2026:CGHC:21871-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBA No.67 of 2025

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
17.04.2026	11.05.2026	--	11.05.2026

1 R. K. Transport Company A Sole Proprietary Firm Having Its Principal Place of Business At Navkar Parisar, Pulgaon Naka, District Durg, CG, Acting in Premises Through its Sole Proprietor Shri R.K. Jain, S/O Late Harilal Jain, Resident Of Pulgaon Naka, Navkar Parisar, Durg, Chhattisgarh

Appellant (s)

versus

1 - M/s Bharat Aluminum Company Limited (BALCO) A Company Incorporated Under The Provisions Of Companies Act, 1956 Having Its Registered Office At Core No.6, Scope Complex, Lodhi Road, New Delhi and a Plant Factory At Korba Town, Tehsil And Dist Korba In The State Of Chhatisgarh.

Respondent(s)

For Appellant (s)	:	Mr. Prafull N. Bharat, Senior Advocate along with Mr. B. L. Parakh, Mr. Nikhil Parakh, Ms. Mitisha Kotecha and Mr. Sanjeevi Sheshadri, Advocates
For Respondent(s)	:	Mr. Ratan Singh, Senior Advocate along with Mr. Rishabh Garg, Akshay Gandotra and Ms. Arya Mittal, Advocates

Digitally signed by R NIRALA

Hon'ble Smt. Justice Rajani Dubey
Hon'ble Shri Justice Radhakishan Agrawal

CAV Judgment

Per Rajani Dubey. J.

1. The present appeal has been preferred by the appellant against the judgment dated 08.09.2025 passed by the learned Commercial Court, District Judge Level, Raipur (C.G.) in ARB MJC No.17/2022, whereby the learned Commercial Court set aside the arbitral award dated 09.04.2022 passed by the learned Sole Arbitrator, whereby the claim of the claimant/appellant was allowed.

2. Brief facts of the case are that Bharat Aluminum Company Limited (BALCO) and R. K. Transport Company (RKTC) entered into a contract dated 01.04.2002 for a period of one year in terms whereof, RKTC had to mine and transport 2,00,000 Metric Tonnes of Alumina Bauxite from Manpat, Sarguja to BALCO's plant in Korba. During the course of performance of the contract, the parties by mutual agreement had amended some of the terms of the contract. The BALCO, from time to time, had offered monetary incentive and bonus scheme for the benefit of the RKTC, which were duly accepted and received by RKTC. BALCO vide its letter dated 25/03/2003 set out the bauxite mining and transportation monthly schedule for the year 2003-04, clarifying that any additional quantity more than the monthly schedule should be supplied only if BALCO gives written

clearance, and bonus for supply of additional quantity above monthly schedule will be paid only upon making of written request. In the course of performance of contract, the RKTC requested for a reduction/change in quality norms of the bauxite supply The BALCO agreed to modify specification of bauxite to 47% alumina and 2.90 of silica as the limit. Further, bauxite specification and penalty clause were amended. On 31/03/2005, after discussions between the parties the period of contract was extended by a further period of three months up to 30/06/2005 on original contract's terms and conditions. In the course of time, dispute arose between the parties and the contract was not extended by BALCO. RKTC claimed an amount of Rs 2774.57 lacs allegedly due to it as balance payment under the subject contract as against its legitimate claim of Rs.149.47 lacs only. Since the dispute could not be resolved amicably, in exercise of its power under clause 33, same was referred by BALCO for arbitration. However, RKTC objected to the same and filed an application under Section 11 of the Arbitration and Conciliation Act before this Court for appointment of an Arbitrator. In the meantime, Ld. Sole Arbitrator was appointed by BALCO, who was agreeable to RKTC. RKTC filed its statement of claim on 08/12/2012 whereafter, the BALCO filed its statement of defense and counter-claim on 10/04/2013 claiming Rs.5,15,26,866/- on account of delay on the part of RKTC in carrying out its obligations under the contract, resulting in loss to BALCO. On

20/06/2015, before commencement of trial, the BALCO filed an application before the Ld. Arbitrator under Section 16 of the A&C Act contending that the claim nos.2, 8, 12, 13, 15, 19. 21 & 29 of RKTC were beyond the scope of the contract and therefore, beyond the jurisdiction of the Ld. Arbitrator. The Ld. Arbitrator vide order dated 19/09/2015 held that the said application would be decided at the time of final argument. However, same remained undecided. In the arbitral proceedings, the documents/vouchers relied upon by the RKTC with respect to its claim for reimbursement of additional expenses incurred for transportation of Bauxite were never produced before the Ld. Arbitrator on the pretext of the documents/vouchers being very bulky, and only certain ledger entries from April 2002 to March 2004 were filed along with the statement of claim by the RKTC. The said ledger entries were denied by BALCO before the Ld. Arbitrator in its statement of admission and denial. In the course of arbitral proceedings, the BALCO had noted certain discrepancy in the documents/vouchers produced by RKTC for inspection Thereupon, the BALCO raised an objection with respect to the admissibility of those ledgers and sought to examine those documents/vouchers. The RKTC's counsel objected to produce the vouchers for inspection of BALCO. The Ld. AT directed the claimant/RKTC to inform the AT as well as the BALCO as to when the documents will be available, within 3 weeks. Thereafter, the RKTC sought time on a couple of

occasions on the premise that the documents were voluminous and pertain to period long back The Ld. Arbitrator vide its order dated 07/06/2018 dismissed BALCO's objection and directed the parties to carry out the inspection at a mutually fixed date and venue. During eventual inspection of the documents by the BALCO on 05/08/2018, BALCO had noted certain discrepancies in the documents/vouchers produced by RKTC for Inspection. In order to effectively point out those discrepancies, BALCO chose to cross-examine the RKTC's witness Mr. Kapoor Chand Jain. The BALCO moved an application dated 21/08/2018 before Ld. Arbitrator to this effect. The Ld. Arbitrator vide order dated 01/11/2018 allowed BALCO's request. Subsequent to Mr. Kapoor Chand Jain's evidence, BALCO filed an application under Section 26 of the A&C Act seeking appointment of a Forensic Expert for examination of documents/vouchers produced by the RKTC, alleging that the pristine nature of documents validates the apprehension of the BALCO that the documents did not exist and were created only after examination was sought. No written order was passed by the Ld. AT on the application. After RKTC's evidence was closed, on record. BALCO sought to amend its statement of defense and bring certain additional documents Accordingly, it filed an application dated 12/06/2019 for amendment of counter statement and counter claim. Along with the said application, BALCO filed an application for bringing additional documents on record. However, the Ld. Arbitrator vide

its order dated 15/03/2020 dismissed the applications filed by the BALCO on the ground that the same would tantamount to having a de novo trial. The Ld. Arbitrator also ordered that the evidence-in-chief of BALCO's witness, so far as it relates to pleadings which were not a part of the statement of defense, would also not be considered. After conclusion of evidence, written arguments were filed by the parties and subsequently rejoinder was also filed by the claimant. The learned Sole Arbitrator vide award dated 09.04.2022 allowed the claims of the appellant/claimant partially, against which the respondent filed appeal before the learned Commercial Court and the learned Commercial Court vide judgment dated 08.09.2025 set aside the award passed by the learned Sole Arbitrator. Hence the present appeal has been filed by the appellant.

3. Learned Senior counsel for the appellant submits that the Ld. Commercial Court has exceeded its jurisdiction by re-appreciating evidence and re-interpreting the contract. It is not permissible to re-appreciate evidence and re-interpret the contract. Interpretation of the contract is a matter for the Arbitrator to determine based on evidence and communications and an error in interpretation is not a basis for interference under Section 34 of the Arbitration Act. A plausible view of the arbitrator cannot be interfered with merely because an alternate view is possible and the Court cannot convert itself into an Appellate Court. The Arbitral Tribunal is the master of evidence and the

findings of fact which are arrived at by the arbitrators based on evidence on record are not to be scrutinized, as if the Court was sitting in appeal. As long as there is material available with the arbitrator that damages have been suffered, but it does not give him an insight into the granular details, he is permitted the leeway to employ honest guesswork and/or a rough and ready method for quantifying damages. The Respondent cannot approbate and reprobate on the validity of Ex. C/6 and by not challenging these claims, it was estopped from raising a challenge to Ex. C/6. The Ld. Commercial Court has not dealt with the argument of the appellant that no claim of Ex. C/6 having been 'without prejudice' could be entertained, as the respondent had not examined the attendees of the meeting. In the meeting conducted on 27 February 2006, the minutes of which were recorded in the Ex. C/6 took place after disputes had arisen between the parties. On 22 August 2005, RKTC issued a notice under Section 21 of the Arbitration Act to BALCO and detailed 29 claims and sought an amount of Rs. 27,74,57,000. The claims detailed both the quantification as also the factual basis of these claims. The Minutes of Meeting dated 27 February 2006 were signed on 04 March 2006 where BALCO admitted 19 of these claims in principle. Factual admissions as to the efforts made and difficulties faced by RKTC were made. The offer made on 23 June 2006 by BALCO for an amount of Rs.1,49,47,000 as a full and final settlement was unacceptable to RKTC. It is to be noted

that while this document claims to be without prejudice, a similar mention is absent in Ex. C/6. It is settled law that merely because a document contains a reference to negotiations or claims to be without prejudice, it does not mean that the same cannot be looked into or alternatively not be treated as an admission. The document has to be seen as a whole and in the context in which it was executed. The assertion and reliance of BALCO on Ex. C/6 was precluded by virtue of Section 81 of the Arbitration Act, which is wholly misplaced. Section 81 is in the context of a formal conciliation process, where parties are appearing before a third-party conciliator in a bid to resolve disputes. In the case at hand, Ex. C/6 was not produced in any such circumstance but is in fact a mere minutes of meeting executed between the parties where admissions of fact were made. Learned Senior counsel further submits that the Ld. Commercial Court has interpreted the contract afresh in an approach that is positively unheard of and certainly beyond the narrow contours of the jurisdiction under Section 34 of the Arbitration Act. The Impugned Judgment suffers from complete non-application of mind as is evident from the fact that it has set aside Claim No.19 having laid any challenge to the same in the petition under Section 34 of the Arbitration Act. The petition under Section 34 of the Arbitration Act was filed on 11 July 2022 where no challenge was made to Claim No.19 of the Award. This aspect was conceded by BALCO in its written arguments before the Ld. Commercial Court, however reliance

was placed on the challenge made in the rejoinder to Claim No.19. The Rejoinder was filed in October 2024, well beyond the statutory period of limitation. It is settled law that the Rejoinder does not constitute a pleading and cannot expand a case. Therefore, the judgment of the Ld. Commercial Court be set aside and the award of the Arbitrator dated 09.04.2022 deserves to be restored in its entirety and the amounts awarded therein i.e. INR 51,33,40,100 along with interest be awarded in favour of the appellant. Reliance has been placed on the judgments rendered by the Hon'ble Supreme Court in the matters of **UHL Power Company Ltd vs State of Himachal Pradesh,** reported in **AIR 2022 SC (Supp) 1227, Associate Builders vs Delhi Development Authority,** reported in **(2015) 3 SCC 49**, **MMTC Limited vs Vedanta Limited**, reported in **(2019) 4 SCC 163, Ramesh Kumar Jain vs Bharat Aluminum Company Limited (BALCO),** reported in **2025 INSC 1457, Chairman and MD, NTPC Ltd vs Reshmi Constructions, Builders and Contractors,** reported in **(2004) 2 SCC 663, Peacock Plywood (P) Ltd. Vs Oriental Insurance Co. Ltd,** reported in **(2006) 12 SCC 673, Parsa Kente Collieries Ltd vs Rajasthan Rajya Vidyut Utpadan Nigam Limited,** reported in **(2019) 7 SCC 236, Construction and Design Services vs Delhi Development Authority,** reported in **(2015) 14 SCC 263**.

4. Learned Senior counsel appearing for the respondent strongly opposes the submission made by the petitioner's counsel and

submits that the learned Commercial Court after appreciating the oral and documentary evidence available on record has rightly passed the judgment and has rightly set aside the award passed by the learned Arbitrator. He further submits that the judgment of the Hon'ble Apex Court in the matter of **R. K. Jain** (supra) does not support the case of the appellant. The claims raised before the learned Arbitrator in the said judgment were for extra contractual works with no express terms governing the same but in the present case it was not the case. In **R. K. Jain** (supra)**,** claims were primarily awarded on two basis firstly, extra works claims were awarded as no rates were contractually agreed between parties and secondly, idling claims for strike period were awarded as no *force majeure* clause existed in contract. On both these counts, the present case differs as rates were fixed for each work executed and contract contained express '*force majeure Clause (C1.26)* and prohibition clause for claims on account of strikes (C1.26). Claim Nos.1, 2, 5, 7, 22, 23, 24 raised before the Ld. Arbitrator are barred by express contractual provisions. Claim No.21 admitting alleged bribery raised before the Ld. Arbitrator are barred by law, more particularly, Section 23 of Indian Contract Act being against the public policy of India. Claim Nos.3, 4, 6, 8, 21, 22, 23 are based on no evidence at all and are based on self-serving tabulated charts. There is not a single claim with respect to which evidence could not be adduced, hence any claim decided on no evidence would be

perverse. Learned Senior counsel further submits that the learned Commercial Court minutely appreciated the terms and conditions of the agreement and also rightly rejected the claims of the appellant. The learned Arbitrator has exercised its discretion of awarding interest as compensation to the claimant for a claim which he never claimed. The learned Arbitrator failed to consider the delay in proceedings at every stage. The award is directly contrary to the law laid down in **UNIBROS vs All India Radio**, reported in **2023 SCC Online SC 1366**, which mandates strict proof for claiming loss of profit and hence the grant is patently illegal, perverse and in conflict of public policy. The learned Arbitrator allowed the claim without any evidence adduced by the respondent to prove its claim which is not permissible rendering the award perverse and patently illegal. The learned Arbitrator allowed the claim for unfinished work without any supporting evidence. The finding that the claimant was the agent of the respondent contractor and contractual relationship was between them is not a reasonable interpretation and thus the learned Arbitrator wrongly allowed the claims of the appellant without there being any effective evidence. The learned Commercial Court considered the evidence available on record in its true perspective and rightly set aside the award passed by the learned Arbitrator based on the evidence available on record, hence no interference is required by this Court. Therefore, the appeal is liable to be dismissed.

Learned Senior counsel further submits that the minutes of meeting dated 27.02.2006 were with respect to consideration of claim subject to submission and verification of details and no such details were ever submitted by the claimant and the claimant relied solely on a Ex-C/6, which was not verified and supported by any documentary evidence. The learned Arbitrator has not considered the cross-examination of claimant witnesses from question Nos.134 to 136 and even no proper details regarding expenses incurred were submitted by the appellant yet the learned Arbitrator passed the award in favour of the appellant. Learned Senior counsel lastly submits that the rate of interest awarded by the learned Arbitrator in favour of the appellant is on higher side and it can be modified by the Appellate Court and claimant did not claim the rate of interest from the date of cause of action to the date of filing of the statement of claim and the learned Arbitrator awarded not claimed relief. Apart from it, the learned Arbitration Tribunal also considered the COVID-19 crisis in favour of the appellant which it should not have been done. Therefore, the same may kindly be modified. Reliance has been placed on the judgment rendered by the Hon'ble Apex Court in the matters of **Ramesh Kumar Jain vs Bharat Aluminum Company Limited (BALCO),** reported in **2025 INSC 1457, ONGC Ltd vs Off-Shore Enterprises,** reported in **(2011) 14 SCC 147, Pure Helium India (P) Ltd vs Oil and Natural Gas Commission, reported in (2003) 8 SCC**

593, Executive Engineer (R& B) vs Gokul Chandra Kanungo, reported in 2022 SCC Online SC 1336 and State of Chhattisgarh vs Sal Udyog Pvt Ltd, reported in (2022) 2 SCC 275.

5. Heard learned counsel for the parties and perused the material available on record.

6. It is not disputed that Bharat Aluminum Company Limited (BALCO) and R. K. Transport Company (RKTC) entered into a contract on 01.04.2002 for a period of one year in terms whereof, RKTC had to mine and transport 2,00,000 Metric Tonnes of Alumina Bauxite from Manpat, Sarguja to BALCO's plant in Korba. The contract was extended from time to time and the contract in question came to an end on 30.06.2005. Subsequently, dispute arose between the parties regarding the payment of extra work performed by the appellant and the Arbitrator was appointed and the learned Arbitrator passed award on 09.04.2022, against this award, the respondent BALCO filed application under Section 34 of the Act before the learned Commercial Court and the learned Commercial Court by impugned judgment dated 08.09.2025 partly allowed the application of BALCO and set aside most of the claims allowed by the learned Arbitrator. Hence this appeal has been filed by the appellant RKTC.

7. It is also not disputed between the parties that pursuant to discussion between the parties, minutes of meeting dated 27.02.2006 were signed on 04.03.2006 and on 23.06.2006 offer was made by BALCO to appellant RKTC for an amount of Rs.1,49,47,000/- as a full and final settlement, which was not accepted by RKTC.

8. Before the learned Arbitration Tribunal, the appellant RKTC examined himself as witness. It is also clear that in the present case, meeting dated 27.02.2006 was admitted by both the parties and all such claims of RKTC got precluded in the form of Ex-C/5. The learned Commercial Court observed in para 77 as under:-

> “77. Now, this Court shall deal with various claims as granted by Ld. AT. Before doing so, it would be imperative for this Court to make it clear that discussion infra shall only be with a view to adjudicate the challenges mounted by BALCO under the present objection application within the restricted domain of Sec. 34 A&C Act. This Court does not intend to act as an appellate court or a fact finding court so as to delve deep into the factual matrix of the dispute. The grant of various claims by the Ld. AT would only be tested by this Court in terms of the yardsticks as laid down by Hon'ble Supreme Court in the matter OPG Power Generation (P) Ltd. (supra), wherein It has been enunciated as under:-
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> "80. We find ourselves in agreement with the view taken in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., reported in (2019) 20 SCC 1, paras 27-43], as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper

or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:

(1) where no reasons are recorded, or the reasons recorded are unintelligible;

(2) where reasons are improper, that is, they reveal a flaw in the decision-making process; and

(3) where reasons appear inadequate.

81. Awards falling in Category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the 1996 Act. Therefore, such awards are liable to be set aside under Section 34, unless:

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under Section 30.

82. Awards falling in Category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act.

83. Awards falling in Category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are Intelligible and adequate on a fair reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for Inadequacy of reasons. However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award.

Scope of Interference with the Interpretation/construction of a contract accorded in an arbitral award.

84. An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of

> the contract, the award would be patently illegal. However, an Arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not Intefere [See: SAIL v. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63 (2009) 4 SCC (Civ) 16; Pure Helium India (P) Ltd. v. ONGC, (2003) 8 SCC 593; McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181; MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163: (2019) 2 SCC (Clv) 293]. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to Interference [South East Asla Marine Engg. & Constructions Ltd. v. Oil India Ltd., (2020) 5 SCC 164: (2020) 3 SCC (Clv) 1]."

Thus, it is clear that while observing the Hon'ble Apex Court's guidelines, the learned Commercial Court re-appreciated the evidence of parties in terms of contract and also overturned the finding of learned Arbitration Tribunal.

9. The Hon'ble Apex Court in Ramesh Kumar Jain (supra) held in paras 27 to 37 as under:-

> "27. The Arbitration and Conciliation Act, 1996 avows to provide a speedy, cost-effective & efficacious mode of alternative dispute resolution with a policy of minimal judicial intervention. The same is apparent from the legislative intent explicitly mandated under section 5 of A&C Act which envisages an embargo upon the judiciary to interfere in arbitral proceedings save in circumstance expressly stipulated under Part I of the Act. Hence, it is clear that judicial interference is circumscribed with only exception being the statutorily mandated remedies which we find under section(s) 34 and 37 of the A&C Act.
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> 28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral

award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India: is contrary to the fundamental policy of Indian Law, or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited14, this court held that an award can be set aside under Section 34 on the following grounds: "(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

29. When it comes to section 37 of the A&C Act it provides for a limited appellate remedy against an order either setting aside or refusing to set aside an arbitral award passed by civil court in exercise of its power under section 34. This court in MMTC Ltd. v. Vedanta Ltd.15, at Paragraph 14 observed that interference with an order made under section 37 cannot travel beyond the restrictions laid down in section 34. Further in Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking16 this court at Paragraph 18 observed that the scope of appellate scrutiny under section 37 is necessarily co-extensive with the parameters mandated under section 34 of the Act and hence the said provision does not enlarge the jurisdiction of the appellate court. Even this court has observed in M/s. Hindustan Construction Company Limited v. M/s. National Highways Authority of India17, wherein one of us (Justice Aravind Kumar) was part of the bench at Paragraph 26 that the standard of scrutiny of an arbitral award is very narrow and it is not the judicial review of an award. Further in Paragraph 27 it was observed that awards which contains reasons, especially when they interpret contractual terms, ought not to be interfered with lightly. This court has also observed in Larsen Air Conditioning and Refrigeration Company v. Union of India and Ors.18 at

Paragraph 15 that the scope of interference in exercise of appellate power under section 37 is even narrower to review the findings of the awards, if it has been upheld or substantially upheld under section 34. Hence, it is very well settled that arbitral awards are not liable to be set aside merely on the ground of erroneous in law or alleged misappreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section(s) 34 & 37. It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under section(s) 34 and 37. This court in Punjab State Civil Supplies Corporation Limited & Anr. v. M/s. Sanman Rice Mills & Ors.19 at Paragraph 12 observed that even when the arbitral awards may appear to be unreasonable and non-speaking that by itself would not warrant the courts to interfere with the award unless that unreasonableness has harmed the public policy or fundamental policy of Indian law. It might be a possibility that on re-appreciation of evidence, the courts may take another view which may be even more plausible but that also does not leave scope for the courts to reappraise the evidence and arrive at a different view. This court in Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited & Anr.20 held that the arbitrator is generally considered as ultimate master of quality and quantity of evidence. Even an award which is based on little or no evidence would not be held to be invalid on this score. At times, the decisions are taken by the arbitrator acting on equity and such decisions can be just and fair therefore award should not be overridden under section 34 and 37 of the A&C Act on the ground that the approach of the arbitrator was arbitrary or capricious.

30. Hence, in the light of the aforesaid discussion, we would deal with the submissions made by the learned senior counsels on behalf of the parties. But there is yet another aspect that warrants our attention before delving into the analysis of submission and that is the setting aside of the impugned order by the High Court by placing reliance on the ground of "patent illegality" therefore, it becomes imperative to understand the true import of the said term before we move further.

31. Prior to 2015 amendment, the ground of "patent illegality" emerged as result of judicial interpretation in

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

"Take for illustration a case wherein there is a specific provision in the contract that for delayed payment of the amount due and payable, no interest would be payable, still however, if the arbitrator has passed an award granting interest, it would be against the terms of the contract and thereby against the provision of Section 28(3) of the Act which specifically provides that "Arbitral Tribunal shall decide in accordance with the terms of the contract". Further, where there is a specific usage of the trade that if the payment is made beyond a period of one month, then the party would be required to pay the said amount with interest at the rate of 15 per cent. Despite the evidence being produced on record for such usage. if the arbitrator refuses to grant such interest on the ground of equity, such award would also be in violation of sub-sections (2) and (3) of Section 28, Section 28/2) specifically provides that the arbitrator shall decide ex aequo et bono (according to what is just and good) only if the parties have expressly authorised him to do so. Similarly, if the award is patently against the statutory provisions of substantive law which is in force in India or is passed without giving an opportunity of hearing to the parties as provided under Section 24 or without giving any reason in a case where parties have not agreed that no reasons are to be recorded, it would be against the statutory provisions. In all such cases, the award is required to he set aside on the ground of "patent illegality"."

32. In Associate Builders v. Delhi Development Authority21, this court attempted to filter out what contemplated patent illegality in paras 42.1 to 42.3 under the following three subheads: firstly, contravention of the substantive law of India: secondly,

contravention of the Arbitration Act itself and thirdly, contravention of Section 28(3) of the Arbitration Act which mandates the Arbitral Tribunal to decide the case in accordance with the terms of the contract, taking into account the usages of the trade applicable to the transaction. With regard to the third sub-head Justice R.F. Nariman, observed by stating that: if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of term of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.

33. In 2015, by way of the Arbitration and Conciliation (Amendment) Act a new sub-section (2A) to section 34 of A&C Act was inserted which in addition to statutorily recognizing the 'patent illegality ground for setting aside a domestic arbitral award made it an independent and distinct ground from public policy under section 34. The proviso to the newly inserted clause further provided that an award "shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence". The legislative intent behind insertion of this proviso was to avoid excessive intervention to arbitral award by the courts under the ground of patent illegality. However, the Amendment clarified that "an erroneous application of the law" or "re-appreciation of evidence" does not fall under patent illegality. Hence, the courts are not to treat every factual error or every divergent interpretation as an illegality. The illegality must be of a kind that strikes at the heart of the award's validity. For instance, if an arbitrator ignores a binding precedent or a clear prohibition in the contract, that may be patent illegality. Likewise, a finding based on no evidence at all can be said to be perverse and thus patently illegal. But where there is some evidence and a reasonably plausible inference has been drawn by the arbitrators, the courts should ordinarily refrain themselves from supplanting the views arrived by the arbitrator as that would be the true import of the legislative intent inherent in the Amendment Act.

34. Thereafter, this court elucidated the meaning of the expression patent illegality in Ssangyong Engg. & Construction Co. Ltd. v. NHAP22 while taking into consideration the amendment act of 2015 and held it as a glaring. evident illegality that goes to the root of

the award. This includes: (a) an award deciding matters outside the scope of the arbitration (beyond the contract or submission); (b) an award contradicting the substantive law of India or the Arbitration Act itself; (c) an award against the terms of the contract; and (d) an award so unreasoned or irrational that it manifests an error on its face.

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

36. Having discussed the said law, we move ahead to another limb of the submission which was espoused by the respondent particularly with reference to obligations of the arbitrator to decide the dispute in accordance with the terms of the contract. It is a fundamental principle that the arbitrator cannot award anything that is contrary to the contract. The arbitrator is bound by clear stipulations inter se the parties, and an award ignoring such stipulations would violate public policy by undermining freedom of contract. However, that does not mean that not every award which gives a benefit not expressly mentioned in the contract is in violation. The arbitral tribunal in exercise of their power can very well interpret the implied terms

or fill gaps where the contract is silent, so long as doing so does not contradict any express term. For example, if a contract is silent on interest on delayed payments, an arbitrator awarding reasonable interest is not contradicting the contract rather it is a power exercised by the arbitrator to fulfill the gap on the basis of equity which also mandated under Section 31(7)(a) of the A&C Act. Similarly, if a contract does not say either way about compensating extra work done at request, the arbitrator can imply a term or use principles of restitution to award a reasonable sum, without violating the terms of contract. The thin line is whether an express prohibition or restrictions in the contract is breached by the award? If the answer is in affirmative, the award is liable to struck down. However, where the contract is simply silent on a legitimate claim which is inherently linked to the natural corollary of contractual obligation of the parties the arbitrator will be well within his powers to interpret the contract in the light of principles of the contractual jurisprudence and apply the equity to that situation. A contrary interpretation would lead to opening a floodgate whereby a party who may have dominant position would intentionally not ink down the natural obligation flowing from the contract and subsequently; after obtaining the benefit the party would agitate absence of express terms to sway away from even discharging his alternative obligation of compensating the party at loss. Hence the question which arises in such situations is, can the party who bears the brunt and suffers the loss due to silence under the contract regarding the natural contractual obligation which arises in usual course of business be left in limbo? In our view, that is the very purpose why section 70 of the Contract Act, 1872, has been an intrinsic part of our Contract Act. The said provision creates a statutory right independent of contract, often termed quantum meruit or unjust enrichment remedy. For ready reference the said provision has been extracted hereinbelow:

"70. Obligation of person enjoying benefit of non-gratuitous act. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

> 37. The close scrutiny of the aforesaid provision reveals that it comes into play when one party confers a benefit on another in circumstances not governed by a contract, without intent to act gratuitously. Hence in such situation, the party taking the benefit is bound to pay compensation to the party who had gratuitously taken the benefits and the courts including arbitral tribunals, can award compensation under Section 70 if the conditions are met."

10. In light of the above, it is evident that in the present case the learned Arbitrator has meticulously examined and appreciated the claims and counterclaims of both parties on the basis of the oral as well as documentary evidence available on record. The learned Arbitrator has also placed reliance upon document Ex-C/6. Significantly, the respondent, BALCO, has not disputed the authenticity or existence of Ex-C/6. The principal objection raised by the respondent is merely that the document reflects negotiations or claims made "without prejudice." It has further been contended that, unlike the earlier case where no formal agreement existed between the parties, the present dispute is governed by a written agreement dated 01.04.2002, and therefore the learned Arbitrator could not travel beyond the terms of the contract.

11. It is, however, a settled principle of law that the mere use of the expression "without prejudice" in a document relating to negotiations or claims does not automatically render such document inadmissible, nor does it prevent the Court or the

learned Arbitrator from examining the same or treating it as an admission, if the facts and circumstances so warrant.

12. The Hon'ble Apex Court in **Chairman and MD, NTPC Ltd** (supra) held in paras 32, 33, 34 & 35 as under:-

> "32 Even correspondences marked as without prejudice may have to be interpreted differently in different situations.
>
> 33. What would be the effect of without prejudice offer has been considered in Cutts Vs. Head and Another [(1984) 2 WLR 349] wherein Oliver L.J. speaking for the Court of Appeals held:
>
> "In the end, I think that the question of what meaning is given to the words "without prejudice" is a matter of interpretation which is capable of variation according to usage in the profession. It seems to be that, no issue of public policy being involved, it would be wrong to say that the words were given a meaning in 1889 which isimmutable ever after, bearing in mind that the precise question with which we are concerned in this case did not arise in Walker v. Wilsher, 23 Q.B.D. 335, and the court did not deal with it. I think that the wide body of practice which undoubtedly exists must be treated as indicating that the meaning to be given to the words is altered if the offer contains the reservation relating to the use of the offer in relation to costs."
>
> 34. Yet again in Rush & Tompkins Ltd. Vs. Greater London Council and Another [(1988) 1 All ER 549]:
>
> "The rule which gives the protection of privilege to 'without prejudice' correspondence 'depends partly on public policy, namely the need to facilitate compromise, and partly on 'implied agreement' as Parker LJ stated in South Shropshire DC v Amos [1987] 1 All ER 340 at 343, [1986] 1 WLR 1271 at 1277. The nature of the implied agreement must depend on the meaning which is conventionally attached to the phrase 'without prejudice'. The classic definition of the phrase is contained in the judgment of Lindley LJ in Walker v. Wilsher (1889) 23 QBD 335 at 337:
>
> 'What is the meaning of the words "without prejudice"? I think they mean without prejudice to the

position of the writer of the letter if the terms he proposes are not accepted. If the terms proposed in the letter are accepted a complete contract is established, and the letter, although written without prejudice, operates to alter the old state of things and to establish a new one.'

Although this definition was not necessary for the facts of that particular case and was therefore strictly obiter, it was expressly approved by this court in Tomlin v Standard Telephones and Cables Ltd. [1969] 3 All ER 201 at 204, 205, [1969] 1 WLR 1378 at 1383, 1385 per Danckwerts LJ and Ormrod J. (Although he dissented in the result, on this point Ormrod J agreed with the majority.) The definition was further cited with approval by both Oliver and Fox LJJ in this court in Cutts v. Head [1984] 1 All ER 597 at 603, 610, [1984] Ch. 290 at 303, 313. In our judgment, it may be taken as an accurate statement of the meaning of 'without prejudice', if that phrase be used without more. It is open to the parties to the correspondence to give the phrase a somewhat different meaning, e.g. where they reserve the right to bring an offer made 'without prejudice' to the attention of the court on the question of costs if the offer be not accepted (See Cutts v. Head) but subject to any such modification as may be agreed between the parties, that is the meaning of the phrase. In particular, subject to any such modification, the parties must be taken to have intended and agreed that the privilege will cease if and when the negotiations 'without prejudice' come to fruition in a concluded agreement."

35. Meaning the words "without prejudice" come up for consideration before this Court in Superintendent (Tech. I) Central Excise, I.D.D. Jabalpur and Others Vs. Pratap Rai [(1978) 3 SCC 113] wherein it has been held:

"The Appellate Collector has clearly used the words "without prejudice" which also indicate that the order of the Collector was not final and irrevocable. The term "without prejduce" has been defined in Black's Law Dictionary as follows:

Where an offer or admission is made 'without prejduce', or a motion is defined or a bill in equity dismissed 'without prejudice', it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost, except in so far as may be expressly conceded or decided. See, also Dismissal Without Prejudice.

Similarly, in Wharton's Law Lexicon the author while interpreting the term 'without prejudice' observed as follows:

The words import an understanding that if the negotiation fails, nothing that has passed shall be taken advantage of thereafter; so, if a defendant offers, 'without prejudice', to pay half the claim, the plaintiff must not only rely on the offer as an admission of his having a right to some payment.

The rule is that nothing written or said 'without prejudice' can be considered at the trial without the consent of both parties not even by a Judge in determining whether or not there is good cause for depriving a successful litigant of costs . The word is also frequently used without the foregoing implications in statutes and inter partes to exclude or save transactions, acts and rights from the consequences of a stated proposition and so as to mean 'not affecting', 'saving' or 'excepting'.

In short, therefore, the implication of the term 'without prejudice' means (1) that the cause or the matter has not been decided on merits, (2) that fresh proceedings according to law were not barred."

13. The Hon'ble Apex Court in **Peacock Plywood (P) Ltd.** (supra) held in paras 42 & 43 as under:-

"42. Only because the expression "without prejudice" was mentioned, the same, in our opinion, by itself was not sufficient and would not curtail the right of the insured to which it was otherwise entitled to. The expression "without prejudice" may have to be construed in the context in which it is used. If the purpose for which it is used is accomplished, no legitimate claim can be allowed to be defeated thereby. [See Cutts v. Head and Another, (1984) 2 WLR 349 and Rush & Tompkins Ltd v. Greater London Council and another, (1988) 1 All ER 549].

43. In Phipson on Evidence, Sixteenth Edition, pages 655-657, it is stated:

"Without prejudice privilege is seen as a form of privilege and usually treated as such. It does not, however, have the same attributes as the law of privilege. Privilege can be waived at the behest of the party entitled to the privilege. Without prejudice

privilege can only normally be waived with the consent of both parties to the correspondence. Whilst the rule in privilege is "once privileged, always privileged", the rule for without prejudice is less straightforward, and at least in three party cases, this will not always be the position. A third distinction is that in the three party situation, which is not governed by contract, without prejudice documents are only protected in circumstances where a public policy justification can be provided, namely where the issue is whether admissions were made. That is not a principle applicable in the law of privilege. Fourthly, whereas legal professional privilege is a substantive right, without prejudice privilege is generally a rule of admissibility, either based on a contractual, or implied contractual right, or on public policy. This may have consequences relevant to proper law issues. Finally, if a party comes into possession of a privileged document, subject to equitable relief for breach of confidence, there is no reason why he should not use it and it will be admissible in evidence. But, the mere fact that a party has a without prejudice document does not entitle him to use it without the consent of the other party.

(c) When is correspondence treated as within the rule?

The first question is to determine what communications attract without prejudice privilege. The second stage is to consider when the court will, nevertheless, admit such communications.

Correspondence will only be protected by without prejudice privilege if it is written for the purpose of a genuine attempt to compromise a dispute between the parties. It is not a precondition that the correspondence bears the heading without prejudice. If it is clear from the surrounding circumstances that the parties were seeking to compromise the action, evidence of the content of those negotiations will, as a general rule, not be admissible. The converse is that there are some circumstances in which the words are used but where the documents do not attract without prejudice privilege. This may be because although the words without prejudice were used, the negotiations were not for the purpose of a genuine attempt to settle the dispute. The most obvious cases are first, where the party writing was not involved in genuine settlement negotiations, and secondly, where although the words were used, they were used in

> circumstances which had nothing to do with negotiations. Surveyors reports, for example, are sometimes headed without prejudice, although they have nothing to do with negotiations. The third case is, where the words are used in a completely different sense. Thus, in Council of Peterborough v. Mancetter Developments, the documentation was admissible because in context the words meant "without prejudice to an alternative right and without concession to the other application" and had nothing to do with settlement.
>
> There are circumstances in which the correspondence is initiated with a view to settlement but the parties do not intend that the correspondence should be without prejudice. It may be that the parties positively want any subsequent court to see the correspondence and always had in mind that it should be open correspondence. It may be a nice point whether negotiations at which no one mentioned the words "without prejudice" should be admitted in evidence: for example at an early meeting between the parties when the dispute first developed. There is no easy rule here. On the other hand, even when a letter is sent as the "opening shot" in negotiations, and is not preceded by any previous correspondence, it may be without prejudice. There are authorities in both directions on this and it will depend on the facts.
>
> It has been said that if one is seeking to change the basis of the correspondence from without prejudice to open it is incumbent on that person to make the change clear, although that may be more a pointer than a rule. There is no reason why every letter for which without prejudice is claimed should contain an offer or consideration of an offer, so long as the without prejudice correspondence is part of a body of negotiation correspondence."

14. A perusal of Ex-C/6 clearly demonstrates that the document pertains to Agreement No.200035 dated 29.04.2002 relating to bauxite mining and transportation for the period from 01.04.2002 to 30.06.2005, wherein as many as 29 claims were deliberated upon by both parties. The document itself reflects admissions on the part of the respondent, BALCO, acknowledging that the

appellant RKTC had taken significant initiative during the period of crisis and had rendered extraordinary efforts, for which suitable incentives were recommended. The document further reveals that, with respect to certain claims, BALCO expressly admitted that it was facing a financial crisis following the 67-day strike and that the appellant RKTC was the only contractor that had deployed its own machinery and resources for restarting the mining operations. In recognition of such efforts and contribution, a lump-sum compensation was also recommended. The learned Arbitrator, after meticulously appreciating the oral as well as documentary evidence and considering the submissions advanced by both parties, proceeded to pass the impugned award.

15. The Hon'ble Apex Court in similar case in **Ramesh Kumar Jain** (supra) held in para 37 as under:-

> "37. The close scrutiny of the aforesaid provision reveals that it comes into play when one party confers a benefit on another in circumstances not governed by a contract, without intent to act gratuitously. Hence in such situation, the party taking the benefit is bound to pay compensation to the party who had gratuitously taken the benefits and the courts including arbitral tribunals, can award compensation under Section 70 if the conditions are met."

16. The Hon'ble Apex Court in **Parsa Kente Collieries Limited** (supra) held in para 9.1 as under:-

> "9.1 In the case of Associate Builders (supra), 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 the cases of McDermott International Inc. v. Burn Standard Co. Ltd., reported in (2006) 11 SCC 181 (paras 112113) and Rashtriya Ispat Nigam Limited v. Dewan Chand Ram Saran, reported in (2012) 5 SCC 306 (paras 4345), 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 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 paragraph 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.

17. The Hon'ble Apex Court held in **Construction and Design Services** (supra) held in para 17 as under:-

"17. Applying the above principle to the present case, it could certainly be presumed that delay in executing the work resulted in loss for which the respondent was entitled to reasonable compensation. Evidence of precise amount of loss may not be possible but in

> absence of any evidence by the party committing breach that no loss was suffered by the party complaining of breach, the Court has to proceed on guess work as to the quantum of compensation to be allowed in the given circumstances. Since the respondent also could have led evidence to show the extent of higher amount paid for the work got done or produce any other specific material but it did not do so, we are of the view that it will be fair to award half of the amount claimed as reasonable compensation."

18. In light of above, in the present case also, the learned Commercial Court reappreciated the evidence and came to a different view which is impermissible. The learned Commercial Court scrutinized the award from a stricter standard of proof than arbitration law demands, as Hon'ble Apex Court held in **Ramesh Kumar Jain** (supra) that the errors pointed out in the impugned judgment, i.e., lack of evidence, percentage-based guess allowances, etc. do not, singly or cumulatively, amount to patent illegality warranting annulment. There were at least some evidence and logical rationale for each award element. The arbitrator's approach was certainly a possible view a reasonable man might take. The High Court, unfortunately, re-appreciated the evidence and came to a different view, which is impermissible. The High Court's scrutinized the award from a stricter standard of proof than arbitration law demands. Arbitrators are not bound by the strict rules of evidence as per Section 19 of the A&C Act and may draw on their knowledge and experience. It is settled that a court should not interfere simply because the arbitrator's reasoning is brief or because the

arbitrator did not cite chapter and verse of the contract as long as the path can be discerned by which the arbitrator arrived at his conclusions. Here, the path is discernible and not absurd.

19. As regards objection of the respondent regarding rate of interest awarded to the appellant by the learned Arbitrator, it is clear from arbitral award that the learned Arbitrator after observing provisions of Arbitration Act awarded interest @ 18% per annum in favour of the appellant.

20. Section 31 (7a & 7b) of the Arbitration Act provides as under:-

> "(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which award is made.
>
> 1[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.
>
> Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]
>
> Prior to amendment dated 23.10.2015, Clause (b) reads as under:-
>
> "A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

21. It is also clear that arbitral proceedings started prior to this amendment and the learned Tribunal also considered pandemic

period as prolonged delivery of award and awarded interest also. The learned Arbitration Tribunal duly considered the provisions of Arbitration Act and passed award including statutory interest. Thus, looking to the facts and circumstances of the case, we are not inclined to interfere in the rate of interest awarded by the learned Arbitrator to the appellant.

22. Thus, in light of guidelines of the Hon'ble Apex Court, the impugned judgment dated 08.09.2025 passed by the learned Commercial Court cannot be sustained and the appeal deserves to be allowed.

23. Accordingly, the appeal is allowed and the judgment passed by the learned Commercial Court dated 08.09.2025 is hereby set aside and the award passed by the learned Arbitrator dated 09.04.2022 is restored.

Sd/-
Rajani Dubey
Judge

Sd/-
Radhakishan Agrawal
Judge

Nirala