2026:DHC:7423

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 07.08.2026
Judgment pronounced on: 02.09.2026

\# **CNR No. DLHC011798302016**

\+ O.M.P. (COMM) 441/2024

M/S SANJAY IRON STEEL .....Petitioner

Through: Mr. Praveen Chauhan, Ms. Malvica Satija and Mr. Sarthak Sawhney, Advs.

versus

STEEL AUTHORITY OF INDIA AND ANR. .....Respondents

Through: Mr. Ashish Rana, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% **02.09.2026**

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996[1] by the Petitioner, challenging the arbitral Award dated 22.07.2024[2] passed by the learned Sole Arbitrator.

2. The dispute arises out of an online tender invited by Steel Authority of India Limited[3] on 25.06.2019 for appointment of a distributor for the Panchkula Cluster, for the purchase, transportation, handling, storage, processing and sale of TMT/TMT Coils to dealers. The Petitioner participated in the tender process and emerged as the

[1] "the Act" hereinafter
[2] "impugned Award" hereinafter
[3] "Respondent" hereinafter

successful bidder. Pursuant thereto, the parties entered into a Distributorship Agreement[4], under which the Petitioner was appointed as the distributor for the Panchkula Cluster.

3. The distributorship was initially to remain in force for a period of five years and was governed by the terms and conditions contained in the tender documents. As per the agreed terms and conditions, the Petitioner was required, *inter alia*, to achieve the prescribed sales and maintain the requisite inventory. Clause 16.3 of the Instructions to Tenderers further required the Petitioner to furnish a Performance Bank Guarantee[5]. The Petitioner, accordingly, furnished the PBG in the sum of Rs.1,28,00,000/-, which was initially valid up to 22.10.2020.

4. During the subsistence of the distributorship, the Petitioner raised a grievance that the Respondent was itself supplying material to certain customers and dealers at prices lower than those being offered to its distributors. According to the Petitioner, such direct supplies adversely affected its business and made it difficult for the Petitioner to achieve the stipulated sales targets.

5. When the PBG was nearing expiry on 22.10.2020, the Respondent called upon the Petitioner to extend the same for a further period of one year. The Petitioner, however, expressed its unwillingness to continue with the distributorship and, *vide* emails

[4] "Contract" hereinafter
[5] "PBG" hereinafter

dated 26.10.2020 and 29.10.2020, sought to surrender the Contract, principally on account of the aforesaid direct supplies allegedly being made by the Respondent. The Petitioner also declined to extend the validity of PBG.

6. The Respondent did not accept that the Petitioner had any contractual right to surrender the distributorship before the expiry of the agreed tenure and, therefore, repeatedly called upon it to extend the PBG in terms of the Contract. As the Petitioner failed to do so, the Respondent issued a notice dated 07.11.2020 and subsequently invoked and encashed the PBG on 12.11.2020. The Contract was subsequently terminated on 01.12.2020, and the PBG was forfeited under Clause 18.4 of the Contract.

7. Aggrieved by the termination of the Contract as well as invocation of the PBG, the Petitioner invoked the arbitration clause and, *inter alia*, sought refund of the PBG amount of Rs.1,28,00,000/-. The Respondent contested the claims and also raised a counter-claim of Rs.2,31,80,789/- towards the losses allegedly suffered by it on account of the Petitioner's breaches of the Contract.

8. Upon consideration of the terms of the Contract and the material on record, the learned Arbitral Tribunal came to the conclusion that the Petitioner had no right to surrender or abandon the distributorship before the expiry of the contractual period and that its failure to extend the PBG amounted to a breach of its contractual obligations. The learned Arbitral Tribunal, accordingly, upheld the

termination and held that the Respondent rightly invoked the PBG, thereby rejecting the Petitioner's claim for refund of the PBG. The counter-claim of the Respondent for Rs.2,31,80,789/-, however, came to be rejected on the ground that the losses alleged by the Respondent had not been substantiated by evidence.

9. Learned Counsel for the Petitioner submitted that the impugned Award is contrary to Condition 4 of the terms and conditions agreed in the Contract. According to him, Condition 4 permits encashment of the PBG only where the Company has suffered loss or damage on account of negligence or non-performance by the Distributor. Learned Counsel pointed out that the learned Arbitral Tribunal itself has recorded a finding that the losses alleged by the Respondent were not proved and has, on that basis, rejected the Respondent's counter-claim. It is, therefore, contended that having recorded such a finding, the learned Arbitral Tribunal could not have permitted the Respondent to retain the PBG amount of Rs.1.28 crores. The submission, in substance, is that the impugned Award, to that extent, travels beyond the express terms of the Contract and is consequently vitiated by patent illegality.

10. Learned Counsel for the Petitioner further submitted that the retention of the PBG is contrary even to the case set up by the Respondent before the learned Arbitral Tribunal. According to him, the Respondent has sought to adjust the amount of the PBG against its claim of Rs.2,31,80,789/- towards the losses allegedly suffered by it. Once those losses were found not to have been proved and the

counter-claim itself stood rejected, there remained, according to the learned Counsel, no basis for permitting the Respondent to retain the PBG.

11. Insofar as Clause 18.4 of the Instructions to Tenderers is concerned, learned Counsel for the Petitioner submitted that the said clause merely confers a right upon the Respondent to forfeit the PBG upon termination of the Contract. On the other hand, Condition 4, according to him, specifically stipulates the circumstances in which the PBG can be enforced. It is, therefore, submitted that Clause 18.4 cannot be read independently so as to justify retention of the PBG in the absence of proof of the loss or damage contemplated under Condition 4.

12. *Per contra*, learned Counsel appearing for the Respondent placed reliance upon Clause 18.4 of the Instructions to Tenderers. He submitted that the said clause specifically provides for forfeiture of the PBG where the Contract is terminated on account of the Distributor being unable to perform its obligations to the satisfaction of the Company. In the present case, the learned Arbitral Tribunal has recorded a categorical finding that the Petitioner prematurely sought to surrender the Contract and thereafter failed to extend the PBG despite being contractually obliged to do so. The Respondent, therefore, contended that forfeiture of the PBG was fully justified under Clause 18.4.

13. Learned Counsel further submitted on behalf of the Respondent

that the PBG and the counter-claim stood on entirely different footings. The counter-claim represented the additional losses which the Respondent claimed to have suffered on account of the Petitioner's breach and was rejected because those losses could not be proved. The PBG, on the other hand, was forfeited as a consequence flowing from the Petitioner's breach and the consequent termination of the Contract. Rejection of the counter-claim, therefore, according to the Respondent, has no bearing upon its contractual right to retain the PBG.

14. Learned Counsel for the Respondent lastly submitted that the challenge raised by the Petitioner essentially invites this Court to reconsider the interpretation placed by the learned Arbitral Tribunal upon the contractual provisions and to re-appreciate the material which was before it. It is submitted that the view taken by the learned Arbitral Tribunal, namely, that the Petitioner had breached the Contract and that the PBG was liable to be forfeited as a consequence thereof, is at the very least a possible and plausible view of the contractual provisions. Such a view, it is contended, cannot be interfered with in proceedings under Section 34 merely because another interpretation may also be possible.

15. As the present petition is preferred under Section 34 of the Act, the scope of interference available to this Court must be kept in view. It is well settled that while exercising jurisdiction under Section 34, the Court does not sit in appeal over an arbitral Award. The Supreme

Court in ***UHL Power Company Ltd. v. State of Himachal Pradesh***[6], has reiterated that the jurisdiction under Section 34 is narrow and that an Award cannot be interfered with merely because the Court may itself have a different interpretation of the contractual provisions.

16. At the same time, an Arbitral Tribunal is required to adjudicate in accordance with the terms of the Contract between the parties. No doubt, interpretation of contractual terms lies primarily within the domain of the learned Arbitral Tribunal and the Court would ordinarily not interfere merely because another interpretation is possible. That principle, however, does not mean that the learned Arbitral Tribunal can disregard the terms of the Contract or give them an interpretation which is not supported by the language of the contract. Where the interpretation adopted by the learned Arbitral Tribunal is one that is not even a possible view of the Contract, the resultant Award may fall within the limited parameters available under Section 34 of the Act.

17. It is in the backdrop of the aforesaid principles that the findings rendered by the learned Arbitral Tribunal in the present case are required to be examined.

18. The controversy, in fact, lies within a fairly narrow compass. What requires consideration is whether the rejection of the Respondent's counter-claim for want of proof of loss is inconsistent with the learned Arbitral Tribunal's decision to reject the Petitioner's

[6] **(2022) 4 SCC 116**

claim for refund of the PBG and, if so, whether such inconsistency is of a nature which would render the impugned Award patently illegal.

19. The Petitioner's case is primarily based on Condition 4 of the terms and conditions agreed in the Contract, which provides for enforcement of the PBG where the Respondent suffers loss or damage due to the Petitioner's negligence or non-performance. The Petitioner points out that the learned Arbitral Tribunal, while deciding the counter-claim, found that the Respondent had not proved any loss and, according to the Petitioner, Condition 4 was, therefore, not satisfied and the PBG ought to have been returned. The relevant portion of the said Condition is reproduced below:

> *"4.0 Some of the terms for losses/ damages determination/recoveries, encashment, release will be as under:-*
>
> 1. ***If the company suffers any losses or damages due to any negligence and / or non-performance of the obligations under the contract by the Distributor they shall on demand pay to the company the specified sum. However, the company shall reserve the right to recover such losses and/ or damages by encashing the security deposit and enforcing the Bank Guarantee and/ or from any of the bills of the Distributor pending for payment with the company without prejudice to any other legal remedies /recourse available to the company to proceed against the Distributor for recovering such losses/ damages.***
>
> 2. *The decision of the company as to the amount of loss(s) / damage(s) suffered by the company shall be final and binding upon the Distributor.*
>
> 3. *The Security Deposit and performance Guarantees (if any) shall be released only after the expiry / termination of the contract and satisfactory performance of the work and on completion of all obligations by the Distributor under the contract terms.*

4. *Before release of SD/PG the Distributor shall also submit a certificate to the effect that he has no claim(s) against the company under the contract."*

20. At first blush, the submission of the Petitioner does appear attractive. The learned Arbitral Tribunal has undoubtedly recorded that the loss claimed by the Respondent was not proved and has nevertheless permitted the Respondent to retain the PBG. If Condition 4 were the only contractual provision governing the matter, the Petitioner could legitimately contend that the learned Arbitral Tribunal rejection cannot be reconciled with a contractual condition which predicates enforcement of the PBG upon loss or damage having been suffered by the Respondent.

21. The matter, however, cannot be examined with reference to Condition 4 alone. Clause 18.4 of the Instructions to Tenderers has a direct bearing on the controversy and reads as under:

> *"18.4: In case of inability on the part of the Distributor to perform to the full satisfaction of Company under this contract, Company shall have the right to terminate the contract on serving due notice and the security deposit as well as the Bank Guarantee would be forfeited by the company. The Company may also appoint another Distributor for the same job cost and risk of Distributor.*

22. A bare reading of Clause 18.4 shows that where the Distributor is unable to perform the Contract to the satisfaction of the Company and the Contract is consequently terminated, the Company is contractually entitled to forfeit both the security deposit and the PBG. The right to forfeiture under this clause is linked to the failure of performance followed by termination. The clause itself does not

expressly make such forfeiture conditional upon the Respondent first establishing a quantified loss or damage.

23. Condition 4 and Clause 18.4, therefore, have to be understood in their respective settings. Condition 4 provides for enforcement of the PBG where the Respondent seeks to recover loss or damage suffered on account of negligence or non-performance by the Distributor. Such a situation may arise even during the subsistence of the Contract and does not necessarily depend upon termination the Contract.

24. Clause 18.4, on the other hand, specifically deals with a situation where the Distributor has failed to perform the Contract to the satisfaction of the Respondent and the Contract is terminated on that account. It expressly provides for forfeiture of the security deposit as well as the PBG as a consequence of such termination. The two provisions, therefore, operate in different situations, and the requirement relating to proof of loss under Condition 4 cannot, merely by implication, be read into Clause 18.4 when the latter contains no such stipulation.

25. Coming then to the facts of the present case, the learned Arbitral Tribunal has found that the Petitioner prematurely sought to surrender the Contract and thereafter failed to extend the PBG despite its obligation under the Contract. On that basis, the learned Arbitral Tribunal upheld the termination effected by the Respondent. Significantly, the finding of breach on the part of the Petitioner and

the validity of the consequent termination are not under challenge in the present proceedings. Having upheld the termination, the learned Arbitral Tribunal further held that the Respondent was entitled, under the "*terms of Contract*", to invoke and retain the PBG.

26. In view of this Court, once the breach stood established and termination was held to be valid, the conclusion of the learned Arbitral Tribunal that the claim of refund of PBG is not admissible finds support from terms of Contract i.e. Clause 18.4, which expressly provides for such forfeiture upon termination in the circumstances contemplated therein. Such conclusion also finds support from the Condition 4.3, which provides that the PBG shall be released only after the expiry/termination of the Contract, satisfactory performance of the work and completion of all obligations by the Distributor under the terms of the Contract.

27. The Petitioner nevertheless contends that Clause 18.4 merely confers a power of forfeiture whereas Condition 4 exclusively sets out the circumstances in which the PBG may actually be enforced. I am unable to accept this submission in the manner it is urged. Nothing in the impugned Award indicates that the learned Arbitral Tribunal adopted such a construction of the two provisions. This Court, while exercising jurisdiction under Section 34, cannot substitute its own interpretation of the Contract merely because another construction may also appear possible. The rejection of the counter-claim for want of proof of quantified loss, therefore, does not by itself render the learned Arbitral Tribunal's conclusion regarding forfeiture of the PBG

inconsistent or perverse. Clause 18.9 is also of no avail to the Petitioner in this regard.

28. Further, the Petitioner has also vehemently contended that permitting encashment and retention of the PBG in the absence of proof of loss would amount to undue enrichment of the Respondent. The submission again has to be tested on the touchstone of the contractual provisions. Whether proof of loss is a prerequisite to retention of the PBG must necessarily depend upon the terms agreed between the parties. In the present case, Clause 18.4 does not make such forfeiture consequent upon termination dependent upon prior proof of loss. Neither the learned Arbitral Tribunal nor this Court can introduce such an additional requirement into the clause when the parties themselves have not chosen to incorporate one, as that would amount to rewriting the bargain between them.

29. As regards the contention that the Respondent itself had proceeded before the learned Arbitral Tribunal on the footing that the PBG was to be adjusted only against the losses forming subject matter of the counter-claim, this also does not appear to be borne out from the record. The Statement of Defence and the submissions recorded by the learned Arbitral Tribunal indicate that the Respondent had defended forfeiture of the PBG by placing reliance upon Clause 18.4 of the Instructions to the Tenderers.

30. Viewed thus, there is no inherent inconsistency between the rejection of the Respondent's counter-claim and the learned Arbitral

Tribunal's decision permitting retention of the PBG. The counter-claim was rejected because the Respondent was unable to establish by evidence the losses quantified and claimed by it. The PBG, however, was held liable to forfeiture as a contractual consequence of the Petitioner's breach followed by a valid termination under Clause 18.4. The two conclusions operate in distinct fields and are capable of standing together. Therefore, the findings of the learned Arbitral Tribunal cannot be said to be inconsistent, nor do they disclose any patent illegality.

31. In view of the foregoing discussion, I find that no ground is made out which would warrant interference with the impugned Award in exercise of jurisdiction under Section 34 of the Act. The present petition is, accordingly, dismissed.

32. All pending applications, if any, also stand disposed of.

OM PRAKASH SHUKLA, J

SEPTEMBER 02, 2026/*ss*