IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

MISCELLANEOUS FIRST APPEAL NO.1268 OF 2017 (AA)

BETWEEN:

BHARAT HEAVY ELECTRICALS LTD.,
ELECTRONICS DIVISION,
P.B.NO.2606,
MYSORE ROAD,
BENGALURU-560 026,
BY MR. UMESH G. PADAGATTI,
DEPUTY GENERAL MANAGER.

...APPELLANT

(BY SMT. A.D.SANGEETHA, ADV. FOR
SRI. S. R. SHIVA PRAKASH, ADV.)

AND:

1. STERLING BIO ENERGY SYSTEMS PVT. LTD.,
CHENNAI-600 078,
BY ITS MANAGING DIRECTOR,
MR. INAYATHULLA KHAN LODI,
S/O M.A.K. LODHI,
AGED ABOUT 64 YEARS,
R/AT "MANGALA", NO.26,
69TH STREET,
11TH SECTOR,
K.K. NAGAR,

CHENNAI-600 078.

2. SRI. S. SRINIVAS MURTHY
SOLE ARBITRATOR,
R/AT NO.1313,
GROUND FLOOR,
27TH CROSS,
3RD BLOCK EAST,
13TH MAIN,
JAYANAGAR,
BENGALURU-560 011.

…RESPONDENTS

(BY SRI. R. KRISHNAMURTHY, ADV. FOR R1;
V.C.O. DTD:22.06.2018 NOTICE TO R2 IS DISPENSED WITH)

THIS MFA IS FILED UNDER SECTION 37(1)(C) OF THE ARBITRATION AND CONCILIATION ACT, 1996, AGAINST THE ORDER DATED 04.01.2017, PASSED IN A.S.NO.90/2013, ON THE FILE OF THE VI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY, BENGALURU, CCH 11, DISMISSING THE SUIT FILED UNDER SECTION 34 OF ARBITRATION AND CONCILIATION ACT 1996, TO SET ASIDE THE AWARD DATED 20.07.2013.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.08.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This Miscellaneous First Appeal is filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 ('Arbitration Act' for short) challenging the judgment and decree dated 04.01.2017 passed by the VI Additional City Civil and Sessions Judge, Bengaluru City (CCH-11) ('Civil Court' for short), in A.S.No.90/2013, whereby the Civil Court dismissed the suit filed by the appellant herein under Section 34 of the Arbitration Act and confirmed the arbitral award dated 20.07.2013.

2. We have heard Smt. A.D. Sangeetha, learned counsel appearing for the appellant and Shri. R. Krishnamurthy, learned counsel appearing for respondent No.1.

3. The appellant is a Central Public Sector Undertaking and respondent No.1 is a private limited company acting as the system integrator with M/s Semitech Innovations Global Pte. Ltd, Singapore ('SIG'), whose technology provider was Semiconductor Technologies,

Australia ('STA'). The appellant, respondent No.1 and SIG executed an Pilot Project Evaluation Agreement (Ex.C12) dated 26.10.2005 to evaluate an embedded Automatic Meter Reading system for energy meters. The tripartite agreement contemplated implementation of the pilot project within 90 days, while Annexure-B thereto specified the allocation of expenses between the parties. By communication dated 07.07.2006, the appellant placed the project on hold. By notice dated 01.07.2009, respondent No.1 sought reimbursement of the expenditure incurred and invoked the arbitration clause. The appellant disputed its liability.

4. The disputes were thereafter referred to a learned Sole Arbitrator, wherein respondent No.1 raised claims aggregating to approximately Rs.5.63 crore under various heads. By award dated 20.07.2013, the learned Arbirator partly allowed the claims and awarded a total sum of Rs.1,10,93,642/-, comprising Rs.33,97,242/- towards expenses relating to the visits of foreign engineers, Rs.28,00,000/- towards expenses incurred in preparing the pilot project and Rs.48,96,400/- towards payments stated to

have been made to STA and SIG, together with interest at 18% per annum from 08.07.2010 until payment. The other claims including those for business loss and loss of profits were rejected.

5. The appellant challenged the award in A.S. No.90/2013 under Section 34 of the Arbitration Act. Applying the principles laid down in ***Associate Builders v. Delhi Development Authority*** reported in ***(2015) 3 SCC 49***, the Civil Court held that it could neither reappreciate the evidence nor sit in appeal over the findings of the learned Arbitrator. The objection under Section 230 of the Indian Contract Act, 1872 was rejected on the ground that respondent No.1 was an independent party to the tripartite agreement. The challenge based on absence of proof was also rejected since the learned Arbitrator had considered the documentary evidence on record. In respect of travel-related expenditure, the Civil Court noticed that Annexure 'B' to Ex.C12 required the appellant to bear the stipulated travel, accommodation and incidental expenses of the visiting technical personnel.

6. As regards limitation, the Civil Court held that the Arbitrator had considered the sequence of events and found the claims to be within time and that the appellant had failed to demonstrate any misreading of the relevant dates or material. It consequently held that the award was within the scope of Ex.C12 and the reference and was neither perverse nor unfair and unreasonable or shock the conscience of the Court. Accordingly, finding no ground for interference under Section 34 of the Arbitration Act, the suit was dismissed.

7. The learned counsel appearing for the appellant contends that notwithstanding the limited scope of interference under Sections 34 and 37 of the Arbitration Act, the award is liable to be set aside for patent illegality and conflict with the public policy of India under the unamended Section 34 applicable to the proceedings. It is further contended that Clauses 4 and 13 read with Annexure-B to Ex.C12, confined the appellant's liability to the specified travel, boarding, lodging and incidental expenses relating to the stipulated visits and expressly excluded any fee for the products or software supplied for the pilot project. Clause

16(h) further restricted liability for damages and consequential losses. The learned Arbitrator nevertheless awarded Rs.28,00,000/- towards preparation of the pilot project and Rs.48,96,400/- towards payments allegedly made by respondent No.1 to STA/SIG for licence fees, technology, materials and demonstration sets, though neither head was covered by Ex.C12 or any other contractual obligation of the appellant. These were expenses incurred by respondent No.1 in acquiring technology from its own principals and could not be shifted to the appellant as reimbursable expenses.

8. It is further contended that all three amounts were awarded without adequate supporting evidence. The claim of Rs.48,96,400/- was based on subsequent book entries unsupported by independent evidence, the award of Rs.28,00,000/- was made without vouchers, accounts and the travel expenses of Rs.33,97,242/- was unsupported by air tickets or complete particulars and exceeded the ceilings prescribed in Annexure-B to Ex.C12. The award is therefore

based on no evidence and contrary to the requirement of reasons under Section 31(3) of the Arbitration Act.

9. It is further contended that, having rejected the claims for damages and loss of profits under the limitation-of-liability clause, the Arbitrator could not have awarded expenses outside Ex.C12. If treated as reimbursements, such amounts were governed by Annexure-B and, if treated as damages for breach, they were barred by Clause 16(h). It is further contended that the claims are time-barred, since the expenditure related to 2005–06 and the cause of action arose, at the latest, on 07.07.2006 when the project was placed on hold without liability, whereas arbitration was pursued only in 2009. In the absence of any acknowledgment under Section 18 of the Limitation Act, the continued subsistence or non-termination of Ex.C12 could not extend the period of limitation. The maintainability of the claims is questioned under Section 230 of the Contract Act, respondent No.1 being merely an agent or system integrator of STA/SIG without specific authority to enforce the rights of its principal. It is further contended that Ex.C12

was only a pilot-project evaluation arrangement, and not a concluded supply or technology-transfer contract capable of supporting the amounts awarded.

10. Reliance is placed on ***Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd*** reported in ***(2003) 5 SCC 705***, to contend that patent illegality forms part of public policy and that an award may be set aside if it is perverse, unsupported by evidence, disregards vital evidence, lacks reasons or travels beyond the contract. It is submitted that the award is challenged only on these recognised grounds. Reliance is also placed on ***Associate Builders v. Delhi Development Authority*** reported in ***(2015) 3 SCC 49*** and ***Ssangyong Engineering and Construction Company Ltd. v. National Highways Authority of India (NHAI)*** reported in ***(2019) 15 SCC 131***, to contend that, while an error in interpreting the contract ordinarily falls within the Arbitrator's jurisdiction, adjudication on matters outside the contract constitutes a jurisdictional error amenable to challenge.

11. The learned counsel appearing for the appellant has also placed reliance on the following decisions:-

- ***M.C.Chacko v. State Bank of Travancore, Trivandrum,*** *reported in* ***(1969) 2 SCC 343;***
- ***State of Rajasthan & Ors. v. Basant Nahata,*** *reported in* ***(2005) 12 SCC 77,*** and
- ***S.V.Samudram v. State of Karnataka & Another,*** reported in ***(2024) 3 SCC 623.***

12. Per contra, learned counsel appearing for respondent No.1 contends that Ex.C12 was a tripartite commercial agreement executed among the appellant, respondent No.1 and SIG following discussions, inspections and demonstrations. Its commercial character and the reciprocal obligations of the parties are evident from Clause 8 relating to confidentiality, Clause 6(b) prescribing the period for implementation and Annexure-B to Ex.C12 allocating the expenditure. The modified interface was successfully demonstrated at the appellant's premises on 12.06.2006, but the project was indefinitely placed on hold on 07.07.2006 without any valid reason. It is contended that the period prescribed under Clause 6(b) was not a rigid

delivery deadline and that no delay was attributable to respondent No.1.

13. It is further contended that the appellant failed to examine Mr. B.S. Gupta and Mr. Joachim, who were directly associated with the project, while RW-1 admitted that he had no personal knowledge of the transaction and had substantially reproduced the statement of objections in his affidavit. The award of Rs.33,97,242/- towards travel and related expenses is defended with reference to Annexure-B to Ex.C12, which required the appellant to bear the expenses relating to the visits of engineers from STA and SIG. Respondent No.1 relied upon documentary evidence of the expenditure, including records concerning bank loans of approximately Rs.38,00,000/-. The visits of the foreign technical teams were undisputed, while the appellant failed to produce the relevant entry-pass records despite being called upon to do so. The award of Rs.28,00,000/- towards preparation of the pilot project is sought to be sustained on the basis of Exhibits C-5 and C-69 and the evidence relating to expenditure on components, modems, moulds, salaries,

rent, interest and other overheads. It is submitted that Clause 13 did not prohibit reimbursement of expenses incurred in preparing and evaluating the project, while Clauses 14(c), 14(e) and 16(h) preserved the right to recover expenses and objectively measurable damages.

14. The award of Rs.48,96,400/- towards payments made to STA and SIG is stated to be supported by Exhibits C-109 to C-112, including the statement of account recording the debit of the said amount. The payments related to licence fees, maintenance, materials and demonstration sets required for the pilot project. It is contended that the appellant neither discredited this evidence during the cross-examination of CW-1 nor produced any rebuttal evidence. The objection under Section 230 of the Indian Contract Act, is contended to be misconceived, since respondent No.1 was an independent party to Ex.C12 and Clause 16(f) expressly provided that the parties contracted on a principal-to-principal basis without creating an agency. The written tripartite agreement is also

relied upon to answer the contention that there was no concluded contract under Section 10 of the Contract Act.

15. It is further submitted that Clause 16(c) encompassed disputes concerning the meaning, interpretation and implementation of Ex.C12 and that the appellant produced no evidence to establish that the claims fell outside its scope. As regards limitation, it is submitted that the project was placed on hold on 07.07.2006 and arbitration was invoked on 01.07.2009, within the prescribed period of three years. It is submitted that the Civil Court considered the objections concerning maintainability, limitation and proof of expenditure and the contractual basis of the claims and applying the principles laid down in ***Associate Builders***'s case (supra), correctly declined to interfere with the award.

16. We notice that the Pilot Project Evaluation Agreement dated 26.10.2005 provides for a non-exclusive right to evaluate the claimant's projects and software and their use as specifically provided in the Agreement. The Agreement further provides that in consideration of the

rights and licence granted for the evaluation of the SIG's products and software, the expenses sharing agreement shall be as described in Annexure - B. Annexure - B to the agreement is the expenses bearing arrangement, which includes the expenses towards visits (minimum 2 visits), flights (USD 1.3k/per person/trip), accommodation, out of pocket expenses to be paid by the BHEL. Other Annexure - B expenses bearing arrangement states as follows:-

1.	*Supply of 75 (Seventy five) Nos. of Single Phase interface board (including concentrator) to BHEL*	*Sterling*
2.	*Supply of 02 (Two) Nos. of Three Phase interface board (including concentrator) to BHEL*	*Sterling*
3.	*Supply of 75 (Seventy five) Nos. of Single Phase Meters*	*BHEL*
4.	*Supply of 02 (Two) Nos. of Three Phase Meters*	*BHEL*
5.	*Supply of Main Computer and BCS*	*BHEL*
6.	*Expenses towards visits (minimum 2 visits) — Flights (~US$1.3K/person/trip), accommodation, out of pockets Expenses*	*BHEL*
7.	*Supply of 01 x dedicated telephone line*	*BHEL*
8.	*Transport of 75 single-phase & 2 three phase interface board including concentrator [illegible]*	*BHEL*

17. The parties joined issues before the arbitrator and nine issues were framed by the arbitrator. On the question

of limitation, the arbitrator held that though the BHEL had on 07.07.2006, asked the claimants to put the project on hold, the contract was not terminated. On 29.09.2006, a letter was addressed to the BHEL, requesting them to fulfil the terms of the agreement, for which no reply was received. Though further communications ensued, the arbitrator found from the materials on record that the contract was not terminated and the claims were therefore within the period of limitation.

18. It was found that the claims were raised for payments on 08.05.2007, 20.05.2009 and 04.02.2009 and the arbitral proceedings commenced on 08.07.2010. It was therefore found that the claim was within the period of limitation. This aspect was specifically considered by the Section 34 Court as well. Construing the clauses in the Agreement, it was found that the appellant had failed in establishing the fact that the period of events mentioned by the arbitrator in answer to the issue raised on limitation was incorrect in any manner.

19. Further, on the question of the expenses as well it was found that the arbitrator had specifically considered the pleadings and the materials on record and had found that the expenses claimed fell within the enumerated items of Annexure - B as agreed between the parties. Section 34 Court also found that it is being required to re-appreciate the evidence and to come to a different conclusion from that arrived at by the arbitrator, which is impermissible in an application under Section 34 of the Arbitration Act.

20. The scope of interference in an appeal under Section 37 of the Arbitration and Conciliation Act, is well settled. In ***MMTC Limited v. Vedanta Limited*** reported in ***(2019) 4 SCC 163***, the Apex Court held that interference under Section 37 cannot travel beyond the restrictions imposed by Section 34 and that the appellate Court cannot undertake an independent assessment of the merits of the award. In ***UHL Power Company Limited. v. State of Himachal Pradesh*** reported in ***(2022) 4 SCC 116***, the Apex Court held that the jurisdiction of the appellate Court

under Section 37 is even more circumscribed than that under Section 34.

21. In ***Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking*** reported in ***(2023) 9 SCC 85***, the Apex Court reiterated that proceedings under Sections 34 and 37 do not involve the exercise of ordinary appellate jurisdiction and that the mere possibility of another view on the facts or interpretation of the contract does not warrant interference. In ***Punjab State Civil Supplies Corporation Limited and Another v. Sanman Rice Mills and Others*** reported in ***2024 SCC OnLine SC 2632***, the Apex Court held that the Section 37 Court cannot reconsider the dispute on merits or reappreciate the evidence and may interfere only where the Section 34 Court has exceeded or failed to exercise the jurisdiction vested in it.

22. We find no sustainable grounds raised warranting interference under Section 37 of the Arbitration and

Conciliation Act. The appeal fails and the same is accordingly ***dismissed.***

All pending interlocutory applications shall stand *disposed of.*

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

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