IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

ARBITRATION PETITION NO. 639 OF 2017

WITH

ARBITRATION PETITION NO. 638 OF 2017

Nuclear Power Corporation of India Ltd. ...Petitioner

Versus

M/s. Standard Corrosion Controls Pvt. Ltd. ...Respondent

Mr. Dhruva Gandhi *a/w Ms. Kajal Gupta, Ms. Shweta Singh i/b M. V. Kini & Co., for the Petitioner.*

Mr. Prithviraj S. Gole *a/w Mr. Siddhesh R. Pednekar, for the Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON : APRIL 8, 2026

PRONOUNCED ON : OCTOBER 27, 2026

JUDGEMENT :

Context and Factual Background:

1. Nuclear Power Corporation of India Ltd. ("***NPCIL***") has filed the two captioned Petitions under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***"). They challenge two arbitral awards, each dated December 6, 2016 and each corrected by a corrigendum dated December 27, 2016 (collectively, "***Impugned Awards***").

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2. Both the Impugned Awards are passed by a retired Chief Engineer of NPCIL in favour of Standard Corrosion Controls Pvt. Ltd. ("***Standard Corrosion***").

3. The two underlying contracts and the two disputes are near-identical. The two contracts are :

A) Work Order dated July 11, 2013 for internal and external painting of residential quarters and a public building at Anusri Township, Tarapur, Phase II ("***Anusri Contract***"). The contract value was Rs. 1,22,86,100. The contract period was twelve months from July 22, 2013, with completion due on July 21, 2014.

B) Work Order dated June 13, 2013 for similar work at Anuvikas Township, Tarapur ("***Anuvikas Contract***"). The contract value was Rs. 88,72,232. Work was to commence on July 15, 2013 and to be completed on May 14, 2014.

4. Both contracts incorporate the same General Conditions of Contract ("***GCC***"). Clause 17.8 of the GCC entails reference of disputes to a sole arbitrator appointed by the Chairman and Managing Director of NPCIL, who appointed the Learned Arbitral Tribunal on June 18, 2015.

5. The sequence of events is common to both contracts, unless stated otherwise:

A) At the kick-off meeting on August 16, 2013, Kansai Nerolac

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was accepted as the source of internal paint. The parties disagree on whether NPCIL insisted on Asian Paints or ICI Dulux for external paint.

B) At the second Project Review Meeting ("***PRM***") on September 19, 2013, Standard Corrosion committed to procuring internal paint by September 25, 2013. The minutes record that the work orders would be cancelled without intimation if painting did not begin by October 10, 2013.

C) Internal paint was delivered on October 5, 2013 and sent for third-party testing on October 7, 2013. Painting began on November 16, 2013.

D) NPCIL issued a first show cause notice on October 15, 2013. Standard Corrosion replied on October 15 and October 25, 2013. NPCIL took no further action on that notice.

E) At the third PRM on November 28, 2013, Standard Corrosion committed to deliver external paint by December 5, 2013. NPCIL issued a second show cause notice on December 13, 2013. Standard Corrosion replied on December 19 and December 20, 2013.

F) At the PRM on December 24, 2013, Standard Corrosion gave a written undertaking on labour and paint. It agreed that if it

failed to meet its commitments by January 10, 2014, the contract would stand terminated and its security deposit and the cost of work done would be forfeited.

G) External paint reached the site on January 9, 2014. The third-party test report followed on February 15, 2014. By an email of January 31, 2014, NPCIL recorded that labour arrangements had improved and work was in progress, but that the test certificate for external paint was awaited.

H) On February 17, 2014, NPCIL directed Standard Corrosion to stop work, citing non-deployment of labour and non-availability of painting material. A labour strike prevailed at the plant site from February 24 to March 31, 2014. The parties disagree on whether it extended to the township.

I) At the PRMs of March 26, 2014 and April 2, 2014, Standard Corrosion gave fresh commitments. By its letter of April 2, 2014, it again accepted termination if it failed, and offered to bear liquidated damages during the extended period.

J) By a notice for final action dated April 19, 2014, NPCIL terminated both contracts under Clause 13.2, 13.2.2 (a) & (b) of the GCC. Standard Corrosion says it received the notice on April 21, 2014. It protested on April 25 and April 28, 2014 and offered to still complete the work. NPCIL's notice

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recorded that about 70% of the contract time had elapsed against about 6% of the work executed. However, NPCIL's case before the Learned Arbitral Tribunal was that progress was 2.78% under the Anusri Contract and 5.10% under the Anuvikas Contract.

K) NPCIL got the balance work executed through Samadhan Enterprises, under a work order dated February 9, 2015, at the risk and cost of Standard Corrosion. To recover its risk and cost, NPCIL encashed the performance bank guarantee, retained the value of the unutilised paint, and withheld Rs. 6,63,491 due to Standard Corrosion under yet another work order.

6. Three provisions of the GCC frame the controversy. Clauses 4.10.1 and 6.4.1, which deal with materials, read thus:

> *"4.10.1* ***The Contractor shall place purchase order well in time for supply of goods as deemed necessary as per the contract****. He shall arrange to* ***give notice sufficient in advance for necessary quality assurance*** *at the place of manufacturing. The contractor shall submit an un-priced copy of Purchase order to Engineer-in-charge in order to ensure that all the requirements of technical specifications have been met.*
>
> *6.4.1* ***The Contractor shall, at his own expense, provide all materials required for the works,*** *other than the material, which are to be issued by the Corporation."*
>
> ***[Emphasis Supplied]***

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7. Clause 7.1.1 deals with time. It reads thus:

> *"7.1.1* ***The execution of the works shall commence from the date of commencement as mentioned in the work order and the completion period for the work shall also be reckoned from the said date****. The* ***time allowed for execution of the works or the extended time*** *in accordance with these conditions* ***shall be the essence*** *of the Contract."*
>
> ***[Emphasis Supplied]***

8. Clause 13.2.1, which deals with termination, reads thus:

> *"13.2.1* ***If the Contractor****:*
>
> *(a)* ***At any time makes default in proceeding with the works with due diligence and continues to do so after 7 days notice in writing from the Engineer-in-Charge****; or*
>
> *(b)* ***Commits default in complying with any of the terms and conditions*** *of the Contract* ***and does not remedy it or take effective steps to remedy it within 7 days after a notice in writing*** *is given to him in that behalf by the Engineer-in-Charge; or*
>
> *(c) to (k)* *****
>
> ***The Engineer-in-charge may, upon giving 7 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site****. The Corporation's election to terminate the Contract* ***shall not prejudice any other rights of the Corporation****, under the Contract or otherwise."*
>
> ***[Emphasis Supplied]***

9. Standard Corrosion invoked arbitration on January 14, 2015. It made nine claims. NPCIL made no counter-claim. NPCIL raised three preliminary objections but did not insist on them at the hearing on February 25, 2016. Both sides relied on documents. No oral evidence was led. The

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Learned Arbitral Tribunal heard the parties on February 25, 2016, March 11, 2016 and March 21, 2016 and received written arguments. He dealt with three issues:

A) Whether the slow progress of the work was due to reasons solely attributable to Standard Corrosion;

B) Whether NPCIL's termination of the contract was lawful; and

C) Whether NPCIL was entitled to withhold any dues of Standard Corrosion towards risk and cost.

10. The Learned Arbitral Tribunal decided all three issues in favour of Standard Corrosion:

A) *Delay:* The slow progress was held not to be solely attributable to Standard Corrosion. He treated the monsoon, the delivery time for paint, the third-party testing requirement, NPCIL's alleged instruction on the external paint brand and delay in finalising the shade card, and the labour strike as outside its reasonable control;

B) *Termination:* The termination was held to be unlawful. The second show cause notice had become redundant once NPCIL accepted the reply and allowed the work to continue. A fresh seven-day notice under Clause 13.2.1 was required and was not given. NPCIL had been inclined to terminate from the outset. Time was not made the essence of the contract; and

C) *Risk and cost:* NPCIL could not withhold dues towards risk and cost. This is a consequence of the termination being unlawful. Separately, NPCIL took about nine months to award the balance work, did not prove its actual expenditure and did not mitigate its losses.

11. Five heads of claims were allowed. On quantification, loss of profit was limited to 10% of the value of the unexecuted work. Claims 3, 4 and 9, for tools and tackles, statutory and administrative expenses and costs, were rejected. The sums awarded are as follows:

Head	Anusri Award (Rs.)	Anuvikas Award (Rs.)
Claim 1 – payment for work done	3,14,543	4,62,226
Claim 2 – value of unused paint material	7,01,133	6,32,601
Claim 5 – refund of performance bank guarantee	6,14,400	4,44,000
Claim 6 – loss of profit (10% of unexecuted work)	11,27,042	7,77,740
Claim 7 – 50% of amount withheld under another work order	3,31,745	3,31,745
Sub-total	**30,88,863**	**26,48,312**
Claim 8 – interest at 12.25% p.a. (simple)	7,42,668	6,53,688
Total awarded	**38,31,531**	**33,02,000**

12. The corrigenda, issued under Section 33 of the Act, corrected the computation of *pendente lite* interest in both awards. The Anuvikas corrigendum also substituted the summary table and reduced the total payable

from Rs. 39,13,832 to Rs. 33,02,000. If unpaid within 90 days, each sum carries simple interest at 15% per annum from the date of the award until payment. The parties were left to bear their own costs.

13. The Petitions were admitted on January 17, 2018 and have been on the docket of this Court since then. The Impugned Awards were stayed on condition that NPCIL deposit 75% of the awarded sum with interest within six weeks. Standard Corrosion was permitted to withdraw the deposit against a bank guarantee of a nationalised bank. On February 6, 2026, the parties were directed to file short Notes on Submissions and the hearing was time-bound. NPCIL concluded its submissions on April 2, 2026. Both sides filed Notes on Submissions dated April 8, 2026.

Grounds of Challenge and Contentions:

14. NPCIL primarily contends that the Impugned Awards conflict with the Public Policy of India. It says they contravene the fundamental policy of Indian law and the most basic notions of morality or justice, and that they are perverse and patently illegal. It says the findings are unsupported by evidence or ignore vital material on record. While a number of grounds have been pleaded, including levelling allegations about the lack of impartiality of the Learned Arbitral Tribunal, the aforesaid grounds alone were pressed in the submissions.

15. NPCIL's contentions may be summarised thus:

A) The finding that the slow progress was not solely attributable to Standard Corrosion is said to be perverse and ignores material on record, because:

I) The work orders and agreements were executed in the monsoon. Standard Corrosion committed to the completion dates, knowing the commencement dates and the monsoon season. No contemporaneous letter complained of the monsoon, other than a letter of October 15, 2013, which was withdrawn by a letter of October 17, 2013;

II) Clauses 4.10.1 and 6.4.1 made paint procurement, Standard Corrosion's obligation. The tender was issued on March 14, 2013. In its letter of October 25, 2013, Standard Corrosion itself stated that "[d]ue to some financial problems, paint material was not procured in time". The Learned Arbitral Tribunal did not consider this letter;

III) At the PRMs of November 28, 2013 and December 24, 2013, Standard Corrosion committed to procure and deliver external paint. It cited no circumstance beyond its control. The finding that these commitments were beyond its reasonable control is *ex facie* perverse;

IV) No letter shows that NPCIL insisted on Asian Paints or

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ICI Dulux. NPCIL's letter of October 21, 2013 only shared shades. Third-party certification was a contractual requirement. The Learned Arbitral Tribunal could not hold that work should have begun without it;

V) The finding that a second lot of internal paint was not required is irrational when only 5-6% of the work was done. Standard Corrosion admitted a shortage of labour, yet the Learned Arbitral Tribunal held that NPCIL had furnished no proof. This wrongly shifted the burden of proof. The email of February 7, 2014 and the letter of February 15, 2014 were not considered; and

VI) The Statement of Claim does not plead that the strike hampered the work. It mentions the strike only while referring to the letter of April 28, 2014. The Learned Arbitral Tribunal recorded that there was no conclusive proof on the strike, yet held that it affected the work. NPCIL adds that the strike was confined to the plant site and not the township;

B) The finding that the termination was unlawful is said to be perverse because:

I) The second show cause notice of December 13, 2013 was never withdrawn. The default continued well

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beyond seven days. Clause 13.2.1 does not require a fresh notice for a continuing default. The finding that "no such notice" was given ignores the notice, the later correspondence and the Clause itself;

II) The Learned Arbitral Tribunal did not consider Standard Corrosion's letter of April 2, 2014, in which it accepted termination if it failed to meet its commitments. He relied on the letter of January 31, 2014 without considering the later communications of February 2014. He did not doubt the figures in the termination notice, yet held the termination illegal; and

III) Time was of the essence under Clause 7.1 and by the conduct of the parties. In any event, NPCIL terminated the contract under Clause 13 and not under Clause 7.1, so the Learned Arbitral Tribunal did not need to examine this question;

C) If the termination was lawful, NPCIL was entitled to recover its risk and cost, as set out in its Written Statement. NPCIL contends that claims 1, 2, 5, 6 and 7 must then be reversed as a necessary consequence;

D) The award of loss of profit is bad in law. No evidence was

led. Once the termination is lawful, Standard Corrosion cannot be placed as if the contract had been performed. The Learned Arbitral Tribunal did not consider the costs Standard Corrosion would have incurred, or NPCIL's entitlement to compensation for delay. NPCIL relies on the Supreme Court ruling in ***Unibros***[1] and the decision of a Learned Single Judge of this Court in ***CFM Asset Reconstruction***[2] on the need for evidence of loss of profit and on ***Ramesh Kumar Jain***[3] for what amounts to perversity and patent illegality.

16. Standard Corrosion's contentions may be summarised thus:

A) The delay was beyond its reasonable control because:

I) The work orders were issued in the monsoon. The paint shade was finalised late, third-party testing was mandatory and the external paint maker was changed at NPCIL's instance. Painting began after about three months and 24 days. About 33% of the Anusri Contract period and 40% of the Anuvikas Contract period were lost by then;

1Unibros v. All India Radio, ***2023 SCC OnLine SC 1366*** *(paragraphs 15 to 19).*

2CFM Asset Reconstruction Pvt. Ltd. & Anr. v. M/s. SAR Parivahan Pvt. Ltd. & Ors., ***Judgment dated 13th June 2024 in I.A. (L) NO. 6246 / 2024 in Commercial Arbitration Petition (L) No.5565 / 2024*** *(paragraphs 11, 12 and 15).*

3Ramesh Kumar Jain vs. Bharat Aluminium Company Limited, ***2025 SCC OnLine SC 2857*** *(paragraphs 32 to 35).*

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II) The first show cause notice of October 15, 2013 was premature, since third-party testing results were awaited. NPCIL took no further action on it;

III) Standard Corrosion attributes to NPCIL a delay of about seven months in arranging external paint, which reached the site on January 9, 2014; and

IV) NPCIL stopped the work on February 17, 2014 on a labour condition not found in the contract. The labour strike from February 24 to March 31, 2014 was not specifically denied in NPCIL's Statement of Defence;

B) The termination was unlawful because:

I) NPCIL accepted Standard Corrosion's replies to the second show cause notice, let the work continue and acknowledged improvement by its email of January 31, 2014. Clause 13.2.1 required seven days' notice, and none was given;

II) NPCIL was inclined to terminate the contract from the second PRM of September 19, 2013; and

III) Time was not of the essence, since Clauses 7.6 and 7.7 provide for extension and for compensation for

delay. Standard Corrosion offered to complete the work and bear liquidated damages, at which time, the contract period was yet to run out under both work orders;

C) Risk and cost could not be recovered after an unlawful termination. NPCIL awarded the balance work only after about nine months, which is almost the entire contract period. It did not supply the replacement contractor's expenditure;

D) The Learned Arbitral Tribunal did not accept the claims blindly. He awarded loss of profit at 10% against 15% claimed, and interest at the contractual rate of 12.25% against 18% claimed. He rejected three heads of claim; and

E) The Impugned Awards are reasoned and founded on the documentary record. NPCIL did not press its preliminary objections. The Learned Arbitral Tribunal considered each contention. There is no error on the face of the Impugned Awards, and this Court must not re-appreciate evidence under Section 34 of the Act.

Points for Determination:

17. In light of these contentions, and keeping in mind the narrow

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confines of the jurisdiction under Section 34 of the Act, the following core issues arise for determination:

A) Whether the findings that the slow progress was not solely attributable to Standard Corrosion can be said to be perverse, patently illegal or in conflict with the fundamental policy of Indian law.

B) Whether the finding that NPCIL's termination was unlawful warrants interference. This includes the findings that no fresh seven-day notice was given under Clause 13.2.1 and that time was not of the essence.

C) Whether the rejection of NPCIL's risk and cost recoveries, and the allowance of claims 1, 2, 5, 6 and 7, stand or fall with the finding on termination. The Learned Arbitral Tribunal also recorded a separate finding on risk and cost in paragraph 28.4.2; and

D) Whether the award of loss of profit can stand on this record.

Analysis and Findings:

18. I have heard at length Mr. Dhruva Gandhi, Learned Advocate on behalf of NPCIL and Mr. Prithviraj Gole, Learned Advocate on behalf of Standard Corrosion, and with their assistance, and written notes on arguments, I have examined the material on record.

19. At the threshold, it may be mentioned that arbitration was invoked in January 2015 i.e., well prior to the amendments to the Act that took effect

on October 23, 2015, but the captioned Petitions were filed after the amendments took effect. Therefore, the post-amendment standard of review under Section 34 of the Act would apply to the instant case. Yet, even applying the pre-amendment standard and the law declared in ***Associate Builders***[4], the Impugned Awards, for the reasons set out below, do not merit interference.

20. Having said that, I have examined the contentions of the parties and the contents of the Impugned Awards. While preliminary objections were taken by NPCIL, they were not jurisdictional in nature but were based on questions of fact and also not pressed in the arbitral proceedings. The issues then boiled down to analysing the causes of delay, the validity of termination and the consequence of whether the risk apportionment would lead to Standard Corrosion having to bear the burden of completion of the work with the use of another contractor.

21. It is noteworthy that the first "kick off" meeting was held on August 16, 2013, while the contracts had been awarded in June-July 2013. In other words, two to three months had already gone by. The Learned Arbitral Tribunal found that Standard Corrosion had tied down supplies from Kansai Nerolac for internal and external paint, even before bidding. This manufacturer being on the list of four permissible manufacturers, it was found, there was no reason for the kick-off meeting leading to approval of this supplier only for internal paint and deferring the decision on the supplier of

4 *Associate Builders Vs. Delhi Development Authority* – ***(2015) 3 SCC 49***

the external paint. Samples had been sent to the approved laboratory only on October 7, 2013, by which time, the monsoon season had ended, during which it was found that work would not have been possible. While tools, tackles, scaffolding were ready, the Learned Arbitral Tribunal found that NPCIL could have permitted work to commence subject to approval by the laboratory, considering that Kansai Nerolac was a reputed supplier whose standing as a supplier had been approved by NPCIL.

22. I am not inclined to interfere with logical and reasonable findings of fact by the Learned Arbitral Tribunal. I must remember that the Section 34 jurisdiction is not an appellate jurisdiction. The reasoning of the Learned Arbitral Tribunal in the Impugned Awards in support of the findings of factors being outside the reasonable control of Standard Corrosion are logical findings based on assessment of evidence by the master of the evidence, who is the best judge of the quality and quantity of evidence. The Learned Arbitral Tribunal has studied and analysed the minutes of each PRM and examined the timeline of activities to arrive at his conclusions.

23. The Learned Arbitral Tribunal found that the first show cause notice was issued on October 15, 2013 which falls within about a week of provision of samples to the laboratory. The paint material had reached the site on October 5, 2013 and sent for laboratory testing two days later and within few days the show cause notice was issued. It is difficult to get into whether the Learned Arbitral Tribunal was meant to look for documentary evidence of

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Asian Paints having been brought in for supply of external paint only at the request of NPCIL, when the Learned Arbitral Tribunal was reasonably well placed to arrive at the finding that the intention was to get competitively priced supplies from Kansai Nerolac even before bidding. The Learned Arbitral Tribunal has also found delay in approving the shade by NPCIL.

24. Even while such activity was carried on in parallel, a second show cause notice was issued on December 13, 2013 and a PRM being held on December 24, 2013. Various commitments with new variables of conditions including deployment of more labour with police verification were reduced to writing in the minutes of this PRM. There was also a delay in supply of paint by Asian Paints. In this context, the Learned Arbitral Tribunal has weighed an email dated January 31, 2014 from NPCIL to Standard Corrosion acknowledging improvement in labour arrangements and that work was progressing smoothly. However, third party laboratory testing certification of the external paint had not been received as yet.

25. Yet, in about two weeks, NPCIL stopped work on February 17, 2014 on the premise that 20 workers each for internal and external painting had not been deployed. It is not disputed that there was a labour strike but there is a dispute about whether it led to disruption of access issues to just the plant or also the township, between February 24, 2014 and March 31, 2014. The next PRM was held on March 26, 2014 towards the end of the strike period and commitments to deploy 20 workers per site for internal painting and 25 for

external painting per site, was recorded in the minutes with an initial deployment of 12 workers on each site from March 27, 2014. Another PRM held on April 2, 2014 recorded further commitments and on the same date, a letter from Standard Corrosion to NPCIL indicating that they would be bound by the terms and also liable to liquidated damages and termination for breach of commitments, was recorded. On April 21, 2014, a termination notice dated April 19, 2014 was served by NPCIL.

26. Taking a holistic view of the events, the Learned Arbitral Tribunal has found the approach of NPCIL of repeatedly and persistently threatening termination even while making progress and agreeing to terms in PRM minutes, to be unreasonable. In this context, the Learned Arbitral Tribunal has arrived at a view that NPCIL appears to have had a predetermined approach of terminating the work orders granted to Standard Corrosion. I do find that the conduct of NPCIL appears to have been one of blowing hot and cold, as found by the Learned Arbitral Tribunal. I am not satisfied that the findings by the Learned Arbitral Tribunal are so implausible and unreasonable that the standard of perversity or patent illegality has been met for the Section 34 Court to interfere with the Impugned Awards.

27. The Learned Arbitral Tribunal has also found that the award of contract to another contractor at the risk and cost of Standard Corrosion was undertaken well after the originally scheduled contract period for performance by Standard Corrosion. The actual details of the costs and expenditure

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incurred in completing the work have not been brought on record by NPCIL. This, coupled with the delay would indicate that mitigation efforts were not undertaken. This again, is a finding that is not implausible. I am not inclined to disturb the Learned Arbitral Tribunal's findings on this facet of the matter – the very absence of what expenditure was occasioned by having to engage someone else to complete the work should be fatal to the element of risk and cost of such completion being to the account of Standard Corrosion.

28. I am not persuaded that NPCIL has made out a case for me to interfere with the Impugned Awards. The Section 34 Court would need to second-guess the assessment of evidence by the Learned Arbitral Tribunal to accept NPCIL's contentions. Whether the work orders having been awarded during the monsoon making it improbable for the view on circumstances outside the control of Standard Corrosion; whether the withdrawal of the monsoon complaint in the correspondence should turn the needle; whether the introduction of Asian Paints through a particular dealer matters; and whether the timelines for testing, police verification and supply were within the reasonable control of Standard Corrosion, are not matters for this Court to re-examine.

29. What is apparent is that the work orders were terminated before the scheduled dates of completion and even the new contractor was not appointed within that period, and worse, no evidence was led about the expenditure incurred in completing the work. On the strength of these facts, for bank

guarantees to be invoked, amounts available in other work orders to be extracted, and the severe steps taken in the matter before the scheduled dates of completion, even while the very first "kick off" PRM was held well into the timeline, I believe the best judgement of what has transpired has to be left to the Learned Arbitral Tribunal, who is none other than a former senior official of NPCIL.

30. I also must state that I do not find the contents of the Impugned Awards to be such that no reasonable or rational person would have arrived at such findings. Likewise, this is not a case where one can hold that there has been a whimsical, arbitrary or unreasonable approach adopted by the Learned Arbitral Tribunal. I have kept in mind the following passage from ***Associate Builders*** when considering this challenge to the Impugned Awards (*the footnote in the judgement, to the extracted paragraph is also set out below the extract*):

> ***33.*** *It must clearly be understood that* ***when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected****. A possible view by the arbitrator on facts has necessarily to pass muster as* ***the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award****. Thus* ***an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score****.* ***Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts****. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held : (SCC pp. 601-02, para 21)*

"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. ***The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent****. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."*

[Inserted Footnote – extracted below:]

Very often an arbitrator is a lay person not necessarily trained in law*. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:*

" General, you have a ***sound head, and a good heart****; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to* ***make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong****".*

34. It is with this very important caveat that the two fundamental principles which form part of the fundamental policy of Indian law (that the arbitrator must have a judicial approach and that he must not act perversely) are to be understood.

[Emphasis Supplied]

Case Law Cited by NPCIL:

31. NPCIL has relied on ***Ramesh Kumar Jain***[5] for what amounts to perversity and patent illegality but the portion cited essentially invokes ***Associate Builders*** and therefore, to avoid prolixity, having dealt with ***Associate Builders***, in my opinion, it is not necessary to add further to the analysis.

32. As regards the assault on the Impugned Awards in reliance upon ***Unibros***, I find that it turns on its own facts. It is apparent that ***Unibros*** involved consideration of loss of opportunity (i.e. profitability, rather than loss of profits) in a terminated construction contract. The following extracts are noteworthy:

> *16.* ***To support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts that the appellant could have earned elsewhere by taking up any, it becomes imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence. This evidence should convincingly demonstrate that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere.***
>
> *17.* ***One might ask, what would be the nature and quality of such evidence? In our opinion, it will be contingent upon the facts and circumstances of each case. However, it may generally include independent contemporaneous evidence such as other potential projects that the contractor had in the pipeline that could have been undertaken if not for the delays****, the total number of tendering opportunities that the contractor received and declined owing to the prolongation of the contract, financial statements, or any clauses in the contract related to delays, extensions of time, and compensation for loss of profit. While this list is not exhaustive and may include any*

5Ramesh Kumar Jain vs. Bharat Aluminium Company Limited, ***2025 SCC OnLine SC 2857*** *(paragraphs 32 to 35).*

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other piece of evidence that the court may find relevant, what is cut and dried is that in adjudging a claim towards loss of profits, the court may not make a guess in the dark; the credibility of the evidence, therefore, is the evidence of the credibility of such claim.

[Emphasis Supplied]

33. ***CFM Asset Reconstruction*** was a case of a sale of property by lender and the absence of a valuation report to assess the contention that the sale was undervalued. That has no relevance to the facts of this case.

34. In the matter in hand, in sharp contrast, Claim No. 6 is not at all about loss of profits had Standard Corrosion worked elsewhere, and instead, it is a claim about loss of profit in the two works contracts that was denied by the wrongful termination. The two concepts i.e. loss of profits and loss of opportunity (from deployment elsewhere) are distinct although often confused.

35. Loss of profit in a wrongly terminated contract is a function of assessing what profits may have been made had the contract not been terminated. Implicit in any commercially sensible party executing a contract is an acknowledgement that the other party had something to profit from by agreeing to the contract[6]. This has been adopted by the Supreme Court in ***MSK Projects***[7] as a "reimbursement" and restoration. The following extracts are noteworthy:

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6 A.T. Brij Paul Singh & Ors. v. State of Gujarat, ***(1984) 4 SCC 59***
7 MSK Projects India (JV) Ltd. v. State of Rajasthan, ***(2011) 10 SCC 573***

38. *In common parlance, "reimbursement" means and implies restoration of an equivalent for something paid or expended. Similarly, "compensation" means anything given to make the equivalent. (See State of Gujarat v. Shantilal Mangaldas [(1969) 1 SCC 509 : AIR 1969 SC 634] , Tisco Ltd. v. Union of India [(2001) 2 SCC 41 : AIR 2000 SC 3706] , GDA [(2004) 5 SCC 65 : AIR 2004 SC 2141] and HUDA v. Raj Singh Rana [(2009) 17 SCC 199 : (2011) 2 SCC (Civ) 136 : AIR 2008 SC 3035] .)* ***However, in Dwaraka Das v. State of M.P. [(1999) 3 SCC 500 : AIR 1999 SC 1031] it was held that a claim by a contractor for recovery of amount as damages as expected profit out of contract cannot be disallowed on ground that there was no proof that he suffered actual loss to the extent of amount claimed on account of breach of contract.***

39. ***In A.T. Brij Paul Singh v. State of Gujarat [(1984) 4 SCC 59*** *: AIR 1984 SC 1703],* ***while interpreting the provisions of Section 73 of the Contract Act, 1972, this Court held that damages can be claimed by a contractor where*** *the Government is proved to have committed breach by* ***improperly rescinding the contract and for estimating the amount of damages, the court should make a broad evaluation instead of going into minute details****. It was specifically held that where in the works contract, the party entrusting the work committed breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract. Claim of expected profits is legally admissible on proof of the breach of contract by the erring party. It was further observed that : (SCC pp. 64-65, para 10)*

> *"****10. ... What would be the measure of profit would depend upon the facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid****."*
>
> ***[Emphasis Supplied]***

36. This again leads to an intersection with ***Associate Builders***

(paragraphs 52 to 54) where interference with awards which allowed the claims for loss of profitability purely based on formula was disapproved by the Supreme Court. Therefore, in my view, one must differentiate between where loss of profit is awarded in cases of illegally terminated contracts based on a percentage of the unexecuted portion, without always requiring detailed evidentiary proof, and loss of profitability where one has to assess what other opportunities may have arisen and what overheads would have been and what profitability analysis would need to be brought to bear.

37. In the matter in hand, Claim No. 6 is purely a claim for a reasonable profit margin that may have been earned had the two work orders not been cancelled even before their scheduled expiry dates, and the Learned Arbitral Tribunal was entitled to make a reasonable estimate, which he exercised by truncating the profit margin to 10% from the 15% claimed.

38. It is now trite law that the Supreme Court has repeatedly iterated that Courts must not lightly interfere with arbitral awards. The scope of review by the Section 34 Court is also well covered in multiple judgements of the Supreme Court in judgements apart from ***Associate Builders***, including ***Dyna Technologies***[8], ***Ssangyong***[9], ***Konkan Railway***[10] and ***OPG Power***[11]. Even implied reasons that are discernible may be inferred to support the just and

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8 Dyna Technologies Private Limited v. Crompton Greaves Ltd – (2019) 20 SCC 1
9 Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India – (2019) 15 SCC 131
10 Konkan Railways Co. Ltd. v. Chenab Bridge Project Undertaking – 2023 INSC 742
11 OPG Power Generation Pvt. Ltd. v. Enexio Power Cooling Solutions India Pvt. Ltd & Anr.– (2025) 2 SCC 417

fair outcome arrived at in arbitral awards. To avoid prolixity, I do not think it necessary to burden this judgement with quotations from these judgements. Suffice it to say (to extract from just one of the foregoing), in ***Dyna Technologies***, the Supreme Court held thus:

> *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts.* ***We need to be cognizant of the fact that arbitral awards should not be interfered with*** *in a casual and cavalier manner,* ***unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award****. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction.* ***The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.***
>
> *25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists.* ***The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act****."*
>
> ***[Emphasis Supplied]***

Summary of Conclusions:

39. To conclude, I am not persuaded that the Impugned Awards contravene the fundamental policy of Indian law or the most basic notions of

morality or justice, or that they are perverse and patently illegal. It is hard to hold that the reasons set out are incapable of being given by a rational and reasonable mind, or that the findings are unsupported by evidence or ignore vital material on record. Individual elements of what more could have been dealt with or how differently it could have been dealt with, do not lend themselves for acceptance in the facts of this case.

40. Therefore, I see no reason to disturb the finding that the pace of work was not solely attributable to Standard Corrosion. Likewise the reasons for which termination was held to be unlawful do not warrant interference. The interpretation of evidence such as the email of January 31, 2014 is a plausible one, and considering the language in the contract and the conduct of the parties, it would be hard to displace the finding that time was not of the essence. The termination having been validly held as unlawful, it would follow that there was no case for visiting upon Standard Corrosion, the consequences of termination. That apart, no evidence was led to indicate the expenditure incurred, for it to be visited upon Standard Corrosion and for the further steps such as invocation of bank guarantees and extraction of amounts lying in other works contracts, to be effected. Finally, in the matrix of this case, the reasonable estimation of loss of profit from the two works contracts (as opposed to loss of opportunity) does not merit interference by the Section 34 Court.

41. In the result, the captioned Petitions are ***dismissed*** and the

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Impugned Awards are upheld.

42. Within a period of four weeks from the upload of this Order on the Court's website, the security, if any, given by Standard Corrosion for release of amounts deposited in Court shall stand discharged and released along with the balance amounts lying with the Registry of this Court. All amounts to be released shall be paid along with earnings thereon.

43. 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.]

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