

2026:DHC:9476-DB

IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment reserved on: 24.09.2026**
Judgment pronounced on: 28.10.2026

CNR No. DLHC010905742023

\+ FAO(OS) (COMM) 31/2023, CM APPL. 5215/2025&CM APPL. 25260/2025

FLOWMORE LIMITED .....Appellant

Through: Mr. Jayant Mehta, Sr. Adv. Mr. Arvind Nigam, Sr. Adv. With Ms. Pratishtha Vij, Adv.

versus

M/S SKIPPER LIMITED .....Respondent

Through: Mr. Nikhil Nayyar, Sr. Adv. with Mr. Saurav Gupta and Ms. Sugandha Batra, Advs.

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

J U D G M E N T

AVNEESH JHINGAN, J.:

1. This appeal is filed assailing the judgment dated 02.02.2023 passed by the learned Single Judge in a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act').

2. The appellant/Flowmore Limited placed a purchase order on the respondent/M/S Skipper Limited for manufacture and supply of structure material for Jharkhand Urja Sancharan Nigam Limited (for brevity 'JUSNL'). Dispute arose between the parties and arbitration was initiated at the instance of the respondent which culminated in the impugned award dated 05.07.2022. A sum of Rs.8,15,05,674/- along

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with interest @ 10% per annum from the date of disposal of the finished goods as scrap till the passing of the award and @8% post award was awarded. The counter claim of the appellant was dismissed. The objections petition filed by the appellant under Section 34 of the Act was dismissed on 02.02.2023 and hence, this appeal.

3. The turn of events as occurred in timeline are as under:

3.1 On 20.02.2019, the appellant invited an offer from the respondent for structural material required for the Jharkhand Urja Sancharan Nigam Ltd. (JUSNL). The respondent submitted the offer on 23.02.2019. The appellant issued purchase order dated 02.03.2019 (for short 'PO') for a total price of Rs.27,72,31,560/- for manufacture and supply of fabricated and hot-dip galvanized tower parts, stubs, cleats, MS templates, earthing tower material and fasteners, in connection with the JUSNL project.

3.2 On 07.03.2019, the respondent sought amendments /clarifications in the PO, in relation to drawings, shop drawings, bill of material (BOM) and manufacturing clearance. On 08.03.2019 the appellant responded to the issues raised and stated that the respondent could obtain approval of drawings/documents directly from the JUSNL and could send its technical person to Ranchi for further technical discussion. On 30.05.2019 the appellant while providing the drawings, BOM of the tower structures and fasteners asked the respondent to arrange proto inspection. The appellant also directed manufacture of stubs and templates and inspection thereof.

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3.3. On 01.06.2019, the appellant requested proto inspection. The respondent reverted that similar prototype had already been made for Simplex-JUSNL project and requested for waiver of prototype. As per Clause 16 of the PO the respondent had to furnish an Advance Bank Guarantee (ABG) equivalent to10% of the basic amount and after that the appellant was to release the 10% advance payment. The respondent on 07.06.2019 furnished an ABG of ₹2,34,94,200/- but the corresponding advance payment was not made by the appellant.

3.4 Again on 11.06.2019 the respondent sought waiver of prototype assembly for the stubs and templates. The appellant in response sought documents finally approved and signed by JUSNL. By e-mail dated 14.06.2019 the appellant requested prototype inspection for each type of tower, stubs and templates. Out of purchase order placed for eight lines, activities relating to three lines were kept in abeyance owing to issues concerning allocation of route by JUSNL.

3.5 On 19.06.2019, the appellant permitted mass production of stubs and templates for five transmission-line locations and sought an inspection call. An email dated 01.07.2019 seeking status of the inspection calls was sent by the appellant. The respondent furnished the revised proforma invoices by emails dated 01.07.2019 and 05.07.2019 for approximately Rs.1.28 crore and Rs.1.13 crore respectively.

3.6 On 22.07.2019 the inspection of the material stated to be ready was sought by the appellant. The respondent submitted that raw

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material is lined up for stubs, prototype of towers is under production but inspection can be done only after receipt of advance. The appellant alleged that despite the stipulated delivery schedule neither prototype inspection was arranged for each tower nor of stubs/templates. The respondent reiterated that the advance was not released against the manufacturing clearance and sought advance for arranging inspection of the stubs and templates.

3.7 On 25.07.2019 the appellant cancelled the PO and returned the ABG on 30.07.2019.

3.8 Owing to dispute the respondent filed a petition under Section 9 of the Act seeking interim measures for the dispute arising from the cancellation of the PO. The Court appointed the sole arbitrator on 27.01.2020. The respondent filed claims amounting to Rs.11,68,50,536/- towards the principal value of manufactured goods, interest, loss of business opportunity and loss of interest on the ABG. The appellant filed a counter-claim of Rs.26,45,12,721/- for loss on account of interest charged by JUSNL, liquidated damages and other losses resulting from failure of the respondent to perform the contractual obligations. The impugned arbitral award was passed awarding Rs. 8,15,05,674/- to the respondent along with interest @10% per annum from 01.02.2020 till passing of the award and post award interest @8% per annum. The counter claims were dismissed.

3.9 The petition under Section 34 of the Act filed by the appellant was dismissed vide judgement dated 02.02.2023 and the award was



upheld.

3.10 In appeal under Section 37 of the Act the judgment dated 02.02.2023 was set aside on 29.05.2023 and the matter was remanded to the learned Single Judge for fresh adjudication. The respondent succeeded before the Supreme Court and by order dated 09.12.2024 the judgment passed under Section 37 of the Act was set aside and the present appeal was restored to its original position for adjudication. The order of the Supreme Court dated 09.12.2024 is reproduced below:

> "Leave granted.
>
> Heard the learned counsel appearing for the parties.
>
> We have perused the impugned judgment. We find that there was absolutely no reason for the Division Bench to remand the application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act") to the learned Single Judge. It appears to us that the Appellate Court while exercising the powers under Section 37 of the Arbitration Act has not done its duty. All questions which are discussed in the impugned judgment could have been decided by the Division Bench itself. If such orders of remand are passed, the same will defeat the very object of enacting the Arbitration Act.
>
> We, therefore, set aside the impugned judgment dated 29th May, 2023 and restore FAO (OS) (COMM) No. 31/2023 to its original number before the Division Bench of the High Court of Delhi. The restored Appeal shall be listed before the roster Bench on 10th January, 2025 for fixing a date for hearing. Both the parties who are represented today shall appear before the roster Bench on that day and no further notice will be served upon them.

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A copy of this order shall be forwarded by the Registry of this Court to the Registrar (Judicial) of the High Court of Delhi who shall ensure that the restored Appeal is listed on 10th January, 2025.

All questions are left open to be decided in the appeal.

The Appeal is, accordingly, allowed."

4. Learned senior counsel for the appellant submits that the arbitrator ignored the contractual terms and material evidence while awarding ₹8,15,05,674/- to the respondent, the award suffers from patent illegality and is perverse.

4.1 The submission is that the claim was allowed in absence of an evidence substantiating actual loss suffered as is contemplated in the decision of the Supreme Court in ***Kailash Nath Associates v. DDA (2015) 4 SCC 136*** *and* ***Fateh Chand v. Balkishan Das AIR 1963 SC 1405***.

4.2 It is submitted that prototype inspection was a prerequisite for mass production. The waiver of the inspection sought by the respondent was never granted. The manufacturing clearance if any, by email dated 01.06.2019 covered only stubs and templates not tower structures. No clearance for mass production under Clause 38 of the PO was issued for the towers. The argument is that email of the respondent dated 23.07.2019 stating that the proto of tower was still under production contradicted the claim that goods to be supplied were manufactured.

4.3 As regards the advance, the appellant submits that the 10%





advance under Clause 16 of the PO was subject to the requisite manufacturing clearance, furnishing of ABG and issuance of the porforma invoice. The ABG furnished by the respondent was not corresponding to the limited manufacturing clearance given and therefore non-payment of the advance was not a breach by the appellant.

4.4 The contention is that proforma invoices, production statements and procurement of raw material was not proof that the goods to be supplied were actually manufactured, particularly when no finished goods were offered for inspection. The award of ₹8,15,05,674/- was based on the assumption that goods worth ₹15.13 crore were manufactured, the deduction towards scrap and nuts and bolts does not cure this defect. Moreover, it was not considered that the respondent was supplying similar goods to other suppliers and it was not a scrap.

5. *Per contra* appellant seeks re-appreciation of evidence and this is beyond the scope of Section 37 of the Act. The arbitrator after considering the contract, correspondence between the parties and the material on record passed a detailed and reasoned award. The findings of the arbitrator is a plausible view and there is no patent illegality or perversity calling for interference.

5.1 The submission is that the PO did not make prototype inspection a condition for manufacture or advance payment. In any event, the arbitrator relying upon the correspondence dated

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30.05.2019 and 19.06.2019 found that the appellant had waived the requirement by granting manufacturing clearance and prototype inspection.

5.2 As regards the advance, Clause 16 of the PO provided for 10% advance against an ABG and proforma invoice. The respondent furnished the ABG of ₹2.34 crore and sought payment but the appellant failed to release the advance. The finding that the goods to be supplied were manufactured is on the basis of production records, procurement documents and contemporaneous evidence not merely on proforma invoices. Moreover, the arbitrator awarded ₹8.15 crore after making deductions towards scrap and nuts and bolts, The submission is that the Section 9 petition filed by the respondent seeking delivery of the manufactured goods also supports the finding. The argument is that entire evidence produced was discussed in detail in the impugned award.

5.3 The contention is that initially contract was for eight lines but by email dated 14.06.2019 lines were reduced to five and by email dated 30.05.2019 clearance for manufacturing was given.

5.4 Learned senior counsel for the respondent relies upon the decision of the Supreme Court in ***Ramesh Kumar Jain v. Bharat Aluminium Company Ltd. 2025 SCC OnLine SC 2857*** to support the contention that there cannot be re-appreciation of evidence in appeal and erroneous application of law is not a patent illegality. To fortify the contention that a plausible view taken by the arbitrator should not





be interfered with, the decision of the Supreme Court in ***Prakash Atlanta (JV) v. National Highways Authority of India2026 SCC OnLine SC 98*** is pressed into service.

6. Heard the learned counsel for the parties at length and perused the record with their able assistance.

7. Before proceeding further, it would be relevant to quote clauses 1, 10, 16 and 38 of PO.

> "1. **PRICES**: Rs.27,72,31,560/- (Rs. Twenty Seven Crores Seventy Two Lacs Thirty One Thousand Five Hundred Sixty Only) inclusive of Proto assembly charges, Earthing of Tower Materials, GST but exclusive of transportation charges.
>
> (1) Rate for MS Red Oxide Templates Rs.58,000/ MT as per our actual requirement shall be confirm shortly.
>
> (2) Further Technical information like detail BOQ & drawing required you may contact Mr. N.K. Ojha at our Bihar Branch Office. Total Approx. Qty. @3597 MT, individual item annexure-I enclosed.
>
> 10. **INSPECTION OF GOODS**: The material shall be subject to final Inspection and testing by Buyer/Client/Client's Engineer/TPI and no extra charges shall be paid on this account. The Supplier shall raise formal Inspection call in Buyer's format at least 3 days in advance. They Buyer reserves the right for Inspection of goods at the point of assembly /or delivery. If the good manufactured are not in accordance with the approved drawings, specifications as per JUSNL and as per purchase order, the Buyer reserves the right to reject the goods in whole or in part. In such an even the Buyer shall be free to buy the

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goods from any other source and the Supplier shall be liable to reimburse the Buyer of any additional cost incurred in doing so.

16. **PAYMENT TERMS**:

10% Advance payment of basic amount against submission of Advance Bank Guarantee During Manufacturing Clearance of equivalent amount of advance payment along with Proforma Invoice incorporate HSN code and bank details.

90% Payment of basic amount + GST and freight as actual payment shall be made through L/C for 180/120 days. 45 days interest will be borne by you and beyond 45 days interest will be borne by us.

L/C will be issued after completion of inspection and before issuance of DI from JUSNL which shall be forwarded to you for dispatch. You will have to submit the following documents with L/C for negotiation:

(a) Commercial Invoice- 2 sets

(b) Photo copy of LR against materials dispatched

(c) Delivery Challan duly signed accepted & against materials certified by us.

(d) LC credit period will start after reconciliation of all materials reached at sites.

38. **MANUFACTURING CLEARANCE:** The Supplier shall start the manufacturing of material only after getting written Manufacturing Clearance (MC) from Buyer. The quantity cleared in MC shall only be manufactured by Supplier. Any material manufactured without getting the MC from Buyer shall be rejected."

8. The arbitrator dealt with the issue which party breached the PO dated 02.03.2019. Considering the emails exchanged between the parties, meeting held on 02.04.2019, Ex. RW-1/X1andEx. RW-1/X6

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and the admission of RW-4 Mr. Prakash Behra during cross-examination that the appellant was obligated to provide structural drawings, the arbitrator held that the appellant had to prepare and furnish the drawings. Further that the respondent received the approved structural drawing by 30.05.2019 and there was no possibility of supplying the goods within the stipulated time.

9. The second aspect was whether the appellant granted waiver for proto inspection for stubs and templates. The trail of communication started from the email dated 31.05.2019 sent by the appellant directing the respondent to develop shop floor drawings and arrange for proto inspection call. On 01.06.2019 the respondent by email enclosed the corrected documents of prototype of stubs and templates for Simplex-JUSNL project and sought waiver of proto assembly thereof. On the very same day the appellant replied and asked for approved copy of the proto for stubs and templates given by JUSNL. The entire correspondence between Simplex-JUSNL was sent by the respondent on 03.06.2019 and the approved BOM for stubs and templates was sent on 11.06.2019. The appellant asked the respondent on 11.06.2019 to send documents duly signed and bearing seal by JUSNL but no response was received from the respondent.

10. The arbitrator held that there was no specific condition for inspection of prototype although the manufacturing of prototype was within the scope of the work of the PO. The manufacturing and inspection of prototype was to be done prior to obtaining the manufacturing clearance and proto inspection was implied part of the

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contract. The impugned award records that there is no document indicating categorical waiver granted for prototype inspection. These findings are not disputed by either of the parties.

11. The arbitrator proceeded to decide whether the appellant waived inspection of prototype and this is also the bone of controversy in the present appeal. The arbitrator deduced that the appellant by the email dated 19.06.2019, permitted mass production of stubs and templates for five locations and seeking of proforma invoice was an implied waiver of prototype inspection.

11.1 It would be fruitful at this stage to reproduce the relevant portion of the email of the appellant dated 14.06.2019:

> "**14.06.2019**
>
> Dear Sir,
>
> Find attached herewith the requirement of stubs & templates for our JUSNL Projects. You may raise proto inspection call for each type of tower stubs & templates immediately.
>
> For Prefix
>
> i) All Tower materials upto Bottom Cross Arm including their Extension will be HT materials and Prefix as proposed by M/s. Skipper is OK.
>
> ii) All Tower materials beyond. as proposed above in para 2(i) above including Template will be MS materials and Prefix to be modified accordingly by M/s. Skipper.
>
> Also you may arrange proto inspection call for DA, DB,
>
> DC & DD type tower and you may arrange revised Proforma Invoice accordingly.
>
> You may hold the all activities of following liens due to

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> JUSNI has been not allotted route for survey, due to forest area involve and the same shall be inform you later on. Detail Annexure also attached here with your reference."

11.2 The relevant portion of the e-mail of the appellant dated 19.06.2019 is as under:

> "**19.06.2019**
>
> Dear Sir.
>
> In continuation of mail, you may go ahead of mass production for stubs & templates for five locations transmission line as per attachment & arrange inspection call at the earliest."

xxx

> "**19.06.2019**
>
> Dear Sir,
>
> Find also here with stamp and signature for stubs & templates to start for mass production."

12. The language of the email dated 19.06.2019 is clear that a 'go-ahead' for mass production of stubs and templates for five locations was given and stamps and signatures were provided to start mass production of stubs and templates only and not of towers.

13. The appellant by email dated 01.07.2019 inquired about the status of inspection call of stubs and templates and also the status of proto inspection for each type of tower.

14. The email of the appellant dated 14.06.2019 sought prototype inspection of the stubs, template and towers. Taking case of the





respondent at highest, the email dated 19.06.2019 gave a 'go-ahead' for mass production of stubs and templates only but there was no mention for waiver of proto inspection call of the towers.

15. Vide email dated 30.05.2019 the appellant had asked to arrange for proto inspection for tower structures. The finding of the arbitrator that the requirement of proto inspection was waived by the appellant is without any basis. There is no evidence to substantiate the waiver of proto inspection of the towers. The conclusion arrived at suffers from patent illegality.

16. It is a trite law that ignoring of vital evidence or a finding based on no evidence suffers from patent illegality. Reliance in this regard be placed on the judgment of the Supreme Court in ***Delhi Metro Rail Corporation Ltd. V. Delhi Airport Metro Express Pvt. Ltd.*** 2024 INSC 292, the relevant para is as under:

> "38. In Associate Builders vs. Delhi Development Authority[22], a two-judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or

irrational where the findings are (i) based on no evidence; (ii) based on irrelevant material; or (iii) ignores vital evidence. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned. A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court observed:

> "31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:
> (i) a finding is based on no evidence, or
> (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
> (iii) **ignores vital evidence in arriving at its decision,**
> such decision would necessarily be perverse.
> …
> 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example **if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside."**

40. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view





> of the arbitrator is not even a possible view.[24] A 'finding' based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of 'patent illegality'. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice."
>
> *(emphasis supplied)*

17. The request of the appellant to raise a proforma invoice for five transmission lines is not a proof of granting manufacturing clearance on 19.06.2019 or that the requirement of proto inspection was waived. The raising of proforma invoice was as per the terms and conditions of the PO in Clause 16. It was only one of the step to be followed in the process of releasing advance payment and shall not construe to be manufacturing clearance or waiver of proto inspection.

18. Clause 16 of the PO provided for the advance payment of 10% of the basic amount against submission of the ABG and proforma invoice during manufacturing clearance. The ABG was furnished by the respondent on 07.06.2019, revised proforma invoice was given on 24.07.2019 but the appellant did not release the advance. Clause 38 of the PO stipulated that manufacturing of the material shall start only after written manufacturing clearance from the appellant. A combined effect of Clauses 1, 10, 16 and 38 of the PO as rightly held by the arbitrator rightly is that the advance was to be paid by the appellant during the manufacturing clearance but before starting of the manufacturing. In other words manufacturing could not have been

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started without receipt of advance. Relying upon the finding recorded that the appellant had waived proto inspection and granted manufacturing clearance by email dated 19.06.2019, it was held that the stage for release of 10% advance payment had arisen. The conclusion is on the basis that the appellant had granted mass production clearance for stubs, templates and towers and waived proto inspection. As discussed earlier there was neither a 'go-ahead' for mass production of towers nor the proto inspection of towers was waived.

19. Another angle is that the arbitrator *albeit* reproduced the email dated 01.07.2019 of the respondent stating that two types of towers would be released for proto production on the same day and the remaining two on the next day but the effect of this email was not considered. This email fortifies the fact that even as per the respondent the appellant had not waived proto inspection of towers. The email of the respondent dated 01.07.2019 is reproduced:

> "**01.07.2019**
>
> For Tower Proto: We shall release 2 types of Tower (Basic Body & +Ombe) for proto production by today and the balance 2 will be on tomorrow.
>
> Best Regards,
>
> Somnath Bhattacharjee-Skipper Ltd.
>
> Manager (Drawing)"

20. The stand of the respondent throughout was that no proto inspection was obligated in absence of the advance payment. The arbitrator held that mass production could not commence without

manufacturing clearance which was to be preceded by a proto inspection and payment of 10% advance. In other words the stage of proto inspection shall be only after receipt of advance, since no advance was paid by the appellant hence, there was no occasion arising to waive of prototype inspection. The findings of the arbitrator in this regard and that there was waiver of proto inspection of tower are contradictory and liable to be set aside.

21. The Supreme Court in ***Union of India v. V. Pundarikakshudu and Sons***, (2003) 8 SCC 168 held that an award suffering from contradictory findings is liable to be set aside.

> "31. In this case the District Judge as also the High Court of Madras clearly held that the award cannot be sustained having regard to the inherent inconsistency contained therein. The arbitrator, as has been correctly held by the District Judge and the High Court, committed a legal misconduct in arriving at an inconsistent finding as regards breach of the contract on the part of one party or the other. Once the arbitrator had granted damages to the first respondent which could be granted only on a finding that the appellant had committed breach of the terms of contract and, thus, was responsible therefor, any finding contrary thereto and inconsistent therewith while awarding any sum in favour of the appellant would be wholly unsustainable being self-contradictory."
>
> *(emphasis supplied)*

22. The arguments that the (i) arbitrator based on the revised proforma invoice dated 24.07.2019 dealt with the claim of the respondent for recovery of the principle outstanding amount due as per the PO; and (ii) that the claim was allowed in absence of evidence





substantiating actual loss as contemplated in the decision of the Supreme Court in ***Kailash Nath Associates v. DDA (supra)*** and ***Fateh Chand v. Balkishan Das (supra)***, deserves rejection.

23. The law is well settled that scope of interference under Section 34 of the Act is limited and more so in proceedings under Section 37 of the Act. There cannot be re-appreciation of evidence and the Court cannot sit in appeal over the findings recorded. Reference in this regard be made to the following decisions of the Supreme Court.

23.1 In ***Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani*, (2024) 7 SCC 218** it was held:

> "**23.** We need not dwell on the limited scope of interference in the petition under Section 34 of the Arbitration Act. That position is very well settled. However, as far as the appeal under Section 37(1)(*c*) of the Arbitration Act is concerned, in *MMTC Ltd.* v. *Vedanta Ltd.* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , in para 14, this Court held thus : (SCC p. 167)
>
> > "*14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision*. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must

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be extremely cautious and slow to disturb such concurrent findings."

24. In another decision of this Court in *UHL Power Co. Ltd.* v. *State of H.P.* [*UHL Power Co. Ltd.* v. *State of H.P.*, (2022) 4 SCC 116 : (2022) 2 SCC (Civ) 401] , in para 16, it was held thus : (SCC pp. 124-25)

> "*16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.* In *MMTC Ltd.* v. *Vedanta Ltd.* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)
>
> ***
>
> **26.** The jurisdiction of the appellate court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of the Court dealing with a petition under Section 34. It is the duty of the appellate court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the appellate court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the appellate court can exercise the same power and jurisdiction that Section 34 Court possesses with the same constraints."





23.2 In ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills, 2024 SCC OnLine SC 2632***it was held:

> "**16.** It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond thescope of interference provided under Section 34 of the Act.
>
> **21.** It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

23.3 ***In Larsen Air Conditioning & Refrigeration Co. v. Union of India, (2023) 15 SCC 472***it was held:

> "**15.** The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "*illegality must go to the root of the matter and cannot be of a trivial nature*"; and that the Tribunal "*must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground*" [ref : *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section



34."

(*emphasis supplied*)

24. The quality of evidence adduced falls within the exclusive domain of the arbitrator as held by the Supreme Court in **Parsa Kente Collieries Limited. v. Rajasthan Rajya Vidyut Utpadan Nigam Limited (2019) 7 SCC 236** the relevant para is as under:-

> "9.1. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court had an occasion to consider in detail the jurisdiction of the Court to interfere with the award passed by the Arbitrator in exercise of powers under Section 34 of the Arbitration Act. In the aforesaid decision, this Court has considered the limits of power of the Court to interfere with the arbitral award. It is observed and held that only when the award is in conflict with the public policy in India, the Court would be justified in interfering with the arbitral award. In the aforesaid decision, this Court considered different heads of "public policy in India" which, inter alia, includes patent illegality. After referring Section 28(3) of the Arbitration Act and after considering the decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , SCC paras 112-113 and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] , SCC paras 43-45, it is observed and held that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if an Arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such

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> a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 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. It is further observed that 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."
>
> *(emphasis supplied)*

25. The arbitrator for holding that the material to be supplied as per the PO was ready with the respondent, relied upon the details of purchase filed as C-34; the indent for cutting of angles (C-35);the fabrication cards (C-38); the production progress statement; and the correspondence regarding freight charges and the invoice dated 03.07.2019 of respondent. There cannot be re-appreciation of evidence for determining another possible view, the arbitrator took a plausible view and calls for no interference. The decision relied upon by the learned senior counsel for the respondent in ***Prakash Atlanta (JV) v. National Highways Authority of India*** (supra) supports this proposition.

26. For quantification of loss suffered due to non supply goods manufactured for the appellant the arbitrator accepted contention of the respondent that the goods manufactured were customized and to mitigate the loss the goods were sold as scrap. At the stage of seeking

waiver of proto inspection the respondent by email dated 01.06.2019 claimed that the goods manufactured for the appellant were similar to the goods being supplied in another project of Simplex-JUSNL and the proto inspection be done away with. The respondent breathed hot and cold simultaneously. On one hand for mitigating losses the respondent claimed that the goods were customized for the appellant and are of no use to any other customer. On the other hand for manufacture of the prototype, the material to be supplied the goods to be manufactured were similar to the goods to be supplied in another project of JUSNL. The arbitrator failed to consider the vital evidence in this regard and acceptance of sale of the manufactured goods in scrap is vitiated by patent illegality.

27. There is no quarrel with the proposition pressed by the learned counsel for the respondent by citing the judgment of the Supreme Court in ***Ramesh Kumar Jain v. Bharat Aluminium Company Ltd.*** (supra) to contend that mere erroneous application of law does not fall within patent illegality and there cannot be re-appreciation of evidence. The Supreme Court in this case also held that a crucial finding unsupported by evidence or consequence of ignoring a vital evidence may be ground for interference though this is to be applied cautiously. The relevant paragraph of the judgment is reproduced below:

> "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."
>
> *(emphasis supplied)*

28. In view of the above discussion, the impugned award is set aside. The appeal is allowed.

29. Pending applications stand disposed of.

AVNEESH JHINGAN, J

SHAIL JAIN, J

OCTOBER 28, 2026
'ha'

Reportable:- **Yes**