IN THE HIGH COURT OF JUDICATURE AT PATNA
COMMERCIAL APPEAL No.8 of 2025

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1. The Bihar State Food and Civil Supplies Corporation Ltd. Sone Bhawan, Daroga Prasad Rai Path, R. Block, Road No 2, Patna 800001, through its Managing Director.
2. The Managing Director, The Bihar State Food and Civil Supplies Corporation Ltd., Khadya Bhawan, R. Block, Rd. No. 2, Patna 800001.
3. The District Manager, The Bihar State Food and Civil Supplies Corporation Ltd., Darbhanga.

... ... Appellant/s

Versus

Sanjeev Kumar Singh Son of Sri Rameshwar Prasad Singh, Resident of Sihma, PS Matihani, District Begusarai.

... ... Respondent/s

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with

COMMERCIAL APPEAL No. 12 of 2025

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1. The Bihar State Food and Civil Supplies Corporation Ltd. Sone Bhawan, 5th Floor, Birchand Patel Path, Patna, at present Khadya Bhawan, R. Block, Patna.
2. The Managing Director, The Bihar State Food and Civil Supplies Corporation Ltd., Sone Bhawan, 5th Floor, Birchand Patel Path, Patna, at present Khadya Bhawan, R. Block, Patna.
3. The District Manager, The Bihar State Food and Civil Supplies Corporation, Madhubani, District Darbhanga.

... ... Appellant/s

Versus

Sanjeev Kumar Singh Son of Sri Rameshwar Prasad Singh, resident of Sihma, P.S. Matihani, District Begusarai.

... ... Respondent/s

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Appearance :

(In COMMERCIAL APPEAL No. 8 of 2025)

For the Appellant/s : Mr.Shailendra Kumar Singh, Adv.

For the Respondent/s : Mr. Prashant Kumar, Adv.
Mr. Manish Prakash, Adv.
Mr. Kumar Anjaneya Shanu, Adv.
Mr. Rohit Raj, Adv.
Mr. Ranvir Pratap Singh, Adv.

(In COMMERCIAL APPEAL No. 12 of 2025)

For the Appellant/s : Mr.Shailendra Kumar Singh, Adv.

For the Respondent/s : Mr. Prashant Kumar, Adv.
Mr. Manish Prakash, Adv.
Mr. Kumar Anjaneya Shanu, Adv.

Mr. Rohit Raj, Adv.
Mr. Ranvir Pratap Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 23-05-2026

COMMERCIAL APPEAL No. 8 of 2025

1. The present appeal has been filed under Section 13 (1A) of the Commercial Courts Act, 2015 (herein after referred to as the "Act, 2015") read with Section 37 of the Arbitration and Conciliation Act, 1996 (herein after referred to as the "Act, 1996") against the Judgment dated 25.07.2025, passed by the Ld. Court of Principal District Judge, Patna (herein after referred to as the "learned PDJ, Patna") in Miscellaneous (Arbitration) Case No. 21 of 2021.

Facts of the Case:

2. The genesis of the present appeal lies in an agreement executed in between the appellants and the claimant-Respondent herein dated 16.12.2016, pursuant to issuance of notice inviting tender from eligible candidates, for being appointed as transporting-cum-handling agent for a period of three years for the revenue District- Darbhanga and acceptance of the tender submitted by the Respondent herein. The claimant-Respondent

was entrusted with the work of transportation of food-grains and other commodities including edible oil to the destinated godown, as directed by or on behalf of the appellants and according to the route chart fixed for the said purpose. The period of contract was for three years pertaining to the District-Darbhanga. The claimant-Respondent is stated to have executed the work of transporting-cum-handling agent under the agreement and had submitted several bills in between the years 2017 to 2019.

3. It appears that disputes had erupted in between the parties, leading to claims and counter claims being made apart from the claimant-Respondent alleging that the payment of the bills were abnormally delayed by the appellants. The claimant-Respondent had then sent a notice to the appellants on 29.05.2019 for appointing an arbitrator suggesting three names, however the appellants did not respond to the said notice as also failed to appoint any arbitrator within a reasonable time, leading to filing of a request case bearing Request Case No. 65 of 2019 under Section 11(6) of the Act, 1996 by the claimant-Respondent, *inter alia* praying therein for appointment of an independent and impartial arbitrator, in view of Clause 21 of the agreement dated 16.12.2016. The Hon’ble Chief Justice of this

Court by an order dated 06.09.2019, passed in Request Case No. 65 of 2019 and other analogous cases, in exercise of the powers U/s. 11(6) of the Act, 1996 had appointed Hon'ble Mr. Justice Sadananad Mukherjee, a retired Judge of the Patna High Court as the sole Arbitrator to enter upon the disputes and render his award in terms of the provisions of the Act, 1996.

4. The claimant-Respondent had then approached the Ld. Sole Arbitrator on 13.09.2019 with a copy of the aforesaid order dated 06.09.2019, passed in Request Case No. 65 of 2019 and other analogous cases, leading to registration of Arbitration Case No. 07 of 2019, whereafter the claimant-Respondent had filed a detailed statement of claim on 25.10.2019, raising a claim of a sum of Rs. 3,49,98,954.68.

5. The appellants had then filed statement of defence on 13.1.2020, *inter alia* stating therein that the claimant-Respondent has submitted calculation chart at Annexure C-77, page No. 110-111 of the claim petition without any supporting documents and the admitted outstanding bills have already been paid long back. It was further stated that claim of earnest money to the tune of Rs. 3,00,000/- has been raised without any supporting document. It was also averred that the claimant-Respondent has engaged in breach of the terms and conditions

of the contract and he has already received all the admissible outstanding amount against the bills submitted by him, hence the claims raised by him is not admissible in the eyes of law.

6. The Respondent-claimant had then filed a rejoinder to the statement of defence on 11.2.2020, stating therein that in support of the statement of claim annexed at Annexure C-77, photo copies of several bills have been annexed as Annexure C-2 to C-35 to the statement of claim wherein each and every fact as well as supporting documents have been furnished in detail. The claimant-Respondent had also filed a supplementary statement of claim on 14.6.2020 wherein it had been stated that a sum of Rs. 28,88,500/- has already been claimed on the head of idling charges paid to different truck owners, however it was stated that the summary statement of claim in the form of chart annexed as Annexure C-77 of the statement of claim be substituted by a new chart annexed to the supplementary statement of claim, apart from claiming a sum of Rs. 1,50,000/- as travelling expenses for attending arbitral proceedings at Patna and a sum of Rs. 1,60,000/- on the head of fees of the Ld. Advocate, however no compensation was claimed by the claimant-Respondent. Thus, the claim amount as per the supplementary claim petition totals up to a sum of Rs.

3,43,32,287.46. It is a matter of record that no rebuttal was filed by the appellants to the supplementary statement of claim. Nonetheless, the Ld. Sole Arbitrator by an award dated 17.10.2020 has also awarded compensation amount to the tune of Rs. 25,00,000/- under Section 54 of the Indian Contract Act.

7. The claimant-Respondent, in his rejoinder to the reply filed before the Ld. Sole Arbitrator on 11.2.2020 has also stated in paragraph no. 5 thereof that the earnest money, amounting to a sum of Rs. 1,00,000/- is not related to the running agreement rather the same was deposited along with the tender on 28.11.2008, i.e. in respect of earlier tender, which was not allotted to the claimant-Respondent, however the District Manager, Bihar State Food and Civil Supplies Corporation Ltd. (hereinafter referred to as "the BSFC") Darbhanga has not refunded the same, hence the claimant-Respondent has also claimed the said amount.

8. At this juncture, it would be relevant to reproduce paragraphs no. 7 and 8 of the statement of claim filed by the claimant-Respondent before the Ld. Sole Arbitrator on 25.10.2019 herein below:-

> *"7. That the claimant/petitioner has also deposited a sum of Rs. 1,00,000/-along with his tender on 28.11.2008 in*

respect of earlier tender which was not allotted to the claimant/petitioner but the District Manager, B.S.F.C, Darbhanga has not refunded the aforesaid earnest Money amounting to Rs. 1,00,000/- deposited with the tender. On repeated demands made by the claimant/petitioner, the claimant was assured by the District Manager, B.S.FC, Darbhanga that as soon as fund is made available by the Head Quarter the said earnest money would be refunded but the same has not been refunded as yet. The claimant is entitled to refund of the aforesaid amount of Rs. 1,00,000/- by the respondent with interest thereon @ 18% per annum from the date of receipt of payment by the claimant/petitioner.

8. That the claimant/petitioner has also deposited a sum of Rs. 3,00,000/-along with his tender on 29.08.2016 in respect of earlier tender which was not allotted to the claimant/petitioner but the District Manager, B.S.F.C. Sitamarhi has not refunded the aforesaid earnest Money amounting to Rs. 3,00,000/- deposited with the tender. On repeated demands made by the claimant/petitioner, the claimant was assured by the District Manager, B.S.FC. Sitamarhi that as soon as fund is made available by the Head Quarter the said earnest money would be refunded but the same has not been refunded as yet. The claimant is entitled to refund of the aforesaid amount of Rs. 3,00,000/- by the respondent with interest thereon @ 18% per annum from the date of receipt of payment by the claimant/petitioner."

9. The learned Sole Arbitrator had thereafter, framed the

following issues for consideration:-

> *"(i) Whether there is cause of action in the present proceeding.*
>
> *(ii) Whether the claims are barred by limitation.*
>
> *(iii) Whether the petitioner claimant has discharged the contractual obligations.*
>
> *(iv) Whether the petitioner is entitled to claim as claimed in the statement of claim.*
>
> *(v) Whether the respondents were in complete breach of contract by not paying the full amount of bill submitted by the claimant petition.*
>
> *(vi) Whether the claimant petitioner is entitled to interest @ 18% per annum up to the date of actual receipt of awarded amount.*
>
> *(vii) Whether the claimant is entitled to reliefs as claimed in the claimed petition."*

10. The Ld. Sole Arbitrator had finally passed the arbitral award on 17.10.2020, holding that the claimant shall be entitled to the following award:-

> *"1. The claimant petitioner shall be paid an amount of Rs. 2,33,07,924/- (Two crores thirty-three lakhs seven thousand nine hundred and twenty-four rupees) only towards claim amount.*
>
> *2. The claimant petitioner shall be paid the amounts of earnest money Rs. 1,00,000/- (One lakh) only and Rs. 3,00,000/- (Three lakhs) only respectively with interest in*

the manner stated above.

3. The claimant petitioner shall be entitled to compensation amount of Rs. 25,00,000/- (Twenty-five lakhs) only under Section 54 of the Indian Contract Act.

4. The claimant petitioner shall be entitled to simple interest @ 10% p.a. from 13.09.2019 till the date of award and further 18% interest over awarded sum from the date of award till realization over the awarded amount.

5. The claimant petitioner shall be entitled to cost towards fees and expenses of the Arbitrator and Courts and other legal expenses.

6. Since the Arbitrator's fees has not been paid by the respondent, the same shall be treated as 'unpaid cost of the Award, under Section 39 of the Arbitration and Conciliation Act, 1996, and accordingly Arbitrator shall have lien over the award, the respondent shall be liable for making payment of the fees of the Arbitrator before pursuing the matter before the Court."

11. The Ld. Sole Arbitrator by his award dated 17.10.2020 has also held that the claimant-Respondent is entitled to a sum of Rs. 1,00,000/- for refundable earnest money for Darbhanga and Rs. 3,00,000/- for refundable earnest money for Sitamarhi.

12. The Ld. Sole Arbitrator by an order dated 13.11.2020, passed in Arbitration Case No. 7 of 2019 has noted that a typographical error has taken place in the last paragraph at

internal page no. 11 of the said award dated 17.10.2020, inasmuch as the amount of balance due from December, 2016 to September, 2019, to which the claimant has been found entitled to, has been mentioned as a sum of Rs. 2,33,07,924/-, however considering the supplementary statement and computing the balance amount, the same should be a sum of Rs. 1,89,13,562/-, hence considering the provisions contained under Section 33(3) of the Act, 1996, the Ld. Sole Arbitrator has directed to correct the amount, to which the claimant is entitled to, in the last paragraph at internal page no. 11 of the award dated 17.10.2020 as also at paragraph no. 1 of internal page no. 14 of the said award dated 17.10.2020, to a sum of Rs. 1,89,13,562/-.

13. The aforesaid award dated 17.10.2020, passed by the learned Sole Arbitrator was challenged by the appellants before the learned Court of Principal District Judge, Patna by filing a petition on 15.01.2021 under Section 34 (2) & (2A) of the Act, 1996, which was numbered as Miscellaneous (Arbitration) Case No. 21 of 2021 (arising out of award dated 17.10.2020 passed in Arbitration Case No. 7 of 2019). The grounds which can be culled out from the petition of the said Miscellaneous Case No. 158 of 2020 are enumerated herein below:-

(i) The Sole Arbitrator has passed the award only on the

basis of calculation chart produced by the claimant-respondent without any supporting documents.

(ii) The appellants had filed statement of defence before the learned Sole Arbitrator and prayed for directing the claimant-respondent to produce supporting documents against his claims as also examine witnesses but the learned Sole Arbitrator neither followed the provisions contained in the Act, 1996 nor examined the records/ witnesses.

(iii) The learned Sole Arbitrator failed to consider that several claims raised by the claimants are *de hors* the agreement.

(iv) The learned Sole Arbitrator has awarded two penalties against the appellants *i.e.* compensation amount and interest on belated payment of the outstanding amount although the admitted claims of the claimant-respondent have already been paid by the appellants well within time.

(v) The learned Sole Arbitrator failed to consider that the claimant-respondent had failed to adhere to the terms of the agreement regarding installing truck with GPS Load-Cells at the time of lifting food grains, hence appropriate deductions were made from the bills. The learned Sole Arbitrator failed to consider that the appellants had passed the admitted amount of bills of the claimant-Respondent, which he had received without any objection.

(vi) The impugned award is against the provisions of the

Act, 1996.

(vii) The learned Sole Arbitrator was though appointed to consider the disputes arising out of the agreement in question, however he has considered several claims based on different contracts and agreements.

14. The claimant-respondent had filed a reply on 05.03.2022 to the aforesaid Misc. Case No. 21 of 2021, *inter alia* stating therein that the said petition filed by the appellants is not maintainable in view of the observations of the learned Sole Arbitrator to the effect that since the arbitration fees has not been paid by the appellants, same shall be treated as unpaid cost of the award under Section 39 of the Act, 1996 and accordingly, Arbitrator shall have lien over the award and the appellants shall be liable to make payment of the fees of the Arbitrator before pursuing the matter before the Court. The claimant-respondent had also raised an objection regarding the aforesaid petition filed by the appellants being in violation of the mandatory provisions contained under Section 34 (5) of the Act, 1996, as no prior notice was issued to the claimant-Respondent before filing of the said petition. The claimant-respondent had also raised the issue of jurisdiction inasmuch as the award under challenge being in respect of commercial dispute as defined under Section 2(1)(c)(xviii) of the Commercial Courts,

Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 (hereinafter referred to as the 'Act, 2015'), the appellants were required to invoke the provisions of the Act, 2015, which has not been invoked, thus the learned Court is not vested with the jurisdiction to decide the case in hand. The claimant-respondent had refuted the contentions made by the appellants in the aforesaid Misc. (Arbitration) Case No. 21 of 2021 and had stated that in pursuance to the agreement dated 16.12.2016 executed in between the claimant-respondent and the appellants, the claimant-respondent had diligently completed the assignment as a Transporting-cum-Handling Agent within the framework of the agreement dated 16.12.2016 and in fact the calculation chart produced by the claimant-respondent with his claim petition is supported by month-wise bills of transport and handling charges as well as other relevant documents which were brought on record before the learned Sole Arbitrator along with the statement of claim filed by the claimant-respondent.

15. It has also been stated by the claimant-respondent in his reply that proper opportunity was provided to the appellants by the learned Sole Arbitrator to file relevant documents, however no documents were filed by the appellants. It has also been

stated that as per Clause 12 A (should be Clause 15) of the agreement, the appellants were under contractual obligation to make payments of the bills of the claimant-respondent herein within a period of 15 days of submission of bills, however none of the bills were paid within time by the appellants. It has also been stated that the appellants never received the bills with any objection. Nonetheless, huge deductions were made by the appellants from the bills without assigning any reason. It has also been stated that the appellants did not file any affidavit of admission/denial of documents of the claimant-respondent before the learned Sole Arbitrator, hence all the documents filed by the claimant-respondent would be deemed to have been accepted. It has further been stated that the claims have only been raised with regard to the district Darbhanga for which the claimant-respondent was appointed as a Transporting-cum-Handing Agent *vide* agreement dated 16.12.2016. Thus, it has been stated that the allegations regarding award of such amount which were not pertaining to the contract in question and were in connection with other districts is baseless. Lastly, it has been stated in the reply filed by the claimant-respondent that it is a well settled law, as held by the Hon'ble Supreme Court in a catena of cases that any error on the face of the award or in case

there is any patent illegality then the same can be examined by the learned Court under Section 34 of the Act, 1996, however the facts/evidence cannot be re-appreciated by the learned Court at the appellate stage.

16. In paragraph No.17 of the reply filed in Misc. (Arbitration) Case No. 21 of 2021 the claimant-respondent has specifically stated that the claims have been raised only in connection with one revenue district for which the defendant was appointed as Transporter-cum-Handling Agent *vide* agreement dated 16.12.2016, hence any allegation by the appellants to the effect that claims over and above the agreement in question pertaining to other districts have been raised by the claimant-respondent herein is denied. At this juncture, it would be apt to reproduce para No. 19 (v) of the reply herein below:-

> *"(v) For that the Hon'ble Sole Arbitrator has decided the dispute within the scope of the agreement as disputes with respect to only one agreement was adjudicated by the Hon'ble Sole Arbitrator for which the Sole Arbitrator was appointed but the plaintiff is trying to mislead this Learned Court merely on the basis of the statement without substantiating any documents in support of their contention."*

17. The claimant-respondent had also stated that the

statement of claim filed by the claimant-respondent before the learned Sole Arbitrator is duly supported by relevant documents which had already been submitted before the concerned officials of the appellants from time to time in accordance with the terms and conditions of the agreement. It has also been stated that interest was claimed on the ground of delay and for the same notice under Section 3 of the Interest Act was sent to the appellants with regard to each and every outstanding amount of bills and the same were also produced before the learned Sole Arbitrator. It has further been stated that the calculation chart produced by the claimant-respondent is duly supported by month-wise bill of transport and handling charges as well as other documents which were brough on record of the arbitral proceedings along with the statement of claim filed by the claimant-respondent and the monthly bills are contained in Annexures C-2 to C-35 of the statement of claim, thus the contention of the appellants that no proof/documents were produce is denied.

18. The learned court of Principal District Judge, Patna (hereinafter referred to as the 'PDJ, Patna') by a judgment dated 25.07.2025 passed in Miscellaneous (Arbitration) Case No.21 of 2021 has been pleased to dismiss the said case holding that no

valid ground has been made out under Section (2) or (2A) of Section 34 of the Arbitration and Conciliation Act, 1996 so as to warrant interference with the impugned arbitral award or the findings of the learned Sole Arbitrator. At this juncture, it would be relevant to enumerate in brief, the findings recorded by the learned PDJ, Patna in the aforesaid judgement dated 25.07.2025, herein below:-

(i) The learned PDJ, Patna has held that since the Ld. Sole Arbitrator in his award dated 17.10.2020 has recorded that no breach of contractual obligation was committed by the claimant-respondent, the claimant-respondent herein is entitled to the outstanding dues for the period starting from December, 2016 to September, 2019 as well as the arrears amounting to Rs.86,18,367, aggregating to a sum of Rs.2,33,07,924/- which has subsequently been revised to a sum of Rs.1,89,13,562 by the learned Arbitrator *vide* order dated 13.11.2020.

(ii) As regards compensation amount of Rs. 25 lakhs awarded by the learned Sole Arbitrator, considering the provisions contained under Section 54 of the Indian Contract Act, the learned PDJ, Patna has come to a finding that since the claimant-respondent ought not to have been subjected to loss arising from the default committed by the appellants and on account of delayed payments causing wrongful loss, as is reflected from the arbitral award, the appellants failed to perform their part of the agreement, hence they cannot claim the

performance of reciprocal promise from the claimant-respondent, thus in view of the undue hardship and financial loss suffered due to delayed payment and defaults on the part of the appellants, the learned Sole Arbitrator has rightly and justifiably awarded compensation of Rs. 25 lakhs in favour of the claimant-respondent.

(iii) The learned PDJ, Patna has further held that it is well settled established legal principal that a Court, while adjudicating a petition under Section 34 of the Act, 1996 is empowered to set aside an arbitral award where it is found to be devoid of reasoning, or where its outcome is so unjust and irrational as to shock the judicial conscience and similarly an award may be invalidated if it is based on evidence and resulting conclusions which no prudent or reasonable person could reasonably reach. The learned PDJ, Patna has also held that the Arbitrator remains the ultimate master of the quality and quantity of evidence and unless the Arbitrator’s approach is demonstrably arbitrary or capricious, the Court shall refrain from revisiting or re-evaluating factual determinations already placed on record.

(iv) The learned PDJ has come to a finding that none of the grounds enumerated under sub-Sections (2) or (2A) of Section 34 of the Act, 1996 have been substantiated in the challenge to the arbitral award. It has also been held that it is a settled law that the proceedings instituted under Section 34 of the Act, 1996 do not partake the nature of an appeal or revision and the jurisdiction conferred upon

the Court is inherently limited as also the Court is neither empowered to re-evaluate the findings and conclusions recorded in the award nor substitute its own views or effect any modification thereof and furthermore, the Court is also not required to delve into or adjudicate the merits of the award in a petition filed U/s. 34 of the Act, 1996.

(v) The learned PDJ, Patna has thus held that the learned Sole Arbitrator has justifiably rendered the arbitral award dated 17.10.2020, having duly considered and evaluated the evidentiary material placed on record and delivered a well-reasoned and a legally sound award.

(vi) In conclusion, the learned PDJ, Patna has held that considering the materials on record, it is manifest that the appellants have failed to establish any of the ground enumerated under sub-Sections (2) or (2A) of Section 34 of the Act, 1996, hence the circumscribed jurisdiction conferred under Section 34 of the Act, 1996 has not been satisfied in the present case so as to warrant setting aside of the impugned arbitral award. The learned PDJ, Patna has also held that the Ld. Sole Arbitrator has adjudicated the disputes strictly within the confines of the agreement executed between the parties and the documents placed on record in that regard as also the findings are clear and the rationale adopted by the learned Sole Arbitrator in arriving at the conclusion is sound, coherent and well-reasoned, hence the award cannot be regarded as patently illegal, perverse or contrary to the public policy of India.

19. The aforesaid judgment dated 25.07.2025 passed by the

learned PDJ, Patna has been challenged in the present appeal.

Submissions of the Ld. Counsel for the Appellants:

20. The learned counsel for the appellants has submitted that the Ld. Sole Arbitrator has passed the award dated 17.10.2020 only on the basis of the calculation chart produced by the claimant-Respondent without any supporting documents and the Ld. Principal District Judge, Patna has similarly erred by not considering the said aspect of the matter. It has been stated that the claimant-Respondent has failed to produce any supporting documents against his claims like truck challan, store issue order etc., apart from the fact that the claimant-Respondent did not examine any witnesses in support of his claim. Thus, it has been submitted that the impugned judgment dated 25.7.2025, passed by the Ld. PDJ, Patna as also the arbitral award dated 17.10.2020, passed by the Ld. Sole Arbitrator, as far as award of claim of a sum of Rs. 2,33,07,924/- (reduced to a sum of Rs. 1,89,13,562/- by an order dated 13.11.2020, passed by the Ld. Sole Arbitrator) to the claimant-Respondent is concerned, is perverse, patently illegal and beyond the parameters of the agreement entered into between the parties. It is also submitted that the learned Ld. PDJ, Patna had neither called for the arbitral records nor had examined the records and in an arbitrary

manner, has upheld the arbitral award dated 17.10.2020 by the impugned judgment dated 25.7.2025. In fact, the Ld. PDJ, Patna failed to consider that all the admitted outstanding amount of bills/claims have been paid to the claimant-Respondent.

21. The learned counsel for the appellants has submitted that the Ld. Sole Arbitrator in his award dated 17.10.2020 has erroneously awarded a sum of Rs. 3,00,000/- on the head of the earnest money deposited by the claimant-Respondent, pertaining to the district-Sitamarhi, whereas the reference made to the Ld. Sole Arbitrator by the Hon'ble the Chief Justice, by an order dated 6.9.2019, passed in Request Case No. 65 of 2019 and other analogous cases is limited to the agreement dated 16.12.2016, pertaining to the district-Darbhanga, hence the Ld. Sole Arbitrator has awarded the said amount beyond the parameters of the agreement dated 16.12.2016 entered into between the parties.

22. The learned counsel for the appellants has further submitted that the Ld. Sole Arbitrator as also the Ld. PDJ Judge, Patna in the impugned arbitral award and judgment dated 17.10.2020 and 25.7.2025 respectively, have failed to consider that several claims raised by the claimant-Respondent are *de hors* the agreement, apart from the fact that though there is no

provision for payment of interest and grant of compensation in the agreement entered into between the parties, however both the Ld. Sole Arbitrator as also the Ld. PDJ, Patna have, in utter disregard to the provisions of the agreement allowed the claim of the claimant-Respondent pertaining to grant of interest and compensation. It is further submitted that the Ld. Sole Arbitrator has though been appointed to consider the disputes arising out of the agreement dated 16.12.2016 for the district-Darbhanga, however he has considered and allowed several claims based on different contract and agreement. Thus, in nutshell, it is the contention of the learned counsel for the appellants that the impugned judgment dated 25.7.2025, passed by the Ld. Court of PDJ, Patna is in teeth of the mandate of the provisions contained under Section 34(2)(a), (b) and (2)(A) of the Act, 1996.

23. The learned counsel for the appellants has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Gayatri Balasamy vs. ISG Novasoft Technologies Limited***, reported in ***(2025) 7 SCC 1*** to submit that Section 34 Court can apply the doctrine of severability and modify a portion of the award while retaining the rest, however the same is subject to parts of the award being separable, legally and practically. In fact, the Courts are empowered to modify the arbitral award

under Section 34 and 37 of the Act, 1996, nonetheless the same is limited and can be exercised when the award is severable, by severing the “invalid” portion from the “valid” portion of the award by correcting any clerical, computational or typographical errors, which appear erroneous on the face of the record and post-award interest can also be modified in some circumstances as mentioned in the said judgment. Reference has also been made to a judgment rendered by the Hon’ble Apex Court in the case of ***North Delhi Municipal Corporation vs. S.A. Builders Limited***, reported in ***(2025) 7 SCC 132*** to submit that the arbitral tribunal does not have the power to award interest upon interest or compound interest either for the pre-award period or the post-award period.

24. The learned counsel for the appellants has also referred to a judgment rendered by the Hon’ble Apex Court in the case of ***Union of India vs. Ambica Construction***, reported in ***(2016) 6 SCC 36*** to submit that reference has been made in the said judgment to a Constitution Bench judgment of the Hon’ble Apex Court, rendered in the case of ***Secretary, Irrigation Department, Government of Orissa & Ors. vs. GC Roy,*** reported in ***(1992) 1 SCC 508***, wherein it has been held that if the arbitration agreement or the contract itself provides for

interest, the arbitrator would have the jurisdiction to award interest, however where the agreement expressly provides that no interest *pendente lite* shall be payable on the amount due, the arbitrator has no power to award *pendente lite* interest. It would be apt to reproduce paragraph nos. 12, 14 and 34 of the said judgment, rendered in the case of ***Ambica Construction*** (supra), herein below:-

> *"**12.** A Constitution Bench of this Court in G.C. Roy [Irrigation Deptt., State of Orissa v. G.C. Roy, (1992) 1 SCC 508] has considered the question of power of the arbitrator to award pendente lite interest and it has been laid down that if the arbitration agreement or the contract itself provides for interest, the arbitrator would have the jurisdiction to award the interest. Similarly, where the agreement expressly provides that no interest pendente lite shall be payable on the amount due, the arbitrator has no power to award pendente lite interest. In G.C. Roy [Irrigation Deptt., State of Orissa v. G.C. Roy, (1992) 1 SCC 508] this Court has held thus : (SCC p. 514, para 7)*
>
> > *"7. ... If the arbitration agreement or the contract itself provides for award of interest on the amount found due from one party to the other, no question regarding the absence of arbitrator's jurisdiction to award the interest could arise as in that case the arbitrator has power to award interest pendente lite as well. Similarly, where the agreement expressly provides that no interest pendente lite shall be payable on the amount due, the arbitrator has no power to award pendente lite interest. But where the agreement does not provide either for grant or denial of interest on the amount found due, the question arises whether in such an event the arbitrator*

has power and authority to grant pendente lite interest.

14. *Ultimately, in G.C. Roy [Irrigation Deptt., State of Orissa v. G.C. Roy, (1992) 1 SCC 508] , this Court has answered the question whether the arbitrator has the power to award interest pendente lite. Their Lordships have reiterated that they have dealt with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant when the agreement is silent as to award of interest. This Court has laid down various principles in paras 43-44 of the Report thus : (SCC pp. 532-34)*

"43. The question still remains whether arbitrator has the power to award interest pendente lite, and if so, on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of the aforementioned decisions, the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34 of the Civil Procedure Code and there is no reason or principle to hold otherwise in the case of arbitrator.

(ii) An arbitrator is an alternative form (sic forum) for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the court for that purpose, even though he may have

obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.

(iii) An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law. (The proviso to Section 41 and Section 3 of the Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

(iv) Over the years, the English and Indian courts have acted on the assumption that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator must have the power to award interest pendente lite. Thawardas Pherumal v. Union of India [Thawardas Pherumal v. Union of India, AIR 1955 SC 468] has not been followed in the later decisions of this Court. It has been explained and distinguished on the basis that in that case there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in the said judgment were not intended to lay down any such absolute or universal rule as they appear to, on first impression. Until Deptt. of Irrigation v. Abhaduta Jena [Deptt. of Irrigation v. Abhaduta Jena, (1988) 1 SCC 418] almost all the courts in the country had upheld the power of the arbitrator to award interest pendente lite. Continuity and certainty is a highly desirable feature of law.

(v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period). For doing complete justice between the parties, such power has always been

inferred.

44. Having regard to the above consideration, we think that the following is the correct principle which should be followed in this behalf:

Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes—or refer the dispute as to interest as such—to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view."

(emphasis in original)

The Constitution Bench of this Court has laid down that where the agreement between the parties does not prohibit grant of interest and where the party claims interest and that dispute is referred to the arbitrator, he shall have the power to award interest pendente lite. The law declared has been held applicable prospectively.

***34.** Thus, our answer to the reference is that if the contract expressly bars the award of interest pendente lite, the same cannot be awarded by the arbitrator. We also make it clear that the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest pendente lite by the Arbitral Tribunal, as ouster of power of the arbitrator has to be considered on various relevant aspects referred to in the decisions of this Court, it would be for the*

Division Bench to consider the case on merits."

25. The learned counsel for the appellants has next referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Ltd***., reported in ***(2003) 5 SCC 705,*** paragraphs no. 13, 15 to 22 and 31 whereof are reproduced herein below:-

> *"**13.** The question, therefore, which requires consideration is — whether the award could be set aside, if the Arbitral Tribunal has not followed the mandatory procedure prescribed under Sections 24, 28 or 31(3), which affects the rights of the parties. Under sub-section (1)(a) of Section 28 there is a mandate to the Arbitral Tribunal to decide the dispute in accordance with the substantive law for the time being in force in India. Admittedly, substantive law would include the Indian Contract Act, the Transfer of Property Act and other such laws in force. Suppose, if the award is passed in violation of the provisions of the Transfer of Property Act or in violation of the Indian Contract Act, the question would be — whether such award could be set aside. Similarly, under sub-section (3), the Arbitral Tribunal is directed to decide the dispute in accordance with the terms of the contract and also after taking into account the usage of the trade applicable to the transaction. If the Arbitral Tribunal ignores the terms of the contract or usage of the trade applicable to the transaction, whether the said award could be interfered. Similarly, if the award is a non-speaking one and is in violation of Section 31(3), can such award be set aside? In our view, reading Section 34 conjointly with other provisions of the Act, it appears that the legislative intent could not be that if the award is in contravention of the provisions of the Act, still however, it couldn't be set aside by the court. If it is held that such award could not be interfered, it would be contrary to the*

basic concept of justice. If the Arbitral Tribunal has not followed the mandatory procedure prescribed under the Act, it would mean that it has acted beyond its jurisdiction and thereby the award would be patently illegal which could be set aside under Section 34.

15. *The result is — if the award is contrary to the substantive provisions of law or the provisions of the Act or against the terms of the contract, it would be patently illegal, which could be interfered under Section 34. However, such failure of procedure should be patent affecting the rights of the parties.*

16. *The next clause which requires interpretation is clause (ii) of sub-section (2)(b) of Section 34 which inter alia provides that the court may set aside the arbitral award if it is in conflict with the "public policy of India". The phrase "public policy of India" is not defined under the Act. Hence, the said term is required to be given meaning in context and also considering the purpose of the section and scheme of the Act. It has been repeatedly stated by various authorities that the expression "public policy" does not admit of precise definition and may vary from generation to generation and from time to time. Hence, the concept "public policy" is considered to be vague, susceptible to narrow or wider meaning depending upon the context in which it is used. Lacking precedent, the court has to give its meaning in the light and principles underlying the Arbitration Act, Contract Act and constitutional provisions.*

17. *For this purpose, we would refer to a few decisions referred to by the learned counsel for the parties. While dealing with the concept of public policy, this Court in Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156] has observed thus: (SCC pp. 217-19, paras 92-93)*

> *"92. The Indian Contract Act does not define the expression 'public policy' or 'opposed to public policy'. From the very nature of things, the expressions 'public*

policy', 'opposed to public policy', or 'contrary to public policy' are incapable of precise definition. Public policy, however, is not the policy of a particular Government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the courts and similarly where there has been a well-recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy. There are two schools of thought — 'the narrow view' school and 'the broad view' school. According to the former, courts cannot create new heads of public policy whereas the latter countenances judicial law-making in this area. The adherents of 'the narrow view' school would not invalidate a contract on the ground of public policy unless that particular ground had been well established by authorities. Hardly ever has the voice of the timorous spoken more clearly and loudly than in these words of Lord Davey in Janson v. Driefontein Consolidated Gold Mines Ltd. [1902 AC 484, 500: (1900-03) All ER Rep 426 : 87 LT 372 (HL)]: 'Public policy is always an unsafe and treacherous ground for legal decision.' That was in the year 1902. Seventy-eight years earlier, Burrough, J., in Richardson v. Mellish [(1824) 2 Bing 229, 252 : 130 ER 294] described public policy as 'a very unruly horse, and when once you get astride it you never know where it will carry you'. The Master of the Rolls, Lord Denning, however, was not a man to shy away from unmanageable horses and in words which conjure up before our eyes the picture of the young Alexander the Great taming Bucephalus, he said in Enderby Town

Football Club Ltd. v. Football Assn. Ltd. [1971 Ch 591, 606] : 'With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles'. Had the timorous always held the field, not only the doctrine of public policy but even the common law or the principles of equity would never have evolved. Sir William Holdsworth in his 'History of English Law', Vol. III, p. 55, has said:

'In fact, a body of law like the common law, which has grown up gradually with the growth of the nation, necessarily acquires some fixed principles, and if it is to maintain these principles it must be able, on the ground of public policy or some other like ground, to suppress practices which, under ever new disguises, seek to weaken or negative them.'

It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles underlying the fundamental rights and the directive principles enshrined in our Constitution.

93. The normal rule of common law has been that a party who seeks to enforce an agreement which is opposed to public policy will be non-suited. The case of A. Schroeder Music Publishing Co. Ltd. v. Macaulay [(1974) 1 WLR 1308 : (1974) 3 All ER 616 (HL)], however, establishes that where a contract is vitiated as

being contrary to public policy, the party adversely affected by it can sue to have it declared void. The case may be different where the purpose of the contract is illegal or immoral. In Kedar Nath Motani v. Prahlad Rai [AIR 1960 SC 213 : (1960) 1 SCR 861], reversing the High Court and restoring the decree passed by the trial court declaring the appellants' title to the lands in suit and directing the respondents who were the appellants' benamidars to restore possession, this Court, after discussing the English and Indian law on the subject, said (at p. 873):

'The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Williston and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the court, the plea of the defendant should not prevail.'

The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy and require to be adjudged void."

(emphasis supplied)

18. *Further, in Renusagar Power Co. Ltd. v. General Electric Co. [1994 Supp (1) SCC 644] this Court considered Section 7(1) of the Arbitration (Protocol and Convention) Act, 1937 which inter alia provided that a foreign award may not be enforced under the said Act, if the court dealing with the case is satisfied that the enforcement of the award will be contrary to the public policy. After elaborate discussion, the Court arrived at the conclusion that public policy comprehended in Section 7(1)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act, 1961 is the "public policy of India" and does not cover the public policy of any other country. For giving meaning to the term "public policy", the Court observed thus: (SCC p. 682, para 66)*

> *"66. Article V(2)(b) of the New York Convention of 1958 and Section 7(1)(b)(ii) of the Foreign Awards Act do not postulate refusal of recognition and enforcement of a foreign award on the ground that it is contrary to the law of the country of enforcement and the ground of challenge is confined to the recognition and enforcement being contrary to the public policy of the country in which the award is set to be enforced. There is nothing to indicate that the expression 'public policy' in Article V(2)(b) of the New York Convention and Section 7(1)(b)(ii) of the Foreign Awards Act is not used in the same sense in which it was used in Article I(c) of the Geneva Convention of 1927 and Section 7(1) of the Protocol and Convention Act of 1937. This would mean that 'public policy' in Section 7(1)(b)(ii) has been used in a narrower sense and in order to attract the bar of public policy the enforcement of the award must invoke something more than the violation of the law of India. Since the Foreign Awards Act is concerned with recognition and enforcement of foreign awards which are governed by the principles of private international law, the expression 'public policy' in Section 7(1)(b)(ii) of the Foreign Awards Act must necessarily be*

construed in the sense the doctrine of public policy is applied in the field of private international law. Applying the said criteria it must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality."

(emphasis supplied)

The Court finally held that: (SCC p. 685, para 76)

"76. Keeping in view the aforesaid objects underlying FERA and the principles governing enforcement of exchange control laws followed in other countries, we are of the view that the provisions contained in FERA have been enacted to safeguard the economic interests of India and any violation of the said provisions would be contrary to the public policy of India as envisaged in Section 7(1)(b)(ii) of the Act."

19. *This Court in Murlidhar Aggarwal v. State of U.P. [(1974) 2 SCC 472] while dealing with the concept of "public policy" observed thus: (SCC pp. 482-83, paras 31-32)*

"31. Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time.

32. ... The difficulty of discovering what public policy is at any given moment certainly does not absolve the Judges from the duty of doing so. In conducting an enquiry, as already stated, Judges are not hidebound by precedent. The Judges must look beyond the narrow field of past precedents, though this still leaves open the question, in which direction they must cast their gaze. The Judges are to base their decisions on the opinions of men of the world, as distinguished from

opinions based on legal learning. In other words, the Judges will have to look beyond the jurisprudence and that in so doing, they must consult not their own personal standards or predilections but those of the dominant opinion at a given moment, or what has been termed customary morality. The Judges must consider the social consequences of the rule propounded, especially in the light of the factual evidence available as to its probable results. ... The point is rather that this power must be lodged somewhere and under our Constitution and laws, it has been lodged in the Judges and if they have to fulfil their function as Judges, it could hardly be lodged elsewhere."

(emphasis supplied)

20. *Mr Desai submitted that the narrow meaning given to the term "public policy" in Renusagar case [1994 Supp (1) SCC 644] is in context of the fact that the question involved in the said matter was with regard to the execution of the award which had attained finality. It was not a case where validity of the award is challenged before a forum prescribed under the Act. He submitted that the scheme of Section 34 which deals with setting aside the domestic arbitral award and Section 48 which deals with enforcement of foreign award are not identical. A foreign award by definition is subject to double exequatur. This is recognized inter alia by Section 48(1) and there is no parallel provision to this clause in Section 34. For this, he referred to Lord Mustill & Stewart C. Boyd, Q.C.'s Commercial Arbitration 2001 wherein (at p. 90) it is stated as under:*

"Mutual recognition of awards is the glue which holds the international arbitrating community together, and this will only be strong if the enforcing court is willing to trust, as the convention assumes that they will trust the supervising authorities of the chosen venue. It follows that if, and to the extent that the award has been struck down in the local court it should as a

matter of theory and practice be treated when enforcement is sought as if to the extent it did not exist."

21. *He further submitted that in foreign arbitration, the award would be subject to being set aside or suspended by the competent authority under the relevant law of that country whereas in the domestic arbitration the only recourse is to Section 34.*

22. *The aforesaid submission of the learned Senior Counsel requires to be accepted. From the judgments discussed above, it can be held that the term "public policy of India" is required to be interpreted in the context of the jurisdiction of the court where the validity of award is challenged before it becomes final and executable. The concept of enforcement of the award after it becomes final is different and the jurisdiction of the court at that stage could be limited. Similar is the position with regard to the execution of a decree. It is settled law as well as it is provided under the Code of Civil Procedure that once the decree has attained finality, in an execution proceeding, it may be challenged only on limited grounds such as the decree being without jurisdiction or a nullity. But in a case where the judgment and decree is challenged before the appellate court or the court exercising revisional jurisdiction, the jurisdiction of such court would be wider. 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. If narrow meaning as contended by the learned Senior Counsel Mr Dave is given, some of the provisions of the Arbitration Act would become nugatory. 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 be set aside on the ground of "patent illegality".

31. *Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in Renusagar case [1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently*

illegal. The result would be — award could be set aside if it is contrary to:

(a) 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.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void."

26. Thus, it is submitted by the learned counsel for the appellants by relying on the aforesaid judgment rendered by the Hon'ble Apex Court in the case of ***Saw Pipes Ltd.*** (supra) that the arbitral award dated 17.10.2020, passed by the Ld. Sole Arbitrator is patently illegal, hence is fit to be set aside and this Court is fully empowered to do so by virtue of the provisions contained under Section 37 of the Act, 1996.

27. The Ld. counsel for the appellants has lastly submitted, by referring to Clause 22 of the agreement dated 16.12.2016 that the claimant-Respondent is not entitled to any compensation for detention of their trucks and in fact the Ld. Sole Arbitrator, in the arbitral award dated 17.10.2020, at internal page no. 10 has also held, while referring to the said Clause 22 of the agreement dated 16.12.2016 that supplementary statement of claim on the

head of idling of trucks is contrary to the terms of the contract in terms of the agreement.

Submissions of the Ld. Counsel for the claimant-Respondent:

28. Per contra, the Ld. counsel for the claimant-Respondent has submitted that it is wrong to say that no supporting documents were annexed by the claimant-Respondent in his claim petition filed before the Ld. Sole Arbitrator in support of his claims, inasmuch as the bills for various months have been annexed as Annexure C-2 to C-35, wherein each and every fact as well as supporting documents have been furnished in detail, duly supported by month wise bills of transport and handling charges as well as other relevant documents, however the appellants did not file any affidavit/annexures/denial of documents of the claimant-Respondent before the Ld. Sole Arbitrator, hence all the documents filed by the claimant-Respondent would be deemed to have been accepted. Thus, it is submitted that the claim of a sum of Rs. 1,89,13,562/- awarded by the Ld. Sole Arbitrator, vide award dt. 17.10.2020 is not only supported by bills / documents but also justified, which have not been denied by the appellants, hence no interference is required.

29. The learned counsel for the claimant-Respondent has

further submitted that all the claims have been awarded within the ambit of the agreement in question i.e. the one dated 16.12.2016, pertaining to the district-Darbhanga. The learned counsel for the claimant-Respondent has also submitted that no objection was taken by the appellants during the course of arbitral proceedings regarding claim/award of a sum of Rs. 3,00,000/- towards earnest money for the district of Sitamarhi, hence now at this stage, such objections cannot be raised, nonetheless it is submitted that the said portion of award severable from the rest of the award. It is also submitted that there is no bar under the agreement to award interest and compensation, hence the arbitral award dated 17.10.2020 as upheld by the judgment dated 25.7.2025, passed by the Ld. Court of PDJ, Patna under Section 34 of the Act, 1996 does not suffer from any infirmity.

30. The learned counsel for the claimant-Respondent has next submitted that Section 34 of the Act, 1996 provides for certain grounds on which the competent Court can interfere with the arbitral award, however no interference is permissible if the grounds urged for setting aside of arbitral award is not within the contours of Section 34 of the Act, 1996. Reference has also been made to Section 5 of the Act, 1996 to submit that an

arbitration award, which is governed by Part-I of the Act, 1996 can only be set aside on the grounds mentioned under Section 34 (2) and (3) and not otherwise. The Ld. Counsel has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Associate Builders vs. Delhi Development Authority***, reported in ***(2015) 3 SCC 49,*** paragraphs no. 33, 34, 52 and 56 whereof are reproduced herein below:-

> *"**33.** It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:*
>
> > *"General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong".*
>
> *It is very important to bear this in mind when awards of*

lay arbitrators are challenged.]. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594], this Court held : (SCC pp. 601-02, para 21)

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

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

52. *It is most unfortunate that the Division Bench did not advert to this crucial document at all. This document shows not only that the Division Bench was wholly incorrect in its conclusion that the contractor has tried to pull the wool over the eyes over the DDA but it should also have realised that the DDA itself has stated that the work has been carried out generally to its satisfaction*

barring some extremely minor defects which are capable of rectification. It is clear, therefore, that the Division Bench obviously exceeded its jurisdiction in interfering with a pure finding of fact forgetting that the arbitrator is the sole Judge of the quantity and quality of evidence before him and unnecessarily bringing in facts which were neither pleaded nor proved and ignoring the vital completion certificate granted by the DDA itself. The Division Bench also went wrong in stating that as the work completed was only to the extent of Rs 62,84,845, Hudson's formula should have been applied taking this figure into account and not the entire contract value of Rs 87,66,678 into account.

56. *Here again, the Division Bench has interfered wrongly with the arbitral award on several counts. It had no business to enter into a pure question of fact to set aside the arbitrator for having applied a formula of 20 months instead of 25 months. Though this would inure in favour of the appellant, it is clear that the appellant did not file any cross-objection on this score. Also, it is extremely curious that the Division Bench found that an adjustment would have to be made with claims awarded under Claims 2, 3 and 4 which are entirely separate and independent claims and have nothing to do with Claims 12 and 13. The formula then applied by the Division Bench was that it would itself do "rough and ready justice". We are at a complete loss to understand how this can be done by any court under the jurisdiction exercised under Section 34 of the Arbitration Act. As has been held above, the expression "justice" when it comes to setting aside an award under the public policy ground can only mean that an award shocks the conscience of the court. It cannot possibly include what the court thinks is unjust on the facts of a case for which it then seeks to substitute its view for the arbitrator's view and does what it considers to be "justice". With great respect to the Division Bench, the whole approach to setting aside arbitral awards is incorrect. The Division Bench*

has lost sight of the fact that it is not a first appellate court and cannot interfere with errors of fact."

31. The learned counsel for the claimant-Respondent has further submitted that it is a settled position of law that the grounds for interference with the arbitral award under Section 37 of the Act, 1996 is narrower than those under Section 34 of the Act, 1996, hence if an arbitral award has been upheld in challenge under Section 34 of the Act, 1996, then the same should not be disturbed by the Appellate Court. In this regard, reliance has been placed on a judgment, rendered by the Hon'ble Apex Court in the case of ***UHL Power Company Ltd. vs. State of Himachal Pradesh***, reported in ***(2022) 4 SCC 116*** as also upon the one rendered by the Hon'ble Apex Court in the case of ***Reliance Infrastructure Ltd. vs. State of Goa***, reported in ***(2024) 1 SCC 479***, paragraphs no. 25 to 33 whereof are reproduced herein below:-

*"**25.** Having regard to the contentions urged and the issues raised, it shall also be apposite to take note of the principles enunciated by this Court in some of the relevant decisions cited by the parties on the scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the 1996 Act.*

***26.** In MMTC [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163], this Court took note of various decisions including that in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49] and exposited on the limited scope of interference under Section 34 and further narrower scope*

of appeal under Section 37 of the 1996 Act, particularly when dealing with the concurrent findings (of the arbitrator and then of the Court). This Court, inter alia, held as under: [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163], SCC pp. 166-67, paras 11-14)

"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate

Builders v. DDA, (2015) 3 SCC 49] Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [(2006) 4 SCC 445]; and McDermott International Inc. v. Burn Standard Co. Ltd. [(2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

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

27. *In Ssangyong Engg. [Ssangyong Engg. &*

Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131], this Court has set out the scope of challenge under Section 34 of the 1996 Act in further details in the following words : (SCC pp. 170-71, paras 37-41)

"37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49], namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49], however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49], namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract

in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [(2015) 3 SCC 49], while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, 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 on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."

28. *The limited scope of challenge under Section 34 of the Act was once again highlighted by this Court in PSA Sical Terminals [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2023) 15 SCC 781] and this Court particularly explained the relevant tests as under : (SCC paras 40 to 42)*

"40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the Court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial

intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the Court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, 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 on the ground of patent illegality.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49], which read thus: (SCC pp. 75-76)

> *'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.

32. A good working test of perversity is contained in two judgments. In CCE & Sales v. Gopi Nath & Sons [1992 Supp (2) SCC 312], it was held:

> *"7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."*

29. *In Delhi Airport Metro Express [Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131], this Court again surveyed the case law and explained the contours of the Courts' power to review the arbitral awards. Therein, this Court not only reaffirmed the principles aforesaid but also highlighted an area of serious concern while pointing out "a disturbing tendency" of the Courts in setting aside arbitral awards after dissecting and reassessing factual aspects. This Court also underscored the pertinent features and scope of the expression "patent illegality" while reiterating that the Courts do not sit in appeal over the arbitral award. The relevant and significant passages of this judgment could be usefully extracted as under: [Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131], SCC pp. 147-48, 150-51 & 155-56, paras 26, 28-30 & 42)*

> *"26. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of*

the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law. (See Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd. [(2020) 2 SCC 455], Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. [(2022) 1 SCC 75] & Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [(2012) 5 SCC 306].)

***

28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall

within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".

30. Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression "public policy of India" and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in

violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.

***

42. The Division Bench referred to various factors leading to the termination notice, to conclude that the award shocks the conscience of the Court. The discussion in SCC OnLine Del para 103 of the impugned judgment [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] amounts to appreciation or reappreciation of the facts which is not permissible under Section 34 of the 1996 Act. The Division Bench further held that the fact of AMEL being operated without any adverse event for a period of more than four years since the date of issuance of the CMRS certificate, was not given due importance by the Arbitral Tribunal. As the arbitrator is the sole Judge of the quality as well as the quantity of the evidence, the task of being a Judge on the evidence before the Tribunal does not fall upon the Court in exercise of its jurisdiction U/s. 34. [State of Rajasthan v. Puri Constr. Co. Ltd., (1994) 6 SCC 485] On the basis of the issues submitted by the parties, the Arbitral Tribunal framed issues for consideration and answered the said issues. Subsequent events need not be taken into account."

(emphasis supplied)

30. *In Haryana Tourism [Haryana Tourism Ltd. v. Kandhari Beverages Ltd., (2022) 3 SCC 237 : (2022) 2 SCC (Civ) 87] , this Court yet again pointed out the limited scope of interference under Sections 34 and 37 of the Act; and disapproved interference by the High Court under Section 37 of the Act while entering into merits of the claim in the following words : (SCC p. 240, paras 8-9)*

"8. So far as the impugned judgment and order

[Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers U/s. 37 of the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to: (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court is hence not sustainable."

31. *As regards the limited scope of interference under Sections 34/37 of the Act, we may also usefully refer to the following observations of a three-Judge Bench of this Court in UHL Power Co. Ltd. v. State of H.P. [(2022) 4 SCC 116]: (SCC p. 124, paras 15-16)*

"15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking

an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings U/s. 34 of the Arbitration Act, by virtually acting as a court of appeal.

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."

32. *The learned Attorney General has referred to another three-Judge Bench decision of this Court in SAL Udyog [State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275], wherein this Court indeed interfered with the award in question when the same was found suffering from non-consideration of a relevant contractual clause. In the said decision too, the principles aforesaid in Delhi Airport Metro Express [(2022) 1 SCC 131], Ssangyong Engg. [(2019) 15 SCC 131] and other cases were referred to and thereafter, this Court applied the principles to the facts of that case. We shall refer to the said decision later at an appropriate juncture.*

33. *Keeping in view the aforementioned principles enunciated by this Court with regard to the limited scope of interference in an arbitral award by a Court in the exercise of its jurisdiction U/s. 34 of the Act, which is all the more circumscribed in an appeal under Section 37, we may examine the rival submissions of the parties in relation to the matters dealt with by the High Court."*

32. Thus, it is submitted by the learned counsel for the claimant-Respondent that the law is now well-settled, inasmuch as an arbitral award can be set aside only on the ground of patent illegality, i.e. where illegalities go to the root of the

matter but re-appreciation of facts and evidence cannot be permitted under the ground of patent illegality and the jurisdiction conferred on Courts under Section 34/37 of the Act is fairly narrow. It is equally a well-settled law that power of Court under Section 37 of the Act, 1996 is not same as the power of the Appellate Court under Code of Civil Procedure, inasmuch as the learned Appellate Court can re-appreciate both factual and legal position whereas the jurisdiction of the Court under Section 37 is confined only to see that the power under Section 34 has been rightly exercised. In fact, neither the Court exercising jurisdiction under Section 34 nor under Section 37 of the Act, 1996 can go into finding of facts recorded by the arbitral Tribunal. Reference has been made to a judgment rendered by the Hon'ble Apex Court in the case ***Bombay Slum Redevelopment Corporation Ltd. vs. Samir Narain Bhojwani,*** reported in ***(2024) 7 SCC 218*** as also to the one rendered in the case of ***Somdat Builders-NCC-NEC(JV) vs. National Highways Authority of India & Others***, reported in ***(2025) 6 SCC 757*** and the one rendered in the case of ***Jan De Nul Dredging India Private Ltd. vs. Tuticorin Port Trust***, reported in ***(2026) SCC Online SC 33***.

Determination:

33. We have heard the learned counsel for the parties at length and perused the voluminous records, including the records of the arbitral proceedings, copies of Misc. (Arbitration) Case No. 21 of 2021 and the reply filed therein as also the arbitral award dated 17.10.2020 and the impugned judgement passed by the learned PDJ, Patna dated 25.07.2025.

34. Shorn of unnecessary details, the facts of the present case are that an agreement dated 16.12.2016 was entered into between the parties for three years, whereby the claimant-respondent was required to execute the work of Transporting-cum-Handling Agent for the District Darbhanga and he was entrusted with the work of transportation of food-grains and other commodities including edible oil to the destinated godown, as directed by or on behalf of the appellants and according to the route chart fixed for the said purpose. The period of agreement was from 16.12.2016 to 15.12.2019. It appears that disputes had erupted in between the parties, leading to claims and counter claims being made apart from the claimant-Respondent alleging that the payment of the bills were abnormally delayed by the appellants.

35. The claimant-respondent had then sent a notice to the appellants on 29.05.2019 for appointing an arbitrator suggesting

three names, however the appellants did not respond to the said notice as also failed to appoint any arbitrator within a reasonable time leading to the respondent filing a request case before this Court bearing Request Case No. 65 of 2019, under Section 11(6) of the Act, 1996 for appointment of an independent and impartial arbitrator in lieu of the provisions in the agreement in question, whereupon the Learned Chief Justice of this Court by an order dated 06.09.2019 passed in Request Case No. 65 of 2019 and other analogous cases, had appointed Hon'ble Mr. Justice Sadanand Mukherjee, a retired judge of the Patna High Court as the Sole Arbitrator to enter upon the disputes and render his award in terms of the provision of the Act, 1996.

36. The claimant-respondent had then filed a detailed statement of claim before the learned Arbitrator on 25.10.2019, raising claims on the head of non-payment/short payment of the bills pertaining to transportation and handling charges. The claimant-respondent had prayed for the following reliefs in the statement of claim filed before the learned Arbitrator:-

> *"(i) Respondents jointly and severally be directed to make payment of the claims of the claimant amounting to Rs. 3,49,98,954.68 (three crore forty-nine lakh ninety-eight thousand nine hundred fifty-four rupees and sixty-eight paisa) with interest thereon @ 18% till 31.10.2019*

as noted in Annexure - C- 77 to the statement of claims, with further interest thereon at the rate of 18% per annum from 01.11.2019 up to date of actual receipt of the awarded amount with interest thereon by the claimant.

(ii) The respondents jointly and severally be directed to pay the cost of arbitration to the claimant.

(iii) The Hon'ble Tribunal may grant any other relief or relieves which is deemed fit and proper in the ends of justice to the claimant."

37. The appellants had then filed their statement of defence on 13.01.2020, whereafter the claimant-respondent had filed a rejoinder dated 11.02.2020 as also a supplementary statement of claim on 14.06.2020. The learned Sole Arbitrator had then framed issues for consideration.

38. The learned Sole Arbitrator *vide* arbitral award dated 17.10.2020 has allowed the claim of the claimant-respondent on the head of outstanding bills amount to the tune of Rs. 1,89,13,562/-, compensation to the tune of Rs. 25 lakhs, simple interest @ 10% for the pendente lite period and further 18% interest over the awarded sum from the date of award till realization of the awarded amount, cost towards fees and expenses of the arbitrator and courts and other legal expenses apart from treating the arbitrator's fees not paid by the

appellants as unpaid cost of the award under Section 39 of the Act, 1996. We have already reproduced the entitlements of the claimant-respondent, as awarded by the learned Sole Arbitrator by the arbitral award dt. 17.10.2020, hereinabove in paragraph No. 10. The said award dated 17.10.2020 was challenged by the appellants before the Ld. Court of PDJ, Patna by filing Misc. (Arbitration) Case No. 21 of 2021 U/s. 34 (2) & (2A) of the Act, 1996, to which the claimant had filed a reply dated 05.03.2022.

39. The learned PDJ, Patna by the impugned judgment dated 25.07.2025 has been pleased to dismiss the said Misc. (Arbitration) Case No. 21 of 2021 holding that no valid ground has been made out under Section (2) or (2A) of Section 34 of the Act, 1996 so as to warrant interference with the impugned arbitral award or findings of the learned Sole Arbitrator. The findings recorded by the learned PDJ, Patna in the aforesaid judgement dated 25.07.2025 has already been detailed hereinabove in paragraph No. 18.

40. At the outset, it would be apt to reproduce the relevant Clauses of the Agreement dt. 16.12.2016 entered into between the parties for the District of Darbhanga, herein below:-

> *"12. The First party shall be liable to pay the second party remuneration for the undertaking in this agreement at the rates specified below against each item. No other*

charges shall be admissible to the Second Party for the due performance to this agreement. These rates are also subject to revision at any time at the discretion of the First Party. If the Second Pary agree to such revisions either by express consent or by implied action such rates would automatically be binding to the second Party. (Application of rate of Particular slab will be only up to the maximum distance fixed for the beginning form Zero).

13. No separate handling and stacking charges is payable in respect of handling work taking place at FCI depot or rail head/Godown, Schedule of approved rates for transport and handling is indicated above in this agreement.

14. The District Manager, Bihar State Food & Civil Supplies Corporation Lid. shall on completion of each month, calculate the amount of remuneration for which the Second Party is entitled to as aforesaid, and pay the same by Account Payee cheque within a reasonable period after such accounting. However, after the submission of bills by the Second Panty and subject to the completion of such other formalities as required by the First party, the payment against bill submitted by the Second Party will be made by the first party in the manner specified in the head office Circular No. Audit IX 13/96-799 dated 07.02.2001. The First Party reserves the right to ament the procedure of payment as and when such is required. No interest shall be payable to the Second Party for unavoidable delay in the payment. ln special circumstances, the payment may be made even within the quarter at discretion of the District Manager with prior approval of the Managing Director while making the payment the damage lite shortage officially, accident, theft, etc. payable by the Second Party will be deducted and if damage is claimed but not finally determined, payment to that extent will be withheld till final determination which is to be done at the shortest possible time.

18. The agreement shall remain in operation for the period of three years from the date of publication of tender notice by the contractor has been appointed and it can be terminated any time by issuing 15 days prior notice. This may be terminated earlier than the period mentioned above on behalf of the First Party in case of non-lifting of grains, sugar, edible oil etc. During the specified period if there is any breach of any of the terms of the agreement by the second party the agreement may be terminated and blacklisted as well as debarred for next five years from future transportation work, security deposits will be forfeited and Bank guarantee of 20 lacs (twenty lacs only) will be utilized and encashed at once by the First Party/ The responsibility of the second party shall not cease with the termination of the agreement unless he has redelivered the grains, sugar, edible oils and etc., entrusted to him and rendered complete accounts thereof to the satisfaction of the First Party.

21. All disputes arising under or in pursuance of this agreement between the parties, except matters decision of which herein expressly is otherwise provided, shall be referred to sole arbitration of the C.MD./Managing Director of the Bihar State Food and Civil Supplies Corporation Ltd. Patna or a person nominated by the C.M.D/ Managing Director decision of such arbitrator shall be final and binding on both the parties. The provisions of the arbitration and conciliation Act 1996 and rules framed there under and statuary modifications thereof shall apply to the proceedings of arbitration and all such disputes shall be subject to the jurisdiction of courts at Patna.

22. The second party would not be entitled to claim any compensation for detention of their trucks at the godown gates or detention by law enforcing agencies during transit any other authorized places of the corporation from where the delivery of any consignment is to be obtained or where any delivery is to be given."

41. At this juncture, we would like to delve upon the scope of Sections 34 and 37 of the Act, 1996, as has been considered and settled in a catena of cases by the Hon'ble Apex Court. In this regard, we would first refer to the judgment rendered by the Hon'ble Apex Court in the case of ***SEPCO Electric Power Construction Corporation vs. GMR Kamalanga Energy Limited*** reported in ***(2026) 2 SCC 542***, paragraph Nos. 68, 114 to 116 whereof are reproduced herein below:-

> ***"68.*** *Furthermore, in the process of discussing the jurisdiction and powers of courts under Sections 34 and 37 of the 1996 Act, a 3-Judge Bench of this Court, in UHL Power Co. [UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116] while holding that the learned Single Judge of the High Court concerned had exceeded his jurisdiction through interference with the arbitral award, explicated the reasons of such narrow scope of powers of a court under Section 34 of the 1996 Act. Referencing extensively on other decisions of this Court, namely, MMTC [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163], K. Sugumar v. Hindustan Petroleum Corpn. Ltd. [(2020) 12 SCC 539] , Dyna Technologies [(2019) 20 SCC 1] , and Parsa Kente Collieries [(2019) 7 SCC 236], it laid down that the courts do not sit in appeal over arbitral awards, therefore, the jurisdiction of the courts concerned is confined to specific grounds as laid down under Section 34 of the 1996 Act, for instance, violation of public policy, patent illegality, or misconduct. Furthermore, it is based on the principle of party autonomy and the need to uphold the finality of an arbitral award. Concluding, it iterated that when the parties have, through conscious decision-making, opted for arbitration as an alternative means of dispute*

mechanism, the courts ought to refrain from reappreciation of evidence or substitution of interpretation(s), unless the award is perverse, unreasonable, or contrary to the mandate of the statute or decisions of court.

114. *Summarising the principles as aforesaid, it is undoubtful that the interference under jurisprudence laid down under Sections 34 and 37 of the 1996 Act is narrow, while aforementioned decisions do acknowledge that, SEPCO has vehemently pushed so in an attempt to persuade us to hold the Division Bench in error. However, the jurisprudence, as also identified in the aforesaid issues, clarifies that the principles of natural justice, and the public policy of India are paramount and cannot be ignored or sidelined in an attempt not to frustrate the patent or latent commercial wisdom of the parties to seek an alternative means of dispute resolution. Such issues attack the root of the Indian legal system and the courts cannot be made a mere spectator to such gross violations.*

115. *The scope under Section 37, as rightly argued by SEPCO, is slimmer than that under Section 34, but, in the instant case, the Section 34 judgment had failed to appreciate the gross violations of the basic principles of adjudication of a dispute. While one may argue some of those may be latent and not a prima facie violation, thereby not mandating any interference, direct omission of the mandate of Section 18 and Section 28 sub-section (3) of the 1996 Act are clearly patent through a skimming of arbitral award. No contentions appear on behalf of SEPCO vis-à-vis waiver through the circumstances arising in March 2012, and despite such a want, the Arbitral Tribunal exceeded the mandate to deem a waiver on the part of GMRKE Limited for contractual notices, without any explicit intent. Thereafter, it patently discriminates against GMRKE Limited to deny their claims for want of contractual notice(s).*

> ***116.*** *An attack on the fundamental policy of Indian law allows for reappreciation and thereby, the impugned judgment cannot be faulted with on the ground of having exceeded its jurisdiction under Section 37 of the 1996 Act. The Division Bench was correct in this regard, as to open up the necessary floodgates of reappreciation of the arbitral award."*

42. Yet another judgment on the aforesaid issue is the one rendered by the Hon'ble Apex Court in the case of ***UHL Power Company Limited vs. State of Himachal Pradesh***, reported in (**2022) 4 SCC 116**, paragraph Nos. 16 to 19 and 21 whereof are reproduced herein below:-

> ***"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. [(2019) 4 SCC 163], 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:*
>
> > *"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the*

concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."

17. *A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corpn. Ltd. [(2020) 12 SCC 539], wherein it has been observed as follows : (SCC p. 540, para 2)*

"2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

18. *It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [(2019) 20 SCC 1], the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus : (SCC p. 12, para 24)*

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."

19. *In Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. [(2019) 7 SCC 236], adverting to the previous decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [(2006) 11 SCC 181] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [(2012) 5 SCC 306], wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus:*

"9.1. ...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 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.

9.2. Similar is the view taken by this Court in NHAI v. ITD Cementation India Ltd. [(2015) 14 SCC 21], SCC para 25 and SAIL v. Gupta Brother Steel Tubes Ltd. [(2009) 10 SCC 63], SCC para 29."

21. *An identical line of reasoning has been adopted in South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd. [(2020) 5 SCC 164] and it has been held as follows:*

"12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [(2019) 20 SCC 1] laid down the scope of such interference. This Court observed as follows:

'24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the

party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.'

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies [(2019) 20 SCC 1] observed as under :

'25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

43. We may also refer to the judgement rendered in the case of ***Jan De Nul Dredging India Private Limited vs. Tuticorin Port Trust*** reported in **2026 SCC OnLine SC 33**, paragraph Nos. 36, 37 whereof are reproduced herein below:-

"36. *In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the appellate court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred.*

> *The appellate court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The appellate court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement.*
>
> ***37.*** *Undoubtedly, in the case at hand, the award of the Arbitral Tribunal is not contrary to any substantive provision of law or any provision of the Act. Yet, it has been disturbed by the appellate court, apparently by giving a different interpretation of the clauses of the licence agreement which jurisdiction was not vested in it. Ordinarily, the interpretation given by the Arbitral Tribunal, as affirmed by the court in exercise of powers under Section 34 of the Act ought to have been accepted."*

44. We have already referred to the judgments rendered in the cases of ***Saw Pipes Limited*** *(supra),* ***Associate Builders*** *(supra),* ***Reliance Infrastructure Limited*** *(supra),* ***Bombay Slum Re-development Corporation Limited*** *(supra),* ***Somdat Builders-NCC-NEC (JV)*** *(supra)* and host of other judgments referred to in the said judgements on the scope of interference under Sections 34 and 37 of the Act, 1996. We find from the law propounded in the aforesaid judgments, referred to hereinabove that broadly as far as Sections 34 and 37 of the Act, 1996 are concerned, the Court is not required to sit in appeal over the

arbitral award and reappreciate the evidence, however interference would be permissible in the following situations:-

(i) When the *award* is in violation of Public Policy of India *i.e*. the Fundamental Policy of Indian Law.

(ii) In case of violation of the Principles of Natural Justice as envisaged under Sections 18 and 34 (2)(a)(iii) of the Act, 1996.

(iii) If the *award* is in conflict with justice or morality i.e. in conflict with the most basic notions of morality and justice.

(iv) If the *arbitral* award shocks the conscience of the Court.

(v) An arbitral award can also be set aside on the ground of patent illegality appearing on the face of the award which goes to the root of the matter.

45. Thus, in nutshell we find that an award can be challenged on the grounds provided for under Section 34 (2) and (2A) of the Act, 1996. It is a well settled law that where a finding is based on no evidence or an arbitral tribunal takes into account something irrelevant to the decision which it arrives at or ignores vital evidence in arriving at its decision, such decision would necessarily be perverse and liable to be set aside on the ground of patent illegality. A conspectus of the aforesaid judgement rendered by the Hon’ble Apex Court would

demonstrate that award can be set aside under Sections 34 and 37 of the Act, 1996, if the award is found to be contrary to:-

(a) Fundamental policy of Indian Law; or
(b) The Interest of India; or
(c) Justice or morality and
(d) It is patently illegal.

46. Yet another issue which arises for consideration is whether the powers of the Court under Sections 34 and 37 of the Act, 1996 will include the power to modify an arbitral award and if the power to modify the award is available, whether such power can be exercised only where the award is severable and a part thereof can be modified. The said issues have been answered in a constitution bench judgment rendered by the Hon'ble Apex Court in the case of ***Gayatri Balasamy vs. ISG Novasoft Technologies Limited***, reported in **(2025) 7 SCC 1**, to the effect that the Court has a limited power under Sections 34 and 37 of the Act, 1996 to modify the arbitral award which may be exercised under the following circumstances:-

(i) When the award is severable, by severing the "invalid" portion from the "valid" portion of the award;

(ii) By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record.

(iii) By modifying post-award interest in some

circumstances;

47. It would be apropos to reproduce paragraph Nos. 32 to 34, 38, 39, 41 to 45, 49, 63, 65 and 87 of the judgment rendered by the Hon'ble Apex in the case of ***Gayatri Balasamy*** (*supra*), herein below:-

> ***"II. Severability of awards***
>
> ***32.*** *In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenz-kompetenz, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the "valid" part(s) of the award while setting aside the "invalid" ones. [The "validity" and "invalidity", as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the 1996 Act.] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.*
>
> ***33.*** *We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.*
>
> ***34.*** *To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award*

necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

III. Difference between setting aside and modification

38. *This distinction lies at the heart of many arguments canvassed before us. The parties opposing the recognition of a power of modification of the courts have strenuously contended that modification and setting aside are distinct and sui generis powers. While modification involves altering specific parts of an award, setting aside does not alter the award but results in its annulment. Their primary concern is that recognising a power of modification may invite judicial interference with the merits of the dispute—something arguably inconsistent with the framework of the 1996 Act.*

39. *We agree with this argument, but only to a limited extent. It is true that modification and setting aside have different consequences: the former alters the award, while the latter annuls it. [The words used in the statute must be interpreted contextually, taking into account the purpose, scope, and background of the provision. Many words and expressions have both narrow and broad meanings and thereby open to multiple interpretations. Legal interpretation should align with the object and purpose of the legislation. Therefore, we may not strictly apply a semantic differentiation while interpreting the words "modification" or "setting aside". Instead, a holistic and purposive interpretation of these words will be consistent with the intent behind the provision and the 1996 Act. Linguistically and even jurisprudentially, a distinction can be drawn between the expressions — "modification", "partial setting aside", and "setting*

aside" of an arbitral award in its entirety. However, we must note that the practical effect of partially setting aside an award is the modification of the award.] However, we do not concur with the view that recognising any modification power will inevitably lead to an examination of the merits of the dispute. It will completely depend on the extent of the modification powers recognised by us. In the following part of our Analysis, we outline the contours of this limited power and explain why, in our view, recognising it will ultimately yield more just outcomes.

41. *To deny courts the authority to modify an award—particularly when such a denial would impose significant hardships, escalate costs, and lead to unnecessary delays—would defeat the raison d'être of arbitration. This concern is particularly pronounced in India, where applications under Section 34 and appeals under Section 37 often take years to resolve.*

42. *Given this background, if we were to decide that courts can only set aside and not modify awards, then the parties would be compelled to undergo an extra round of arbitration, adding to the previous four stages: the initial arbitration, Section 34 (setting aside proceedings), Section 37 (appeal proceedings), and Article 136 (SLP proceedings). In effect, this interpretation would force the parties into a new arbitration process merely to affirm a decision that could easily be arrived at by the Court. This would render the arbitration process more cumbersome than even traditional litigation.*

43. *Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the Court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34. In other words, the power cannot*

contradict the essence or language of Section 34. The Court would not exercise appellate power, as envisaged by Order 41 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code").

44. *We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided in toto. Read in this manner, the limited and restricted power of severing an award implies a power of the Court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.*

45. *We are thus of the opinion that the Section 34 Court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in Part II of our Analysis.*

49. *Notwithstanding Section 33, we affirm that a Court reviewing an award under Section 34 possesses the authority to rectify computational, clerical, or typographical errors, as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation. There are certain powers inherent to the Court, even when not explicitly granted by the legislature. The scope of these inherent powers depends on the nature of the provision, whether it pertains to appellate, reference, or limited jurisdiction as in the case of Section 34. The powers are intrinsically connected as they are part and parcel of the jurisdiction exercised by the Court.*

63. *We are unable to accept the view taken in Kinnari Mullick [Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , which insists that an application or request under Section 34(4) must be made by a party in writing. The request may be oral. Nevertheless, there should be a request which is*

recorded by the Court. We are also unable to agree that the request must be exercised before the application under Section 34(1) is decided. Section 37 (Annexure A) permits an appeal against any order setting aside or refusing to set aside an arbitral award under Section 34. To this extent, the appellate jurisdiction under Section 37 is coterminous with, and as broad as, the jurisdiction of the Court deciding objections under Section 34. Hence, the contention that the Tribunal becomes functus officio after the award is set aside is misplaced. The Section 37 Court still possesses the power of remand stipulated in Section 34(4). Of course, the appellate court, while exercising power under Section 37, should be mindful when the award has been upheld by the Section 34 Court. But the Section 37 Court still possesses the jurisdiction to remand the matter to the Arbitral Tribunal.

65. *In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , this Court emphasised that the issuance of a reasoned award is not a mere formality under the 1996 Act. For an award to be termed "reasoned", it must meet three essential yardsticks: it must be proper, intelligible, and adequate. The purpose behind Section 34(4) is clear: it allows for an award to become enforceable after granting the Tribunal an opportunity to cure any defects. This power is exercisable when the Arbitral Tribunal has failed to give any reasoning or the award exhibits gaps in reasoning and these defects can be cured, thereby preventing unnecessary challenges. The underlying intent is to provide an effective, expeditious forum for addressing curable defects, which Section 34(4) facilitates.*

Conclusions

87. *Accordingly, the questions of law referred to by Gayatri Balasamy [Gayatri Balasamy v. ISG Novasoft Technologies Ltd., 2024 SCC OnLine SC 1681] are*

answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

***87.1**. When the award is severable, by severing the "invalid" portion from the "valid" portion of the award, as held in Part II of our Analysis;*

***87.2.** By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in Parts IV and V of our Analysis;*

***87.3.** Post-award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or*

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

48. Now coming back to the facts of the present case, we find that the Ld. sole Arbitrator has by his arbitral award dated 17.10.2020 awarded a sum of Rs. 2,33,07,924/-, as modified / corrected to a sum of Rs. 1,89,13,562/- vide order dated 13.11.2020, in favor of the claimant-Respondent pertaining to item No.1 at internal page No.14 of the award dated 17.10.2020. In this regard we may state that it is a well-settled law that an Appellate Court cannot re-appreciate the evidence. In the present case the bills submitted by the claimant before the Ld. Sole Arbitrator along with the statement of claim have been marked as Annexure-C-2 to C-35, however the same have not been refuted by the appellants, inasmuch as they did not file any

affidavit of admission / denial of documents of the claimant-Respondent before the Ld. Sole Arbitrator, hence all the bills filed by the claimant before the Ld. Sole Arbitrator would be deemed to have been accepted by the appellants to be correct except to the extent of deduction of detention bill from various bills, as aforesaid. Thus, as far as this amount awarded by the Ld. Sole Arbitrator vide award dated 17.10.2020 at serial no. 1 is concerned, we are of the considered view that no interference is warranted.

49. Now, coming to the amount awarded by the Ld. Sole Arbitrator vide arbitral award dated 17.10.2020 at serial no. 2 regarding the claimant-Respondent being entitled to payment of earnest money to the tune of Rs. 3,00,000/-, deposited by the claimant-Respondent pertaining to the tender relating to Sitamarhi, we find that admittedly the agreement filed in Request Case No. 65 of 2019 before this Court by the claimant-Respondent was the one dated 16.12.2016 for the District Darbhanga and the Ld. Chief Justice of this Court, by an order dated 06.09.2019, passed in Request Case No. 65 of 2019 had appointed Mr. Justice Sadanand Mukherjee, a retired Judge of the Patna High Court as the sole Arbitrator to enter upon the disputes and render his awards in terms of the provisions of the

Act, 1996, thus when the agreement filed in the aforesaid Request Case No. 65 of 2019, dated 16.12.2016 pertains to the district of Darbhanga then the claims have also to be limited to the contours of the said agreement dated 16.12.2016 and the Arbitrator cannot enlarge the scope of reference. In this regard, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***State of Rajasthan vs. Nav Bharat Construction Company***, reported in ***(2006) 1 SCC 86***, paragraphs no. 13, 27 to 31 whereof are reproduced herein below:-

> *"**13.** So far as the second ground is concerned, we have seen the two applications made by the respondent. It prima facie appears that the two applications were for referring, in all, 28 claims to arbitration. The respondent then made 39 claims before the arbitrators. The umpire has awarded in respect of all the 39 claims. If claims not referred to arbitration have been dealt with and awarded, the umpire would have exceeded his jurisdiction. However, Mr Moolchand Luhadia, partner of the respondent who appeared in person, contended that all the claims were referred to the arbitrators by the order dated 1-3-1985. He submitted that this is clear from the directions to the arbitrators to decide all disputes arising between the parties. We are unable to accept this submission. The order dated 1-3-1985 allows "application dated 9-4-1983 as part of application dated*

5-10-1981". It is in the context of claims raised in these two applications that the arbitrators are instructed to decide all disputes between the parties. Mr Luhadia then submitted that all claims were included in the two applications made by them. It was submitted that in the applications some of the claims were clubbed together but whilst filing the statement of claims they were segregated and separated. As we are proposing to refer the matter back to an umpire, we do not propose to go into the question as to whether or not the 39 claims were part of the two applications filed by the respondent. In our view, this is a question which can be decided by the umpire. All that we need to clarify is that if any claim did not form part of the two applications, the same cannot be arbitrated upon and the umpire will confine the reference to the claims made in the two applications. It must be mentioned that in the case of Orissa Mining Corpn. Ltd. v. Prannath Vishwanath Rawlley [(1977) 3 SCC 535] this Court has held that when an agreement is filed in court and an order of reference is made, then the claim as a result of the order of reference is limited to that relief and the arbitrator cannot enlarge the scope of reference and entertain fresh claims without a further order of reference. It must also be mentioned that Mr Luhadia had relied upon the case of H.L. Batra & Co. v. State of Haryana [(1999) 9 SCC 188] . In this case the award of the arbitrator was set aside and a new arbitrator was appointed. The order stated that the new arbitrator was appointed "for settling disputes between the parties". Before the new arbitrator seven additional

claims, over and above the 30 claims originally made, were made. It was held that the award was not vitiated as the terms of reference did not confine the second reference to only 30 claims. This authority is of no assistance to the respondent as it does not lay down that the arbitrator can entertain claims not referred to him.

27. *There can be no dispute to the well-established principle set out in these cases. However, these cases do not detract from the law laid down in Bharat Coking Coal Ltd. case [(2001) 4 SCC 86] or Continental Construction Co. Ltd. case [(1988) 3 SCC 82] . An arbitrator cannot go beyond the terms of the contract between the parties. In the guise of doing justice he cannot award contrary to the terms of the contract. If he does so, he will have misconducted himself. Of course if an interpretation of a term of the contract is involved then the interpretation of the arbitrator must be accepted unless it is one which could not be reasonably possible. However, where the term of the contract is clear and unambiguous the arbitrator cannot ignore it.*

28. *Mr Luhadia submitted that the respondents had made claims totalling Rs 45,56,155.56p. He submitted that claims for damages were to the tune of Rs 27.50 lakhs. He submitted that the claim for final bill was for Rs 2 lakhs. He submitted that the claims for extra items were for Rs 15,98,495. He submitted that the umpire had only awarded Rs 29,96,060. He submitted that as the award is a non-speaking award, even presuming without admitting that some claims were covered by the terms of*

the contract, it still could not be said that the umpire has awarded towards claims covered by the contract. He submitted that thus the award could not be set aside. In support of this submission he relied upon the case of Paradip Port Trust v. Unique Builders [(2001) 2 SCC 680 : AIR 2001 SC 846] . In this case the claim had been for Rs 12,93,260. The arbitrator awarded as follows: (SCC p. 684, para 7)

"M/s Unique Builders Ltd., the claimant is entitled to receive from Paradip Port Trust (Respondent 3) a sum of Rs 8,51,315.00 (Rupees eight lakhs, fifty-one thousand, three hundred fifteen only) with interest…."

29. *It was contended in that case that Claims 2 and 7 (therein) could not have been awarded. This Court held that as the award was a lump sum award and as only Rs 8,51,315 had been awarded against a claim of Rs 12,93,260 it was not possible to say whether any amounts had been awarded against Claims 2 and/or 7. Relying on this Mr Luhadia submitted that even in this case it cannot be said whether any amounts have been awarded against claims alleged to be covered by the contract. We are unable to accept this submission. In this case the award itself states that the award of Rs 29,96,060 is against Claims 1 to 39, except Claim 30. Therefore this award is in respect of claims covered by the contract and to that extent the umpire has misconducted himself. Even otherwise the claim for damages is not in a sum of Rs 27.50 lakhs as claimed. Claims 27 and 28 which deal with damages are for Rs*

3,07,038 and Rs 1,58,904.85. The other claims, included in the figure of Rs 27.50 lakhs given to this Court appear to be claims at enhanced rates for the contracted work done during the extended period. Mr Luhadia denied that the respondents had agreed to do work during the extended period at the contracted rate. Thus at this stage, unlike in Paradip Port Trust case [(2001) 2 SCC 680 : AIR 2001 SC 846] it does appear on the face of the record that higher rates for items covered by the contract have been awarded.

30. *As regards Claim 2 Mr Luhadia fairly admitted that clause 5.11(iii) of the contract requires chiselling of stones on all sides. He however submitted that the rates given in Schedule 'G' were only for chiselling of stones on one side. He submitted that this was clear from Note 1 under Schedule 'G' which stated that Schedule 'G' was based on BSR 1975. He submitted that BSR 1975 showed that such rates were only for chiselling stones on one side. He submitted that when the stone has to be chiselled on all sides the rates given in BSR 1975 were to be applied. He submitted that Claim 2 was based on those rates. We are unable to accept this submission of Mr Luhadia. The contract is very specific. The work specified in the contract has to be done at the rates specified in Schedule 'G'. Even though Schedule 'G' may be based on BSR 1975 it is not exactly as BSR 1975. Where in respect of a work specified in the contract the rate has been given in Schedule 'G' that work could only be done at that rate. Work specified in the contract does*

not become extra work. It is only in respect of extra work that rates specified in BSR 1975 can be applied. To us it is clear that Claim 2 is contrary to the terms of the contract. It is barred by clauses 57, 60 and 61 of the contract. As regards Claim 26, Mr Luhadia relied upon the case of Tarapore & Co. v. State of M.P. [(1994) 3 SCC 521] In this case, the question was whether the contractor was entitled to claim extra amounts because he had to pay increased wages to his workers. This Court has held that the contractor would have tendered on the basis of the then prevailing wages and as the contract required the contractor to pay the minimum wages and if the minimum wages increased it was an implied term of the contract that he would not be entitled to claim the additional amount. However, it must be noted that, in this case, there was no term in the contract which prohibited any extra claims being made because of the increase in wages. Clause 31 of the special conditions of the contract, which has been reproduced hereinabove, specifically bars the contractor from claiming any compensation or an increase in rate under such circumstances. Not only that but the respondents had with their initial tender put in a term which provided that if there was any increase in the minimum wages by the Government the rates quoted by him would be increased by the same percentage. At the time of negotiation this clause was dropped. Thus, the respondents had themselves specifically agreed not to claim any compensation or increase by reason of increase in wages. This claim could therefore not have

been granted.

31. *It prima facie appears that the majority of the claims are against the terms of the contract. However, there are also other claims which are not against the terms of the contract. To merely set aside the award on the ground of misconduct would work hardship on the respondents as they would then be deprived of claims which may be maintainable. In our view the correct course would be to set aside the award and refer the matter back to an independent umpire appointed by this Court. The umpire will fix his own terms and conditions. We however clarify that only those claims covered by the two applications will be considered. Of course the umpire will decide how many of the 39 claims formed part of the claims made in the two applications. Needless to state that the terms of the contract will be kept in mind and claims contrary to the terms of the contract will undoubtedly not be allowed. The umpire will also decide whether the respondent had agreed to do the contracted work done during the extended period at the same rates and/or whether the respondent is entitled to increased rates and if so, at what rate. The umpire shall decide only on the basis of the materials already placed before the earlier arbitrators and the earlier umpire."*

50. We would also gainfully refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***Jayesh H. Pandya & Another vs. Subhtex India Limited & Others***, reported ***in (2020) 17 SCC 383***, paragraphs no. 18, 21 to 23

whereof are reproduced herein below:-

> ***18.*** *It is true that the object of the scheme of the 1996 Act is to secure expeditious resolution of disputes and it is based on the fulcrum of promptitude but at the same time the arbitrator is required to adjudicate the disputes in view of the agreed terms of contract and the procedure. Therefore, the arbitration proceedings are supposed to be governed and run by the terms as agreed by the parties. The arbitrator, therefore, cannot go beyond the clause of the arbitration agreement. We all need to respect the legislative intent underlying the Act. The speedy and alternative resolution to the dispute thus cannot be overlooked but at the same time, proceedings have to be governed and run by the terms agreed between the parties in concluding the arbitral proceedings failing which it will frustrate the mandate of the object of the Act with which it has been legislated by Parliament to act upon on agreed terms and conditions of the agreement in concluding the arbitral proceedings. The exposition of law has been considered by this Court in NBCC Ltd. case [NBCC Ltd. v. J.G. Engg. (P) Ltd., (2010) 2 SCC 385 : (2010) 1 SCC (Civ) 416] in paras 12 and 22 as under: (SCC pp. 391 & 393)*
>
> ***21.*** *The clause so referred indicates that the parties have admittedly agreed and the time period so prescribed is final and binding. It means the arbitration proceedings should commence and end within the prescribed period of time which in the instant case was of four months and expired on 4-9-2007 and, there was no occasion for*

either party to raise an objection as long as the time was available at the command of the arbitrator to conclude the arbitral proceedings and pass an award within the time schedule fixed under the terms of contract as agreed by the parties.

22. *That apart, there is no provision under the arbitration agreement to condone the delay when agreement between the parties binds them to see that the arbitration proceedings should be concluded within the time prescribed. This time restriction is well within the scope and purport of the 1996 Act at national and international arbitrations.*

23. *The time fixed for the arbitration and/or schedule of time-limit in such arbitration proceedings, as it is recognised by law, there is no reason not to accept the same, basically in the present facts and circumstances where the parties themselves agreed to bind themselves by the time-limit. Section 14 read with Section 15 of the 1996 Act also recognise this mechanism and after the expiry of four months' period from the date of first preliminary meeting held on 4-5-2007, the arbitrator indeed became de jure unable to perform his functions and the mandate to act as an arbitrator in the arbitral proceedings between the parties as prayed for stood terminated."*

51. It would be apposite to refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***SEPCO Electric Power Construction Corporation*** (supra), reported in

(2026) 2 SCC 542, paragraphs no. 93, 94, 96, 97, 123, 125 and 126 whereof are reproduced herein below:-

> *"**93.** Numerous precedents laid down by this Court have often emphasised that an arbitrator lacks the power to deviate from or to reinterpret the terms of the contract while making an award. The awards must be within the parameters of the agreement entered between the parties.*
>
> ***94.** This Court in Saw Pipes [ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705] has reiterated that any deviation from the mandate of Section 28 sub-section (3) of the 1996 Act is a valid ground for lambasting an arbitral award. Commenting on the duty of the arbitrators, this Court observed as follows: (SCC p. 744, para 73)*
>
> *"73. It is to be reiterated that it is the primary duty of the arbitrators to enforce a promise which the parties have made and to uphold the sanctity of the contract which forms the basis of the civilized society and also the jurisdiction of the arbitrators. Hence, this part of the award passed by the Arbitral Tribunal granting interest on the amount deducted by the appellant from the bills payable to the respondent is against the terms of the contract and is, therefore, violative of Section 28(3) of the Act."*
>
> ***96.** Further clarification of this proposition is brought about through observations of this Court in a further decision by 3-Judge Bench in Union of India v. Bharat Enterprise [Union of India v. Bharat Enterprise, (2025)*

11 SCC 771 : 2023 SCC OnLine SC 369] wherein it was underlined that the existence and powers of an arbitrator are a creature of the agreement between the parties, and it is the terms of the contract which serves as a fundamental basis for the procedure to be adopted by the Arbitral Tribunal. Therefore, the arbitrator concerned is restricted to the terms of the contract thereof and cannot go outside its scope or what is, per se, specified. In words of the Bench, "A disregard of the specific provisions of the contract would incur wrath of the award being imperilled. This position cannot be in the region of dispute."

97. *In order to achieve an enhanced understanding apropos the scope of the powers and jurisdiction of an arbitrator, a reference may also be made to a decision of this Court in Associated Engg. [Associated Engg. Co. v. State of A.P., (1991) 4 SCC 93] , which was determined vis-à-vis Section 30 of the Arbitration Act, 1940 wherein, it was observed that: (SCC pp. 103-105, paras 24-27)*

"24. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on

the face of it.

25. An arbitrator who acts in manifest disregard of the contract acts without jurisdiction. His authority is derived from the contract and is governed by the Arbitration Act which embodies principles derived from a specialised branch of the law of agency (see Mustill and Boyd's Commercial Arbitration, 2nd Edn., p. 641). He commits misconduct if by his award he decides matters excluded by the agreement (see Halsbury's Laws of England, Vol. II, 4th Edn., Para 622). A deliberate departure from contract amounts to not only manifest disregard of his authority or a misconduct on his part, but it may tantamount to a mala fide action. A conscious disregard of the law or the provisions of the contract from which he has derived his authority vitiates the award.

26. A dispute as to the jurisdiction of the arbitrator is not a dispute within the award, but one which has to be decided outside the award. An umpire or arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties or by deciding a question otherwise than in accordance with the contract. He cannot say that he does not care what the contract says. He is bound by it. It must bear his decision. He cannot travel outside its bounds. If he exceeded his jurisdiction by so doing, his award would be liable to be set aside. As stated by Lord Parmoor: [Attorney-General for Manitoba v. Kelly, (1922) 1 AC 268] (AC p. 276)

'... It would be impossible to allow an umpire to

arrogate to himself jurisdiction over a question which, on the true construction of the submission, was not referred to him. An umpire cannot widen the area of his jurisdiction by holding, contrary to the fact, that the matter which he affects to decide is within the submission of the parties.'

Evidence of matters not appearing on the face of the award would be admissible to decide whether the arbitrator travelled outside the bounds of the contract and thus exceeded his jurisdiction. In order to see what the jurisdiction of the arbitrator is, it is open to the court to see what dispute was submitted to him. If that is not clear from the award, it is open to the court to have recourse to outside sources. The court can look at the affidavits and pleadings of parties; the court can look at the agreement itself. Bunge & Co. v. Dewar & Webb [Bunge & Co. v. Dewar & Webb, (1921) 8 Ll L Rep 436].'

27. If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Such error going to his jurisdiction can be established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The dispute as to jurisdiction is a matter which is outside the award or outside whatever may be said about it in the

award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such jurisdictional error needs to be proved by evidence extrinsic to the award. [See Alopi Parshad & Sons Ltd. v. Union of India [Alopi Parshad & Sons Ltd. v. Union of India, 1960 SCC OnLine SC 13 : (1960) 2 SCR 793 : AIR 1960 SC 588] ; Bunge & Co. v. Dewar & Webb [Bunge & Co. v. Dewar & Webb, (1921) 8 Ll L Rep 436] ; Christopher Brown Ltd. v. Genossenschaft Oesterreichischer [(1954) 1 QB 8 : (1953) 3 WLR 689] ; R. v. Fulham [R. v. Fulham, (1951) 2 KB 1] ; Falkingham v. Victorian Railways Commission [Falkingham v. Victorian Railways Commission, 1900 AC 452 : 69 LJ PC 89] ; R. v. All Saints, Southampton [R. v. All Saints, Southampton, (1828) 7 B&C 785 : 1 Man & Rey KB 663] ; Laing (James) Son & Co. (M/C) Ltd. v. Eastcheap Dried Fruit Co. [Laing (James) Son & Co. (M/C) Ltd. v. Eastcheap Dried Fruit Co., (1961) 1 Ll L Rep 142] , Ll L Rep at p. 145; Dalmia Dairy Industries Ltd. v. National Bank of Pakistan [Dalmia Dairy Industries Ltd. v. National Bank of Pakistan, (1978) 2 Ll L Rep 223] ; Heyman v. Darwins Ltd. [Heyman v. Darwins Ltd., 1942 AC 356 (HL)] ; Union of India v. Kishorilal Gupta & Bros. [Union of India v. Kishorilal Gupta & Bros., 1959 SCC OnLine SC 6 : AIR 1959 SC 1362 : (1960) 1 SCR 493] ; Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co.,

(1984) 4 SCC 679 : (1985) 1 SCR 432] ; Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji [Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji, 1963 SCC OnLine SC 285 : (1964) 5 SCR 480 : AIR 1965 SC 214]; Gobardhan Das v. Lachhmi Ram [(1954) 1 SCC 566 : AIR 1954 SC 689], AIR at p. 692; Thawardas Pherumal v. Union of India [(1955) 1 SCC 372:(1955) 2 SCR 48:AIR 1955 SC 468]; Omanhene Kobina Foli v. Obeng Akessee [1934 SCC OnLine PC 11 : AIR 1934 PC 185 : (1934) 40 LW 138], AIR PC at p. 188; F.R. Absalom Ltd. v. Great Western (London) Garden Village Society Ltd. [F.R. Absalom Ltd. v. Great Western (London) Garden Village Society Ltd., 1933 AC 592 (HL)] and M. Golodetz v. Schrier [M. Golodetz v. Schrier, (1947) 80 Ll L Rep 647]"

123. *It could, thus, be seen that the Division Bench has come to a considerable conclusion that the arbitral award passed by the Arbitral Tribunal was in conflict with the public policy of India inasmuch as the arbitral award was passed in violation of the principles of natural justice. A discriminatory treatment was meted out by the Arbitral Tribunal to GMRKE Limited as against SEPCO and that the arbitral award amounted to modification of the contractual terms. We find that the findings of the Division Bench are recorded after considering the entire material on record and are in consonance with the law laid down by the decisions of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , and*

Ssangyong Engg. [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] Therefore, we see no reason to interfere with the well-reasoned findings as recorded by the Division Bench.

125. *We summarize the aforesaid findings as, despite the limited scope of interference, the Division Bench was obligated to have interfered with the arbitral award owing to fulfilment of conditions mandating a reappreciation of the merits of the award under Section 34 of the 1996 Act. Non-interference and non-setting aside of the award would have hampered upon the fundamental policy of Indian law as well as the public policy of India. The Arbitral Tribunal, itself being a creature of the EPC agreements, could not have travelled beyond its mandate to rewrite the constitution of its own existence through observing the condition of notice having been waived. It further discriminated between the parties, showcasing violation of the provisions of the 1996 Act. As this arbitral award could not have been severed owing to the aforesaid reasons, thereby it is apt to set aside the whole arbitral award.*

126. *Resultantly, the impugned judgment [GMR Kamalanga Energy Ltd. v. SEPCO Electric Power Construction Corpn., 2023 SCC OnLine Ori 5882] is upheld and the arbitral award along with Section 34 judgment are observed to have been rightly set aside by the Division Bench [GMR Kamalanga Energy Ltd. v. SEPCO Electric Power Construction Corpn., 2023 SCC*

OnLine Ori 5882] of the High Court."

52. Thus, considering the aforesaid well-settled law propounded by the Hon'ble Apex Court, we find that an Arbitrator lacks the power to deviate from or to reinterpret the terms of the contract while making an award and the award must be within the parameters of the agreement entered into between the parties. It is equally a well-settled law that the arbitrator cannot go beyond the clause of the agreement and the proceedings have to be governed and run by the terms and conditions of the agreement, agreed between the parties. Thus, neither the arbitrator can go beyond the terms of the contract between the parties nor he can make an award contrary to the terms of the contract and if he does so he will have misconducted himself.

53. Now coming back to the facts of the present case, we find that the agreement dated 16.12.2016 entered into between the parties, which is the subject matter of reference made before the Ld. Sole Arbitrator in Request Case No. 65 of 2019 pertains to the district-Darbhanga, hence the Ld. Sole Arbitrator could not have deviated from the agreement much less could have travelled beyond the terms of the contract and awarded a sum of Rs. 3,00,000/- on the head of earnest money deposited in

connection with another agreement. Thus, this part of the award dated 17.10.2020, pertaining to award of a sum of Rs. 3,00,000/- on the head of earnest money, pertaining to the agreement of district-Sitamarhi is fit to be set aside.

54. As far as serial no. 3 of the arbitral award dated 17.10.2020, pertaining to award of compensation of Rs. 25,00,000/- is concerned, we find from the records that in the statement of claim filed by the claimant-Respondent before the Ld. Sole Arbitrator, the claimant-Respondent has averred in paragraph no. 9 as follows:-

> *"9. That it is stated that the trucks hired by the claimant/petitioner of different capacities i.e trucks of 12 wheels, trucks of 10 wheels and trucks of 6 wheels remained idled for total period of 53 days from 12.07.2019 to 03.09.2019 due to non-payment of bills by the respondents and illegal deductions from the bills of the claimant/petitioner. The claimant/petitioner has to pay Rs. 1,000/- per day as idling charges per truck for 6 wheels truck. The claimant/petitioner also has to pay Rs. 1,500/- per day as idling charges per truck for 13 wheels truck. Similarly, the claimant/petitioner also has to pay Rs. 2,000/- per day as idling charges per truck for 12 wheels truck. Thus, the total payment made by the claimant/petitioner as idle charges to the different truck owners for the hired trucks for 53 days comes to Rs. 28,88,500/-. The claimant/petitioner is also entitled to*

interest over the said amount at the rate of 18% per annum from the period of payment made by the claimant to the respective truck owners till the date of actual receipt of the payment by the claimant from the respondent. Details of calculation would be submitted during the course of arbitral proceeding."

55. In the chart, pertaining to statement of claim annexed as Annexure-C-77 to the statement of claim, it has been stated that a sum of Rs. 28,88,500/- is being claimed on account of delay in payment of the bills, leading to paucity of funds resulting in the vehicles standing for loading from 12.7.2019 to 03.9.2019, thus entitling the claimant-Respondent to raise claim of demurrage charges for 53 days. Therefore, it is apparent that the claimant-Respondent has not made any claim of compensation in the statement of claim filed before the Ld. Sole Arbitrator. Similarly, in the supplementary statement of claim also, it has been stated that a sum of Rs. 28,88,500/- has been claimed on account of idling charges, however no claim of compensation has been made by the claimant-Respondent. In this regard, we find from the arbitral award dated 17.10.2020 that without any evidence much less any proof, the Ld. Sole Arbitrator has simply stated that in view of the delayed payments causing wrongful loss to the claimant-petitioner, the claimant-petitioner shall be paid a compensation amount of Rs. 25,00,000/- as per

Section 54 of the Indian Contract Act, however the claim of idling charges / detention charges have been held by the Ld. Sole Arbitrator to be contrary to the terms of the contract in terms of Clause 22 of the agreement entered into between the parties. It would be relevant to reproduce the said finding of the Ld. Sole Arbitrator herein below:-

> *"As regards supplementary statement of claim claiming Rs. Rs. 86,18,367/- for idling of trucks for 250 days appears to be a claim which is contrary to the terms of the contract in terms of agreement. In this connection, clause 22 of the agreement provides as follows:-*
>
> > *"22. The second party would not be entitled to claim any compensation for detention of their trucks at the godown gates or detention by law enforcing agencies during transit any other authorized places of the corporation from where the delivery of any consignment is to be obtained or where any delivery is to be given."*

56. Thus, in absence of the claimant-Respondent herein having raised any claim for compensation, the Ld. Sole Arbitrator has misconducted himself by awarding ad hoc amount of compensation to the tune of Rs. 25,00,000/-, thus the award to the said extent is liable to be set aside. It is yet another aspect of the matter that the claimant-respondent has also failed to bring on record credible evidence with regard to the said

issue. As far as idling/detention charge is concerned, the same is barred under Clause 22 of the Agreement dated 16.12.2016, as has already been held by the learned Arbitrator, which has been referred to hereinabove in the preceding paragraphs. Thus, there is no proof much less any evidence whatsoever, on the records of the arbitral proceedings regarding the claimant-respondent having suffered any loss or injury, hence the award of compensation to the tune of Rs.25 lakhs is based on no evidence, thus is outrightly perverse on this score as well. This aspect of the matter stands fully covered by the judgement rendered by the Hon'ble Apex Court in the case of ***Unibros vs. All India Radio***, reported in **2023 SCC Online SC 1366** as also in the case of ***Batliboi Environmental Engineers Limited vs. Hindustan Petroleum Corporation Limited and Another***, reported in **(2024) 2 SCC 375**, wherein the judgement rendered by the Hon'ble High Court of Bombay in the case of ***Hindustan Petroleum Corporation Ltd., Mumbai vs. Batliboi Environmental Engineers Ltd, Mumbai and Another***, reported in **(2007) SCC OnLine BOM 1016,** has been upheld.

57. The other issue, which arises for consideration is the award of interest by the Ld. Sole Arbitrator vide arbitral award dated 17.10.2020 in the following manner:-

> *"The claimant-petitioner shall be entitled to simple interest at the rate of 10 % per annum from 13.9.2019 till the date of award and further 18 % interest over awarded sum from the date of award till realization over the awarded amount."*

58. The findings of the Ld. Sole Arbitrator with regard to the aforesaid aspect of the matter is as follows:-

> *"The present petitioner has claimed interest @ 18% per annum upto the date of actual receipt of awarded amount.*
>
> *The Arbitrator shall follow the provision of Section 31(7) (a) of the Arbitration and Conciliation Act 1996 as amended in granting interest. It may be stated that interest upon the interest is not payable. The Arbitrator does not consider it proper to grant 18% interest on the interim bills as made out in the tabular statement (Annex-C-77). The Arbitrator shall grant interest on the awarded amount during the pendency of the proceeding and upon making the award."*

59. Thus, we find that the Ld. Sole Arbitrator vide arbitral award dated 17.10.2020 has awarded interest *pendente lite* as also interest from the date of award till realization of the awarded amount. The law in this regard is no longer *res integra*, inasmuch as the Hon'ble Apex Court has repeatedly held that if the arbitration agreement or the contract itself provides for interest, the Arbitrator would have the jurisdiction to award interest, however when the agreement expressly provides that no interest *pendente lite* shall be payable on the amount due, the Arbitrator has no power to award *pendente lite* interest.

Reference in this connection be had to the judgments rendered by the Hon'ble Apex Court in the case of ***Ambica Construction*** (supra) and the one rendered in the case of ***GC Roy*** (supra). In this regard, we would also refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Union of India & Ors. vs. Larsen & Tubro Limited (L&T)***, reported in ***2026 SCC Online SC 327***, para nos. 29, 31, 34, 36, 38, 40, 43, 45, 46, 47, 48, 52, 53, 55, 56, 59, 61 and 62 whereof are reproduced herein below:-

> *"**29.** We have heard learned counsel for the parties and perused the material placed on record. The following issues are raised for our consideration:—*
>
> ***A.** Whether the AT is justified in awarding pre-award/pendente lite interest, by way of compensation, while passing the award in favour of the respondent-claimant, and more particularly in view of Clause 16(3) and Clause 64(5) of GCC.*
>
> ***B.** Whether the AT is justified in awarding post award interest in favour of the respondent-claimant.*
>
> ***C.** Whether the Courts below committed any error while dealing with Issue (A) and Issue (B) referred hereinabove while exercising the powers under Section 34 and Section 37 of the Act.*
>
> ***31.** Clause 16(3) of the GCC reads as under:*
>
> *"no interest will be payable upon the Earnest Money and Security Deposit or amounts payable to the Contractor under the Contract, but Government Securities deposited in terms of Sub-Clause (1) of this clause will be payable with interest accrued thereon".*
>
> ***34.** Section 31(7)(a) and 31(7)(b) further clarifies that the power of the arbitral tribunal to award interest,*

which reads as under:—

"31. Form and contents of arbitral award.—

……..

(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 the award is made."

(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)."

36. *In the present case, Clause 16(3) of the GCC, as referred hereinabove, expressly stipulates that no interest will be payable upon earnest money and security deposits or amounts payable to the contractor under the contract.*

38. *This Court in the decision rendered in the case of Manraj Enterprises (supra) has considered a similar submission canvassed on behalf of the party concerned and thereafter observed and held in para 12.1 as under:*

"12.1. It is required to be noted that Clause 16(1) is with respect to earnest money/security deposit. However, Clause 16(2) is specifically with respect to interest payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract. The words used in Clause 16(2) is "or". Therefore, the expression "amounts payable to the

contractor under the contract" cannot be read in conjunction with "earnest money deposit" or "security deposit" by applying the principle of ejusdem generis. The expression "amounts payable to the contractor under the contract" has to be read independently and disjunctively to earnest money deposit and security deposit as the word used is "or" and not "and" between "earnest money deposit", "security deposit" and "amounts payable to the contractor under the contract". Therefore, the principle of ejusdem generis is not applicable in the present case."

40. *At this stage, we would also like to refer to the decision rendered by a three-judge bench of this Court in Bright Power Projects (India) (P) Ltd. (supra), wherein in para 10, 11 and 13, it was held as under:*

"10. Thus, it had been specifically understood between the parties that no interest was to be paid on the earnest money, security deposit and the amount payable to the contractor under the contract. So far as payment of interest on government securities, which had been deposited by the respondent contractor with the appellant is concerned, it was specifically stated that the said amount was to be returned to the contractor along with interest accrued thereon, but so far as payment of interest on the amount payable to the contractor under the contract was concerned, there was a specific term that no interest was to be paid thereon.

11. When parties to the contract had agreed to the fact that interest would not be awarded on the amount payable to the contractor under the contract, in our opinion, they were bound by their understanding. Having once agreed that the contractor would not claim any interest on the amount to be paid under the contract, he could not have claimed interest either before a civil court or before an Arbitral Tribunal.

……..

13. Section 31(7) of the Act, by using the words "unless otherwise agreed by the parties", categorically specifies that the arbitrator is bound by the terms of the contract so far as award of interest from the date of cause of action to date of the award is concerned. Therefore, where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest."

43. *Now, at this stage, it is pertinent to observe that this Court, thereafter, in the case of Manraj Enterprises (supra) had an occasion to consider similar issues involved in the present matter and had considered all the aforementioned decisions, including the decisions rendered in the cases of Bright Power Projects (India) (P) Ltd. (supra), Raveechee and Company (supra) and Ambica Construction v. Union of India, (2017) 14 SCC 323 (a three-judge bench judgment of this Court). After considering the aforesaid decisions as well as several other decisions referred on the issue, this Court has observed in para 8 and 11 as under:*

"8. After considering various decisions on award of interest pendente lite and the future interest by the arbitrator and after discussing the decisions of this Court in Ambica Construction v. Union of India [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257] and Raveechee & Co. [Raveechee & Co. v. Union of India, (2018) 7 SCC 664 : (2018) 3 SCC (Civ) 711] and other decisions on the point, this Court has observed in paras 9 to 18 as under: (Garg Builders [Garg Builders v. BHEL, (2022) 11 SCC 697], SCC paras 9-19)

"9. On the other hand, Mr. Pallav Kumar, learned counsel for the respondent, submitted that Section 31(7)(a) of the 1996 Act gives paramount importance to the contract entered into between the parties and categorically restricts the power of an arbitrator to award pre-reference and pendente lite interest when the

parties themselves have agreed to the contrary. He argued that if the contract itself contains a specific clause which expressly bars the payment of interest, then it is not open for the arbitrator to grant pendente lite interest. It was further argued that Ambica Construction [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257] is not applicable to the instant case because it was decided under the Arbitration Act, 1940 whereas the instant case falls under the 1996 Act. It was further argued that Section 3 of the Interest Act confers power on the court to allow interest in the proceedings for recovery of any debt or damages or in proceedings in which a claim for interest in respect of any debt or damages already paid. However, Section 3(3) of the Interest Act carves out an exception and recognises the right of the parties to contract out of the payment of interest arising out of any debt or damages and sanctifies contracts which bars the payment of interest arising out of debt or damages. Therefore, Clause 17 of the contract is not violative of any the provisions of the Contract Act, 1872. In light of the arguments advanced, the learned counsel prays for dismissal of the appeal.

10. We have carefully considered the submissions of the learned counsel for both the parties made at the Bar. The law relating to award of pendente lite interest by arbitrator under the 1996 Act is no longer res integra. The provisions of the 1996 Act give paramount importance to the contract entered into between the parties and categorically restricts the power of an arbitrator to award pre-reference and pendente lite interest when the parties themselves have agreed to the contrary.

11. Section 31(7)(a) of the 1996 Act which deals with the payment of interest is as under:

‘31.(7)(a) Unless otherwise agreed by the parties, where and insofar 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 the award is made.'

12. It is clear from the above provision that if the contract prohibits pre-reference and pendente lite interest, the arbitrator cannot award interest for the said period. In the present case, clause barring interest is very clear and categorical. It uses the expression "any moneys due to the contractor" by the employer which includes the amount awarded by the arbitrator.

13. In Sayeed Ahmed & Co. v. State of U.P. [Sayeed Ahmed & Co. v. State of U.P., (2009) 12 SCC 26 : (2009) 4 SCC (Civ) 629], this Court has held that a provision has been made under Section 31(7)(a) of the 1996 Act in relation to the power of the arbitrator to award interest. As per this section, if the contract bars payment of interest, the arbitrator cannot award interest from the date of cause of action till the date of award.

14. In Sree Kamatchi Amman Constructions v. Railways [Sree Kamatchi Amman Constructions v. Railways, (2010) 8 SCC 767 : (2010) 3 SCC (Civ) 575], it was held by this Court that where the parties had agreed that the interest shall not be payable, the Arbitral Tribunal cannot award interest between the date on which the cause of action arose to the date of the award.

15. BHEL v. Globe Hi-Fabs Ltd. [(2015) 5 SCC 718], is an identical case where this Court has held as under : (SCC p. 723, para 16)

'16. In the present case we noticed that the clause barring interest is very widely worded. It uses the words "any amount due to the contractor by the employer". In our opinion, these words cannot be read

as ejusdem generis along with the earlier words "earnest money" or "security deposit".'

16. In Chittaranjan Maity v. Union of India [(2017) 9 SCC 611], it was categorically held that if a contract prohibits award of interest for pre-award period, the arbitrator cannot award interest for the said period.

17. Therefore, if the contract contains a specific clause which expressly bars payment of interest, then it is not open for the arbitrator to grant pendente lite interest. The judgment on which reliance was placed by the learned counsel for the appellant in Ambica Construction [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257] has no application to the instant case because Ambica Construction [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257] was decided under the Arbitration Act, 1940 whereas the instant case falls under the 1996 Act. This has been clarified in Chittaranjan Maity [Chittaranjan Maity v. Union of India, (2017) 9 SCC 611 : (2017) 4 SCC (Civ) 693] as under: (SCC p. 616, para 16)

'16. Relying on a decision of this Court in Ambica Construction v. Union of India [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257], the learned Senior Counsel for the appellant submits that mere bar to award interest on the amounts payable under the contract would not be sufficient to deny payment on pendente lite interest. Therefore, the arbitrator was justified in awarding the pendente lite interest. However, it is not clear from Ambica Construction [(2017) 14 SCC 323] as to whether it was decided under the Arbitration Act, 1940 (for short "the 1940 Act") or under the 1996 Act. It has relied on a judgment of Constitution Bench in Irrigation Deptt., State of Orissa v. G. C. Roy [(1992) 1 SCC 508]. This judgment was with reference to the 1940 Act. In the 1940 Act, there was no provision

which prohibited the arbitrator from awarding interest for the pre-reference, pendente lite or post-award period, whereas the 1996 Act contains a specific provision which says that if the agreement prohibits award of interest for the pre-award period, the arbitrator cannot award interest for the said period. Therefore, the decision in Ambica Construction cannot be made applicable to the instant case.'

18. The decision in Raveechee & Co. [Raveechee & Co. v. Union of India, (2018) 7 SCC 664] relied on by the learned counsel for the appellant is again under the Arbitration Act, 1940 which has no application to the facts of the present case.

19. Having regard to the above, we are of the view that the High Court [Garg Builders v. BHEL, 2017 SCC OnLine Del 12871] was justified in rejecting the claim of the appellant seeking pendente lite interest on the award amount."

……

11. In the said decision in Bright Power Projects [Union of India v. Bright Power Projects (India) (P) Ltd., (2015) 9 SCC 695 : (2015) 4 SCC (Civ) 702], this Court also considered Section 31(7)(a) of the 1996 Act. It is specifically observed and held that Section 31(7) of the 1996 Act, by using the words "unless otherwise agreed by the parties" categorically specifies that the arbitrator is bound by the terms of the contract insofar as award of interest from the date of cause of action to date of the award is concerned. It is further observed and held that where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest. Thus, the aforesaid decision of a three-Judge Bench of this Court is the answer to the submission made on behalf of the respondent that despite the bar under Clause 16(2) which is applicable to the parties, the Arbitral Tribunal is not bound by the same. Therefore, the contention raised on behalf of the

respondent that dehors the bar under Clause 16(2), the Arbitral Tribunal independently and on equitable ground and/or to do justice can award interest pendente lite or future interest has no substance and cannot be accepted. Once the contractor agrees that he shall not be entitled to interest on the amounts payable under the contract, including the interest upon the earnest money and the security deposit as mentioned in Clause 16(2) of the agreement/contract between the parties herein, the arbitrator in the arbitration proceedings being the creature of the contract has no power to award interest, contrary to the terms of the agreement/contract between the parties and contrary to Clause 16(2) of the agreement/contract in question in this case."

45. *The provisions of the Act of 1996, including provisions contained in Section 31(7)(a) give paramount importance to the contract entered into between the parties and categorically restrict the power of an arbitrator to award pre-award/pendente lite interest when the parties have themselves agreed to the contrary. Thus, the AT cannot award pre-award/pendente lite interest, even in the form of compensation, in view of specific Cl. 16(3) of GCC read with Cl. 64(5) of GCC.*

46. *At this stage, it is also relevant to observe that the AT itself acknowledged this prohibition by rejecting Claim No. 7 seeking pendente lite interest. The relevant paragraph of the Arbitral Award reads as under:—*

"The Interest so claimed is therefore not admissible as per Section 31(7)(a) of the Act read with Clause 64(5) of the GCC & Clause 7.35 of SCC of the contract agreement signed between the two parties. Tribunal did not therefore consider to award any interest on the award sum as claimed by the Claimant. Therefore, Arbitral Tribunal declare Nil Award against this claim."

47. *With regard to the post-award interest, Section 31(7)*

(b) of the Act provides that unless the award otherwise directs, the sum awarded shall carry interest from the date of the award till payment. The legislative intent underlying this provision is twofold: first, to compensate the successful party for delayed realization of the award, and second, to ensure prompt compliance with the award by the judgment-debtor.

48. *Recently, this Court in the case of R.P. Garg (supra), has observed and held in para 9, 11 and 12 as under:*

"9. We are of the opinion that the judgment of High Court is clearly erroneous. Firstly, the interest granted by the First Appellate Court only related to post award period, and therefore, for this period, the agreement between the parties has no bearing. Section 31(7)(b) deals with grant of interest for post award period i.e., from the date of the award till its realization. The statutory scheme relating to grant of interest provided in Section 31(7) creates a distinction between interest payable before and after the award. So far as the interest before the passing of the award is concerned, it is regulated by Section 31(7)(a) of the Act which provides that the grant of interest shall be subject to the agreement between the parties. This is evident from the specific expression at the commencement of the sub-section which says "unless otherwise agreed by the parties".

……..

11. So far as the entitlement of the post-award interest is concerned, sub-Section (b) of Section 31(7) provides that the sum directed to be paid by the Arbitral Tribunal shall carry interest. The rate of interest can be provided by the Arbitrator and in default the statutory prescription will apply. Clause (b) of Section 31(7) is therefore in contrast with clause (a) and is not subject to party autonomy. In other words, clause (b) does not give the parties the right to "contract out" interest for the post-award period. The expression 'unless the

award otherwise directs' in Section 31(7)(b) relates to rate of interest and not entitlement of interest. The only distinction made by Section 31(7)(b) is that the rate of interest granted under the Award is to be given precedence over the statutorily prescribed rate. The assumption of the High Court that payment of the interest for the post award period is subject to the contract is a clear error.

12. The clear position of law that granting post-award interest is not subject to the contract between the parties was recently affirmed in the decision of this Court in Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.,6 wherein the court observed as follows:

"24. The issue before us is whether the phrase "unless the award otherwise directs" in Section 31(7)(b) of the Act only provides the arbitrator the discretion to determine the rate of interest or both the rate of interest and the "sum" it must be paid against. At this juncture, it is crucial to note that both clauses (a) and (b) are qualified. While, clause (a) is qualified by the arbitration agreement, clause (b) is qualified by the arbitration award. However, the placement of the phrases is crucial to their interpretation. The words, "unless otherwise agreed by the parties" occur at the beginning of clause (a) qualifying the entire provision. However, in clause (b), the words, "unless the award otherwise directs" occur after the words "a sum directed to be paid by an arbitral award shall" and before the words "carry interest at the rate of eighteen per cent". Thereby, those words only qualify the rate of post-award interest.

25. Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The arbitrator has the discretion to determine the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the principal amount, and the period for which

payment of interest is to be made — whether it should be for the whole or any part of the period between the date on which the cause of action arose and the date of the award. When a discretion has been conferred on the arbitrator in regard to the grant of pre-award interest, it would be against the grain of statutory interpretation to presuppose that the legislative intent was to reduce the discretionary power of the arbitrator for the grant of post-award interest under clause (b). Clause (b) only contemplates a situation where the arbitration award is silent on post-award interest, in which event the award-holder is entitled to a post-award interest of eighteen per cent."

52. *We are of the view that the AT has committed serious error by awarding pre-award/pendente lite interest qua Claim Nos. 1, 3 & 6, though AT has observed that the said amount are awarded by way of compensation, however, in view of the peculiar clause of GCC as well as provisions contained in Section 31(7)(a) of the Act of 1996 and the decisions rendered by this Court, the AT could not have awarded the pre-award/pendente lite interest.*

53. *For the above stated reasons, the Commercial Court and the High Court failed to appreciate that the AT had awarded pendente lite interest in violation of an express contractual bar and such failure attracts interference even within the limited scope of Sections 34 and 37 of the Act.* ***55.*** *There is no provision in the GCC which expressly bars the grant of post-award interest. In the absence of such an express exclusion, the statutory mandate under Section 31(7)(b) of the Act must prevail.*

56. *In RP Garg (supra), in paragraph 11, this Court reiterated that post-award interest flows as a matter of law under Section 31(7)(b), unless the parties have unequivocally agreed to exclude it.*

59. *In this context, the decision of this Court in Gayatri Balasamy v. ISG Novasoft Technologies Limited, (2025)*

7 SCC 1, is significant. In paragraphs 74 to 78, this Court has categorically held that courts retain the power to modify post-award interest under Section 31(7)(b) of the Act where the facts justify such modification. It has been clarified that Section 31(7)(b) is a distinct legislative creation which prescribes a statutory standard to guide the determination of post-award interest and since such interest is inherently future-oriented, the courts may increase or decrease the rate of post-award interest where compelling reasons exist. The Court further observed that when the statute itself benchmarks a standard, such benchmark must weigh in the consideration of the rate awarded and that the power of modification is necessary to avoid unnecessary setting aside of the entire award merely on the question of interest.

61. *Accordingly, the answer to the issues framed in the present matter is that:*

A. *The AT is not justified in awarding pre-award/pendente lite interest, by way of compensation, while passing the award in favour of the respondent-claimant, and more particularly in view of Clause 16(3) and Clause 64(5) of the GCC. The award of such interest is not in accordance with the agreement, and liable to be set aside.*

B. *The AT is justified in awarding post award interest in favour of the respondent-claimant, however, the rate of post-award interest is modified from 12% per annum to 8% per annum from the date of award till realization.*

C. *The Courts below committed a serious error while dealing with Issue (A) and Issue (B) referred hereinabove while exercising the powers under Section 34 and Section 37 of the Act.*

62. *In view of the aforesaid discussion, the impugned judgment dated 25.05.2023 passed by the High Court of Judicature at Allahabad, the order dated 15.09.2022*

passed by the Commercial Court, Jhansi, and the Arbitral Award dated 25.12.2018, are set aside, to the extent of the grant of pre-award/pendente lite interest or amounts in the nature of interest, qua Claim No. 1, 3 and 6. The Arbitral Award dated 25.12.2018 is further modified to the extent of the rate of the post-award interest from 12% per annum to 8% per annum from the date of award till realization."

60. It would be apposite to reproduce paragraphs no. 73 and 74 of the Constitution Bench judgment rendered by the Hon'ble Apex Court in the case of ***Gayatri Balasamy vs. ISG Novasoft Technologies Ltd.,*** reported in (***2025) 7 SCC 1*** herein below:-

*"**73.** The next question that arises is: Do courts possess the power to declare or modify interest, especially post-award interest? In respect of pendente lite interest, Section 31(7)(a)(**Annexure A**), states that unless otherwise agreed by the parties, the Arbitral Tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(b) (**Annexure A**) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till the date of payment. The Explanation defines the expression "current rate of interest".*

***74.** There can be instances of violation of Section 31(7)(a), and the pendente lite interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the Court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or*

second, recourse may be had to the powers of remand under Section 34(4).”

61. It would also be gainful to refer to a judgment rendered by the Hon’ble Apex Court in the case of ***PAM Developments Private Ltd. vs. State of West Bengal & Anr.***, reported in ***(2024) 10 SCC 715***, paragraphs no. 23, 23.1 to 23.6 whereof are reproduced herein below:-

*“**23.** The power of the arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest under Section 31(7) of the Act is fairly well-settled. The judicial determinations also highlight the difference in the position of law under the Arbitration Act, 1940. The following propositions can be summarised from a survey of these cases:*

***23.1.** Under the Arbitration Act, 1940, there was no specific provision that empowered an arbitrator to grant interest. However, through judicial pronouncements, this Court has affirmed the power of the arbitrator to grant pre-reference, pendente lite, and post-award interest on the rationale that a person who has been deprived of the use of money to which he is legitimately entitled has a right to be compensated for the same. [State of Orissa v. G.C. Roy, (1992) 1 SCC 508, para 43(i). Also see State of Orissa v. N.C. Budharaj, (2001) 2 SCC 721; Union of India v. Krafters Engg. & Leasing (P) Ltd., (2011) 7 SCC 279 : (2011) 3 SCC (Civ) 533] When the agreement does not prohibit the grant of interest and a party claims interest, it is presumed that interest is an implied term of the agreement, and therefore, the arbitrator has the power to decide the same. [State of Orissa v. G.C. Roy, (1992) 1 SCC 508, paras 43 (iv) & 44]*

***23.2.** Under the 1940 Act, this Court has adopted a*

strict construction of contractual clauses that prohibit the grant of interest and has held that the arbitrator has the power to award interest unless there is an express, specific provision that excludes the jurisdiction of the arbitrator [Port of Calcutta v. Engineers-De-Space-Age, (1996) 1 SCC 516, paras 4 and 5; Madnani Construction Corpn. (P) Ltd. v. Union of India, (2010) 1 SCC 549 : (2010) 1 SCC (Civ) 168; Tehri Hydro Development Corpn. Ltd. v. Jai Prakash Associates Ltd., (2012) 12 SCC 10 : (2013) 2 SCC (Civ) 122, paras 18-20; Union of India v. Ambica Construction, (2016) 6 SCC 36 : (2016) 3 SCC (Civ) 36 (First Ambica Construction Case); Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257 (Second Ambica Construction Case); Raveechee & Co. v. Union of India, (2018) 7 SCC 664 : (2018) 3 SCC (Civ) 711; Reliance Cellulose Products Ltd. v. ONGC Ltd., (2018) 9 SCC 266 : (2018) 4 SCC (Civ) 351] from awarding interest for the dispute in question [State of U.P. v. Harish Chandra, (1999) 1 SCC 63].

23.3. *Under the 1996 Act, the power of the arbitrator to grant interest is governed by the statutory provision in Section 31(7). This provision has two parts. Under clause (a), the arbitrator can award interest for the period between the date of cause of action to the date of the award, unless otherwise agreed by the parties. Clause (b) provides that unless the award directs otherwise, the sum directed to be paid by an arbitral award shall carry interest @ 2% higher than the current rate of interest, from the date of the award to the date of payment.*

23.4. *The wording of Section 31(7)(a) marks a departure from the Arbitration Act, 1940 in two ways : first, it does not make an explicit distinction between pre-reference and pendente lite interest as both of them are provided for under this sub-section; second, it sanctifies party autonomy and restricts the power to*

grant pre-reference and pendente lite interest the moment the agreement bars payment of interest, even if it is not a specific bar against the arbitrator. [Sayeed Ahmed & Co. v. State of U.P., (2009) 12 SCC 26, paras 14, 23, 24 : (2009) 4 SCC (Civ) 629; Union of India v. Saraswat Trading Agency, (2009) 16 SCC 504 : (2011) 3 SCC (Civ) 499; Sree Kamatchi Amman Constructions v. Railways, (2010) 8 SCC 767, para 19 : (2010) 3 SCC (Civ) 575; Union of India v. Bright Power Projects (India) (P) Ltd., (2015) 9 SCC 695, para 13 : (2015) 4 SCC (Civ) 702; Reliance Cellulose Products Ltd. v. ONGC Ltd., (2018) 9 SCC 266, para 24 : (2018) 4 SCC (Civ) 351; Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd., (2019) 17 SCC 786, paras 13-15 : (2020) 3 SCC (Civ) 605; Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 9 SCC 286, paras 16-20, 24 : (2022) 4 SCC (Civ) 623]

23.5. *The power of the arbitrator to award pre-reference and pendente lite interest is not restricted when the agreement is silent on whether interest can be awarded [Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd., (2019) 17 SCC 786, para 13.2] or does not contain a specific term that prohibits the same [Oriental Structural Engineers (P) Ltd. v. State of Kerala, (2021) 6 SCC 150, paras 15-18:*

23.6. *While pendente lite interest is a matter of procedural law, pre-reference interest is governed by substantive law. [Central Bank of India v. Ravindra, (2002) 1 SCC 367, para 39 following State of Orissa v. G.C. Roy, (1992) 1 SCC 508, para 43(v)] Therefore, the grant of pre-reference interest cannot be sourced solely in Section 31(7)(a) (which is a procedural law), but must be based on an agreement between the parties (express or implied), statutory provision (such as Section 3 of the Interest Act, 1978), or proof of mercantile usage [Central Bank of India v. Ravindra, (2002) 1 SCC 367, para 39; Central Coop. Bank Ltd. v. S. Kamalaveni Sundaram, (2011) 1 SCC 790, para 13 :*

(2011) 1 SCC (Civ) 331] .

62. Thus, we find from the law laid down by the Hon'ble Apex Court in the aforesaid judgments that the provisions of the Act, 1996 including the provisions contained in Section 31(7)(a) of the Act, 1996 gives paramount importance to the contract entered into between the parties and categorically restricts the power of an Arbitrator to pre-award / *pendente lite* interest when the parties have themselves agreed to the contrary, hence an Arbitral Tribunal cannot award pre-award or *pendente lite* interest, even under the guise of compensation, where contract expressly prohibits payment of interest on amounts payable under the contract, however post-award interest is governed by Section 31(7)(b) of the Act, 1996 and can be granted unless expressly barred.

63. Now coming back to the present case, we find that Clause 14 of the agreement dated 16.12.2016 stipulates- "no interest shall be payable to the second party for unavoidable delay in the payment". Therefore, it is amply clear that the agreement dated 16.12.2016 entered into between the parties expressly prohibits payment of interest on amounts payable under the contract / agreement, hence applying the principles laid down by the Hon'ble Apex Court in the aforesaid cases, we hold that the Ld.

Sole Arbitrator was not justified in awarding interest *pendente lite* @ 10 % per annum from the date of start of the arbitral proceedings i.e. 13.09.2019 till the date of award, hence is liable to be set aside. Moreover, neither any pleading has been made by the claimant-Respondent nor any evidence has been brought on record to demonstrate the factum regarding unavoidable/avoidable delay in the payments. However, award of interest @ 18 % over the awarded sum from the date of award till realization of the awarded amount being covered by the provision contained in Section 31(7)(b) of the Act, 1996 does not require any interference.

64. Having regard to the facts and circumstances of the case discussed hereinabove in the preceding paragraphs and for the foregoing reasons, the arbitral award dated 17.10.2020, passed by the Ld. Sole Arbitrator as also the impugned judgment dated 25.7.2025, passed by the Ld. Principal District Judge, Patna is corrected/modified/set aside in terms of this judgment as follows:-

> "(i) The award of the Ld. Sole Arbitrator at serial no. 2 at internal page No.14 of the award dated 17.10.2020, holding the claimant-Respondent entitled to award of a sum of Rs. 3,00,000/- on the head of earnest money, pertaining to the agreement of district-Sitamarhi is set aside. Accordingly, the impugned judgment dt 25.7.2025, passed by the Ld. Principal District Judge, Patna,

upholding this portion of the award is also set aside.

(ii). The award of the Ld. Sole Arbitrator at serial no. 3 at internal page No.14 of the award dated 17.10.2020, holding the claimant-Respondent entitled to compensation of Rs. 25,00,000/- is set aside. Accordingly, the impugned judgment dated 25.7.2025, passed by the Ld. Principal District Judge, Patna, upholding this portion of the award is also set aside.

(iii). The award of the Ld. Sole Arbitrator at serial no. 4 at internal page No.14 of the award dated 17.10.2020 regarding grant of simple interest @ 10 % per annum from 13.9.2019 till the date of award is set aside, however award of interest @ 18 % over the awarded amount from the date of award till realization of the awarded amount is upheld. Accordingly, the impugned judgment dated 25.7.2025, passed by the Ld. Principal District Judge, Patna, upholding this part of the award to the extent of grant of simple interest @ 10 % per annum from 13.9.2019 till the date of award is also set aside.

65. In view of the aforesaid discussion, the award dated 17.10.2020 read with order dated 13.11.2020, passed by the Ld. Sole Arbitrator and the impugned judgment dated 25.7.2025, passed by the Ld. Court of Principal District Judge, Patna are corrected/modified/set aside to the above extent.

66. Accordingly, the present appeal is partly allowed to the aforesaid extent.

COMMERCIAL APPEAL No. 12 of 2025

67. The present appeal has been filed by the appellants under Section 13 (1A) of the Act, 2015 read with Section 37 of the Act, 1996 against the order dated 31.07.2025, passed by the learned Principal District Judge, Patna (hereinafter referred to as the "learned PDJ, Patna") in Execution Case No. 110 of 2021.

68. Shorn of the unnecessary details, it would suffice to state here that the claimant-respondent had instituted execution proceedings by filing the aforesaid Execution Case No. 110 of 2021 under Section 36 of the Act, 1996 for execution of Arbitral award dated 17.10.2020 read with order dated 13.11.2020, passed by the learned Sole Arbitrator, Patna in Arbitration Case No.7 of 2019. The appellants had filed rejoinder to the said execution petition raising various objections and stating therein that the aforesaid award passed by the learned Sole Arbitrator has been challenged under Section 34 of the Act, 1996 by filing Miscellaneous (Arbitration) Case No.21 of 2021, hence the Execution Case be listed after disposal of the said miscellaneous case filed by the appellants.

69. It appears that the learned PDJ, Patna by the impugned order dated 31.07.2025, passed in Execution Case No. 110 of 2021, had on a petition filed by the claimant-respondent

supported by an affidavit dated 06.05.2025, attached the bank accounts of the appellants and had directed the Office to issue warrant of attachment in respect of the bank accounts mentioned in the said order dated 31.07.2025, in accordance with due process of law.

70. The Ld. Counsel for the claimant-respondent has further pointed out that subsequently, the learned PDJ, Patna has passed an order dated 26.11.2025 in Execution Case No. 110 of 2021 whereby and whereunder the petition filed by the claimant-respondent herein on 26.11.2025 has been allowed and the authorities of the ICICI Bank, Frazer Road Branch, Patna have been directed to effect transfer of amount of Rs. 4,52,04,745/- from the bank account standing in the name of the award debtor, maintained at the said branch to the bank account of the claimant-respondent maintained at State Bank of India, Nagarpalika Chowk, Market Branch, Begusarai, whereafter the matter had been directed to be listed on 11.12.2025.

71. Thus, it is submitted by the Ld. Counsel for the claimant-respondent that the present petition has been rendered infructuous on account of passing of the subsequent order dated 26.11.2025 by the learned PDJ, Patna in Execution Case No. 110 of 2021, which has not yet been challenged by the

appellants.

72. Having regard to the facts and circumstances of the case and without going into the merits of the present appeal, we find that since the award dated 17.10.2020 passed by the learned Arbitrator (as modified vide order dated 13.11.2020), in Arbitration Case No.7 of 2019 as also the judgment dated 25.07.2025 passed by the learned PDJ, Patna in Misc. (Arbitration) Case No.21 of 2021, under Section 34 of the Act, 1996, dismissing the appeal filed by the appellants have now been corrected/modified/set aside by the aforesaid judgment being passed today in the connected Commercial Appeal No.8 of 2025, we are of the view that the present appeal has been rendered infructuous, as such the parties would be well advised to approach the Execution Court, especially in view of the fact that the execution proceedings are still pending.

73. Accordingly, the present appeal stands disposed of.

(Mohit Kumar Shah, J)

I agree.
Arun Kumar Jha, J:

(Arun Kumar Jha, J)

Ajay/Gaurav

AFR/NAFR	AFR
CAV DATE	15.05.2026
Uploading Date	23.05.2026
Transmission Date	NA