Section 2(1)(f) would show that whatever be the transaction between the parties, if it happens to be entered into between

> persons, at least one of whom is either a foreign national, or habitually resident in, any country other than India; or by a body corporate which is incorporated in any country other than India; or by the Government of a foreign country, the arbitration becomes an international commercial arbitration notwithstanding the fact that the individual, body corporate, or government of a foreign country referred to in Section 2(1)(f) carry on business in India through a business office in India….."
>
> (emphasis supplied)

9. The scope of interference with an arbitral award in an ICA is limited. After the 2015 amendment to Section 34 of the Act, the ground of patent illegality under Section 34(2-A) of the Act is not available for setting aside an award in an ICA seated in India. Since the present petition under Section 34 of the Act was filed in 2013, the unamended provision applies as held by Supreme Court in ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India,*** (2019) 15 SCC 131. Even under the unamended provisio the ground of conflict with the public policy of India applies to an ICA in a narrower compass and nowhere could be treated equivalent to a regular appeal.

10. The learned Single Judge modified the award on three aspects. First, the quantity of yellow peas for which damages were awarded was reduced from 85,340 MTs to 69,340 MTs by excluding the additional ten percent quantity. Secondly, the contractual price of USD 526 per MT was replaced by USD 490 per MT being the price agreed to by the seller in February 2009. Thirdly, the Agriwatch price of USD 355 per MT considered by the tribunal was replaced by USD 315 per MT being the Agriwatch price for February 2009. Consequently, the damages

were reduced from Rs.68,05,01,626/- to Rs.57,03,21,500/-. The interest awarded by the tribunal was also modified.

11. The Supreme Court, in its decision dated 30.04.2025 in ***Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited*** (supra) held that the power of the court to modify an arbitral award under Section 34 is limited and does not permit re-appreciation of evidence or a review of the merits of the award. The relevant paragraphs are reproduced below:

> "12. In a catena of judgments of this Court, it has been consistently held that the arbitral tribunal is the master of evidence. The scope of judicial intervention under Section 34 is confined to the limited grounds expressly provided therein. The Court does not possess the power to correct errors of fact, reconsider costs, or engage in a review of the merits of the arbitral award.
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> *** *** ***
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> 46. Mustill and Boyd have observed that an order varying an award is not equivalent to an appellate process. The authors suggest that a modification order would only be appropriate where the modification, including any adjustment of costs, follows inevitably from the tribunal's determination of a question of law. This approach would be beneficial, as it would reduce costs and delays. The courts need not engage in any fact-finding exercise. By acknowledging the Court's power to modify awards, the judiciary is not rewriting the statute. We hold that the power of judicial review under Section 34, and the setting aside of an award, should be read as inherently including a limited power to modify the award within the confines of Section 34."

11.1 The Supreme Court further held that clerical, computational and typographical errors apparent on the face of the record can be corrected under Section 34 of the Act. The relevant paragraph is as under:

> "54. In the same vein as these judgments, we hold that inadvertent errors, including typographical and clerical errors can be modified by the court in an application under Section 34. However, such a power must not be conflated with the appellate jurisdiction of a higher court or the power to review a judgment of a lower court. The key distinction between Section 33 and Section 34 lies in the fact that, under Section 34, the court must have no uncertainty or doubt when modifying an award. If the modification is debatable or a doubt arises regarding its appropriateness, i.e., if the error is not apparent on the face of the record, the court will be left unable to proceed, its hands bound by the uncertainty."

11.2 The power of severance is available whereby the part of the award falling foul of Section 34 can be separated from the remaining part and the invalid part is not intricately connected with the other part. The Supreme Court held as under:

> "32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a two fold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of *kompetenz- kompetenz*, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the "valid" part(s) of the award while setting aside the "invalid" ones.[27] Indeed,

before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.

34. To this extent, the doctrine of *omne majus continet in se minus*—the greater power includes the lesser— applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be inter-dependent or intrinsically intertwined. If they are, the award cannot be set aside in part."

11.3 The court has limited power to modify post-award interest under Section 34 of the Act. The relevant paragraph is as under:

"78. However, the court, while exercising this power, must be cautious and mindful not to overstep its role by altering the interest rate unless there are compelling and well-founded reasons to do so. In exercising this power, the court is not acting in an appellate capacity, but rather under limited authority. For instance, the 1996 Act stipulates a standard post-award interest rate. When the statute itself







benchmarks a standard, unless there are special and specific reasons, the rate of interest stipulated by the statute should be applied."

*** *** ***

85. Accordingly, the questions of law referred to by Gayatri Balasamy (supra) are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

I. when the award is severable, by severing the 'invalid' portion from the 'valid' portion of the award, as held in Part II of our Analysis.

II. by correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in Part IV and V of our Analysis;

III. post award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or

IV. Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in Part XII of our Analysis."

(emphasis supplied)

12. It is not being controverted that the award was modified by the learned Single Judge while deciding the objections under Section 34 of the Act. The natural consequence is that the award falls within the teeth of law laid down by the Supreme Court in ***Gayatri Balasamy*** (supra) and cannot be sustained.

13. The only issue surviving and pressed by learned counsel for the seller is that the matter should not be remanded for fresh consideration of the Section 34 petition rather the modifications made by the learned Single Judge be severed and the rest of the impugned judgement be upheld. The contention is noted to be rejected. The intricate connection between the findings on breach of contract and the consequential quantification of damages is an issue to be determined by considering the facts and circumstances of the case in totality along with the grounds for challenging the award.

14. In an appeal under Section 37 of the Act it would not be apposite to determine the objections under Section 34 on merits. It is not possible to assess at this stage whether the conclusion in the impugned judgement would have remained same if the objections were considered within the four corners of Section 34 of the Act. A determination of the entire matter on merits under Section 37 of the Act and proceeding to hear the appeal as objections under Section 34 of the Act would deprive the parties of the forum available under the statute.

15. Another aspect to be considered is that the award as a whole was not upheld by the learned Single Judge. The valuation of the claim, the assessment of mitigation of losses and the rate of interest were all modified. In these circumstances, whether a case is made out for remitting the matter under Section 34(4) of the Act is an issue to be decided only once it is determined in the Section 34 proceedings whether the grounds for setting aside the award can be eliminated by giving the tribunal an opportunity to resume the proceedings or take

such other action as it considers appropriate. The power under Section 34(4) of the Act is not intended for revisiting the issues decided or for re-appreciation of evidence. In the impugned judgement, the evidence relied upon by the tribunal in awarding damages was not accepted.

16. Moreover, the award is dated 03.09.2013. The dispute arose in 2009 and considerable time has elapsed since then, it is necessary to consider whether the tribunal would even be available to resume the proceedings after the lapse of more than thirteen years.

17. The matter needs to be considered from another angle. The contention of learned counsel for the seller that the issue of breach of contract by STC cannot be re-agitated, lacks merit. In paragraph 32 of the impugned judgement, the learned Single Judge recorded as under:

> "The evidence on record clearly shows that the Seller had two vessels ready i.e., MV TARSUS for November, 2008 and MV DING XIANG HAI for December, 2008."

Whereas, the learned Single Judge also observed that one vessel was substituted for the other for November shipment only. In paragraph 33, the learned Single Judge held that the absence of a formal letter nominating the same vessel or another vessel for December 2008 was "impractical to say the least". The contradiction is writ large, as per the record both vessels i.e. MV Tarsus and MV Ding Xiang Hai were intended for shipment in November 2008 whereas paragraph 32 of the impugned judgement records MV Tarsus for November 2008 and MV Ding Xiang Hai for December 2008.

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18. In view of the modifications made to the award and the inconsistency in the findings recorded in the judgment under Section 34 of the Act, the impugned judgement is set aside. The matter is remanded to the learned Single Judge for fresh consideration of the objections under Section 34 of the Act.

19. The appeals are accordingly disposed of.

20. All pending applications stand disposed of.

**AVNEESH JHINGAN, J**

**SHAIL JAIN, J**

**OCTOBER 12, 2026**
**'JK'**

Reportable: **Yes**



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