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

\+ O.M.P. (COMM) 8/2017, I.A. 286/2017 & I.A. 5452/2021

NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Petitioner

Through: Mr. Amit Singh Chauhan, Mr. Kuldeep Kasana and Mr. Arindam Bhardwaj, Advocates.

versus

S & P INFRASTRUCTURES DEV (PVT) LTD

.....Respondent

Through: Mr. Raghvendra Upadhyay, Ms. Kanika Singh, Ms. Radhika Jindal and Ms. Purnima Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% **30.07.2026**

1. The present petition filed under Section 34 of the Arbitration and Conciliation Act, 1996[1] seeks to interdict the arbitral award[2] dated 13.07.2016 passed by the Arbitral Tribunal[3] comprising of Shri J.C. Shah, Presiding Arbitrator, Shri B.D. Joshi and Shri Ashok Wasson, Co-arbitrators.

2. The brief facts of the present case would reveal that the Petitioner, namely, National Highways Authority of India[4] is a statutory authority constituted under Section 3 of the National Highways Authority of India Act, 1988, for the development, maintenance and

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[1] "Act", hereinafter
[2] Also referred to as "award" or "impugned award"
[3] "Tribunal", hereinafter
[4] "NHAI", hereinafter

management of National Highways. The Central Government entrusted NHAI with the work of short-term improvement and routine maintenance of the Kanpur–Fatehpur section (km 457.377 to km 508.877) and Fatehpur–Thariyaon section (km 508.877 to km 571.197) on NH-2 in the State of Uttar Pradesh[5].

3. Accordingly, NHAI issued a Notice Inviting Tender (NIT) in 2012, wherein the Respondent emerged as the successful bidder quoting Rs.11,19,76,925/-. Thus, a Letter of Acceptance came to be issued to the Respondent on 06.12.2012 and in furtherance thereof, Contract Agreement dated 09.01.2013 was executed between the parties. The contract was an item-rate contract based on the bill of quantities. The stipulated period for execution of the work was from 25.01.2013 to 24.01.2014.

4. Subsequently, a Supplementary Agreement dated 01.12.2014 was also executed between the parties relating to amendment of Clause 25 relating to arbitration. Pursuant thereto, due to certain disputes, the Respondent requested NHAI for constitution of an Arbitral Tribunal. The Tribunal came to be constituted and after exchanging pleadings and arguments, the Tribunal rendered its award on 13.07.2016, which was received by NHAI on 14.09.2016, whereby five claims of the Respondent were allowed.

5. It emerges from the record that the Tribunal awarded, (i) Claim No.1 relating to Loss of Profit; (ii) Claim No.3 relating to Finance

[5] "work", hereinafter

Charges; (iii) Claim No.4 relating to Final Bill/EOT Bills; (iv) Claim No.5 relating to Security Deposit and (v) Claim No.6 relating to RO & HO Overheads. However, Claim No.2 relating to Claims for idling charges and arbitration costs and Claim No.7 relating to cost of Arbitration were rejected.

6. Aggrieved by the award, NHAI has filed the present petition under Section 34 of the Act challenging the said award in respect of Claim Nos. 1, 3, 4, 6 and the interest component.

7. The fulcrum of the arguments advanced by the learned Counsel for the Petitioner is that there was absolutely no dispute regarding the impugned claims during execution of the work in question or even while submitting the final bill. Thus, according to him, the claims were barred by the principles of waiver, acquiescence and estoppel.

8. The learned Counsel, as far as grant of Claim No.1 relating to loss of profit is concerned, has vehemently submitted that the Tribunal could not have awarded any compensation for loss of profit, particularly when the contract had been fully performed. According to him, the contract was never terminated and there was no contention between the parties relating to the performance of contract. Further, since the contract was fully performed, there was no question of grant of any loss of profit. In this regard, it is submitted that no correspondence has been placed on record requesting additional work or complaining of insufficient work fronts. Further, it is also averred that the Respondent never sought any variation as per Clause 38 and hence, there was no contractual or factual basis for any claim of loss of profit.

9. Learned Counsel has taken this Court to the facts and figures of the contract executed between the parties. It is evident from the record that the Petitioner issued indents worth Rs.5.91 crores, but the Respondent only executed work worth approximately Rs.3.18 crores, which depicts that the Respondent was ill-equipped to carry out the entire work. Further, it is argued that the Respondent produced no evidence to demonstrate deployment of machinery or manpower at the work site. It is thus averred that a dichotomy existed in awarding the claims in favour of the Respondent since on one hand, the Tribunal rejected Claim No. 2 relating to idling charges for want of evidence, and on the other hand, it held that adequate machinery and manpower had been deployed while allowing Claim No. 1. According to the learned Counsel, the Tribunal overlooked the minutes of meeting[6] of the Evaluation Committee wherein it was recorded that the Respondent's quoted price was already 16% below the estimated contract value, buttressing the fact that no profit could arise. It is argued that further work could only be granted once the indent already given stood completed, hence, the arbitral award is in breach of the contractual mechanism governing work through indents.

10. As far as Claim No. 3 is concerned, the learned Counsel has submitted that furnishing performance guarantees was an express contractual obligation of the Respondent and hence, finance charges for obtaining guarantees cannot be shifted to the Petitioner. The learned Counsel has stoutly submitted that finance charges are built-in and form

[6] "MoM", hereinafter

a part of overheads and cannot be separately recovered. According to him, no evidence was furnished regarding blocked finances, margin money or the expenditure actually incurred by the Respondent. Further, in any case, the Respondent never raised this claim during execution or in the final bill. It is also submitted that no independent findings were rendered under this claim. Thus, the finding under Claim No. 3 is liable to be set aside.

11. As far as Claim No.4 for the Final Bill and Extension of Time[7] bills/letters along with interest is concerned, it is submitted that payments were withheld because of poor contractual performance by the Respondent and that numerous letters were also issued requiring improvement in their performance. Further, a joint inspection revealed substantial mortality of median plants, giving rise to the Petitioner's claim of Rs.23.13 lakh against the Respondent for the dried-up plants. It is also pointed out that upon request of Respondent, a re-inspection was also organised but Respondent did not participate in the same and unfortunately, the Tribunal completely ignored this correspondence and wrongly disallowed recoveries. According to the learned Counsel, the Petitioner had already legally recovered the said amount due from the Respondent, hence, there was no occasion for the Tribunal to have allowed the said claim, as it was essentially in the nature of counterclaim against the recoveries already made by the Petitioner. With respect to interest awarded, it is submitted that since the underlying claims are wrongly awarded, interest thereof does not arise

[7] "EOT", hereinafter

and even otherwise, it is not tenable since interest is granted from dates when the claim did not arise.

12. Similarly, in regard to Claim No. 6 for reimbursement of underutilised Regional Office[8] and Head Office[9] overheads, the learned Counsel has contended that the Respondent failed to prove mobilisation or actual expenditure under the RO/HO heads and also that these expenses are accounted for under the overhead charges. Further, no evidence to this effect was produced, which was also observed by the Tribunal, however, the Tribunal in the most illegal manner went ahead in awarding this claim. It is also submitted that the standard objections of the claim having been never been included in monthly statements or the final bill, was also considered for the present claim.

13. The learned Counsel, whilst concluding his arguments, has contended that the award is contrary to the terms of the contract and the Tribunal ignored material documentary evidence and as such the findings are perverse and unsupported by evidence. Additionally, the award seeks to rewrite the contractual bargain, which is impressible in law. According to him, the award is patently illegal and contrary to public policy warranting interference under Section 34 of the Act.

14. In support of his arguments, learned Counsel placed reliance on ***Kanchan Udyog Ltd. v. United Spirits Ltd.***[10], ***C&P Haulage v. Middleton***[11], ***the Board of Trustees of V.O. Chidambaranar Port Trust***

[8] "RO", hereinafter
[9] "HO", hereinafter
[10] **(2017) 8 SCC 237, Para 28-30**
[11] **(1983) 3 ALL ER 94 (Pg. 117)**

v. PSA Social Terminals Ltd. & Ors.[12]***, Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Coproration Ltd. & Anr***[13]***.*** and ***Unibros v. All India Radio***[14].

15. *Per contra*, the learned Counsel for the Respondent has supported the arbitral award and submits that the present petition has been filed by the Petitioner in the nature of an appeal, which is not within the scope of Section 34 of the Act, and hence, the petition deserves to be dismissed at the outset. According to the learned Counsel, the Award does not suffer from any patent illegality, perversity and is not in conflict with the terms of the contract or public policy of India.

16. According to the learned Counsel, the Petitioner essentially seeks re-appreciation of evidence from this Court, which is untenable, as held in a catena of judgments.

17. As far as the merits are concerned, the learned Counsel has submitted that the Petitioner failed to make available work corresponding to the tendered contract value of Rs.11.19 crores. According to the learned Counsel, only partial work fronts were made available and although machinery and manpower had been mobilised for execution of the entire contract, however, the desired work could not be achieved because of reasons directly attributable to the Petitioner. Consequently, the Respondent suffered expected loss of profit, which was rightly awarded by the Tribunal. It is also submitted

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[12] **MANU/TN/3681/2017, Para 30-32**
[13] **(2024) 2 SCC 375**
[14] **2023 SCC OnLine SC 1366**

that the Petitioner did not undertake any action with respect to the Respondent's failure to execute the work, and instead released the performance guarantee and security deposit as well.

18. It was also averred that the MoM of the Evaluation Committee were not part of the contract and that the Respondent was not a party to these minutes.

19. With respect to the claims awarded relating to finance charges, the learned Counsel has submitted that the Respondent, while quoting rates, had factored in finance charges for bank guarantees, working capital and margin money for performance of the overall work and not for the truncated work, which the Respondent was compelled to execute because of the Petitioner. According to him, since the entire tendered quantity was allegedly not made available, those finance costs remained unrecovered and therefore, the Respondent sought reimbursement, which was rightly allowed by the Tribunal.

20. Further, as regards the Final Bill/EOT Bills, it is submitted that almost thirteen running bills were submitted during the original contract period, out of which the 13th bill was unpaid by the Petitioner. Further, six additional bills submitted during the extension period also remained unpaid. Therefore, the Tribunal has rightly awarded the claim for release of outstanding bill amounts along with interest. It is averred with respect to the claim of RO & HO overheads that the Respondent claimed reimbursement of RO and HO overheads at 1% and 2% respectively as per trade practice, which was rightly allowed by the Tribunal. Moreover, the claim was based on the allegation that the

Petitioner failed to provide work for the entire contract value, resulting in under-utilisation of resources and therefore the same was rightly awarded in favour of the Respondent.

21. Having heard the learned Counsel for the parties and perused the material on record, this Court is not inclined to allow the present petition for the reasons to follow.

22. At the very outset, it is well-settled by plethora of judgments that the scope of interference by this Court under Section 34 of the Act is circumscribed. The Court exercising jurisdiction under Section 34 does not sit in appeal over the findings of the Arbitral Tribunal and cannot undertake a re-appreciation or re-evaluation of the evidence merely because another view may be possible. The interference is warranted only within the limited parameters prescribed under the statute. Furthermore, interference is not warranted even if the award appears to be unreasoned or non-speaking, unless one of the statutory grounds is made out.

23. In ***Associate Builders v. Delhi Development Authority***[15], the Supreme Court made the following observations:

> ***"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.*

[15] **(2015) 3 SCC 49**

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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.*

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42.1. *(a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act…*

42.2. *(b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside."*

24. Further, in ***DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd.***[16], the Supreme Court made the following observations:

"34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a

[16] **(2024) 6 SCC 357**

domestic award may be set aside if the Court finds that it is vitiated by "patent illegality" appearing on the face of the award.

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36. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned.

37. A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party.

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39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A "finding" based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An Award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice."

25. In ***Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.***[17]**,** it was held *inter alia* that construction of the terms of a contract is primarily for the Arbitrator/Tribunal to decide, unless an interpretation is adopted which no reasonable person could arrive at. Moreover, it has been consistently held in a catena of judgments of the Supreme Court that the Tribunal is the master of evidence and the Section 34 Courts cannot reassess evidence or substitute its own conclusions merely because another view is probable.

[17] **AIR 2019 SC 2908**

26. Having traced the statutory contours within which an arbitral award shall be tested and the guiding principles of interpretation of contracts, this Court finds that the Petitioner is attempting to assail the arbitral award by contesting the interpretation of the Tribunal on facts, such as the finding that the MoM of the Evaluation Committee is not part of the contract. In the same breath, this Court also finds that the contract depicts in categorical and clear terms that the MoM were never the part of the contract.

27. Furthermore, the Petitioner also seeks to challenge the finding of the Tribunal that it did not provide work fronts to the Respondent. This is challenged on the premise that there were no contemporaneous letters or any other record during execution of the contract voicing concerns about non-availability of work fronts. In my considered view, this ground seeks to challenge the interpretation of evidence by the Tribunal and calls for review of the case on merits. Such an enquiry would necessitate re-evaluation of evidence, which is beyond the permissible scope of jurisdiction under Section 34 of the Act.

28. As far as the contention of the Petitioner is concerned that the Tribunal essentially re-wrote the contract by ignoring the MoM dated 06.11.2012, which according to them formed part of the contract and that the Tribunal committed patent illegality and perversity, this Court finds no merit in the said submission in view of the explicit finding of the Tribunal that the MoM was not part of the contract and that the MoM was not binding. In this regard, it is trite that Courts should ordinarily refrain from substituting their interpretation for that of the arbitrator. This Court is clear in its mind that the Petitioner cannot

challenge the quality of the interpretation of evidence taken into consideration for arriving at such a decision. In my considered view, scope of interference would only arise in the miniscule window when the Tribunal, upon considering the facts presented before it, fails to draw an inference that ought to have been drawn or, conversely, draws an inference that is manifestly untenable, resulting in a gross miscarriage of justice.

29. Upon a perusal of the reasoning adopted in the award, this Court is of the view that whether the MoM were a part of contract or not, the Tribunal has already rendered a clear and reasonable finding in view of the unambiguous stipulation in the contract as to what all documents/instruments are included within tits ambit. It is glaringly evident from a *prima facie* reading of the contract that the aforesaid MoM are not included in the list delineating the documents forming part of the contract. Therefore, the view taken by the Tribunal that the said MoM were not binding on the parties is a plausible and reasonable interpretation of the contractual terms, which does not warrant my interference under Section 34 of the Act.

30. The contentions of the Petitioner that there were no contemporaneous letters or records during execution of the contract voicing concerns about the non-availability of work fronts and that the Petitioner's non-providing of work fronts is a baseless assertion, are of no avail. This challenge is also based on the scope and manner in which the evidence has been appreciated by the Tribunal. At the cost of repetition, such an endeavour is well-within the competence of the Tribunal.

31. Further, the contention that the Tribunal had grossly erred in accepting the said evidence without an affidavit under Section 65B of the Indian Evidence Act, 1872[18] is difficult to accept. This is because of two reasons. Firstly, Section 1 of the IEA stipulates that it is not applicable to proceedings before the Arbitrator and Section 19 of the Act mandates that an Arbitrator shall not be bound by the IEA. Secondly, no such objection was taken on behalf of the Petitioners at the appropriate stage, that is, before the Tribunal.

32. Having failed to raise the aforesaid objection before the Tribunal, the Petitioner cannot be permitted to raise the same for the first time in the present proceedings. The fact as to whether the adequate evidence has been provided by the Respondent about non-availability of work fronts along with the onus of proving availability of work fronts is undoubtedly a factual determination, which cannot be undertaken by this Court in the light of the precedents cited above.

33. It also emerges from the record that the work which was provided to Respondent was satisfactorily completed, as is evident from the Petitioner's Office Note dated 12.09.2014 that the "contractor has completed the work" and the release of performance bank guarantees. The onus was on the Petitioner to provide evidence to support its contention that the work fronts were duly provided but the Respondent did not complete the same.

34. With respect to the contention that the award is not in consonance with Sections 54 and 73 of the IEA, the Petitioner failed to

[18] "IEA", hereinafter

specifically mention or demonstrate as to how these provisions have not been complied with by the Tribunal. In any case, this Court is conscious of the fact that the Supreme Court has authoritatively clarified that a mere erroneous application of law does not warrant any interference on the ground of patent illegality. Paragraph 37 of the decision in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[19], is relevant to the present context, it is reproduced thus:

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

35. In relation to Claim No.1 pertaining to loss of profit, the relevant consideration is not merely the value of indents issued by the Petitioner, but whether the Respondent was prevented from executing the balance contractual work due to circumstances attributable to the Petitioner. The Tribunal, after examining the material on record, returned the finding that the Respondent completed the entire work made available to it amounting to Rs.3,18,66,623.93/- and was prevented from completing the balance work amounting to Rs.8,01,10,301/- due to non-handing over by the Petitioner. Such a finding, even if open to another interpretation, cannot be substituted by this Court unless it is shown to

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[19] **(2019) 15 SCC 131**

be wholly perverse, unreasonable, unsupported by evidence or going to the root of the matter.

36. Although, it has been contended by the Petitioner that it had issued the indents amounting to Rs.5,91,68,860/- and the Respondent could only complete the work amounting to Rs.3,18,66,923.93/-, thereby, demonstrating the Respondent's inability to complete the indented work; therefore, is it submitted that no question of any loss of profits arises for the balance work for which, admittedly, indents were not issued. This contention proceeds on an erroneous premise. According to this Court, the said assumption appears to be a wrong understanding on the part of the Petitioner for the simple reason that it is evident from the record that the contract was about Rs.11 crores and the Respondent could execute work of around Rs. 3 crores. The non-availability of work is also attributed to the Petitioner. Therefore, this Court finds no anomaly in the grant of loss of profit to the Respondent and hence, the conclusion arrived at by the Tribunal cannot be said to suffer from any patent illegality or perversity. The Tribunal has considered the relevant contractual provisions and the evidence placed before it while awarding compensation towards loss of profit on the unexecuted portion of the contract. This Court finds no apparent infirmity in the reasoning adopted by the Tribunal, which appears to be a plausible and reasonable view based on the material available on record.

37. Further, it would be profitable to quote the reasoning arrived by the Tribunal, which seems to be plausible and reasonable and forms the basis for allowing the said claim. This reasoning demonstrates that the

Tribunal applied its mind to the facts and circumstances of the case and arrived at a conclusion which, at the very least, represents a possible and legally permissible view. Consequently, not warranting interference by this Court. The relevant excerpt is as under:

> *"65.16. With regard to the Respondent's submission that the Letter of Acceptance was de facto limited to Rs.6,96,19,750/-. AT noticed from the facts on record that in response to the Notice inviting Tender for the Project for specified Quantities referred in the Bill of Quantities for whole works to be completed, the Claimant submitted its Bid quoting rate for the Items referred in the Bill of Quantities at the tendered amount of Rs. 11,19,76,925/-.*
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> *65.17. The Respondent vide letter dated 06.12.2012 communicated to the Claimant acceptance of its tender at the tendered amount of Rs.11,19,76,925/-. Accordingly, based on such tendered/Contract amount, the Claimant was called upon to furnish Performance Securities of Rs.1,11,97,692/- & Rs. 11,19,769/- as per paras 33.2 & 33.1 of ITB i.e. 10% % 1% respectively.*
> *65.18. Thereafter, Agreement dated 09.01.2013 was signed by the parties in that reiterating the Respondent has accepted the Claimant's Bid for execution and completion of the work and remedying the defects at a cost of Rs. 11,19,76,925/-.*
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> *65.19. However, the Respondent as an afterthought for the first time in its Amended Reply dated 07.03.2016 to the Claim Statement has come up with a plea that the total value of the Contract was Rs.6,96,19,750/- by referring minutes of meeting of their evaluation committee.*
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> *65.20. AT has carefully analysed and find that neither Letter of Acceptance dated 06.12.2012 nor Contract Agreement dated 09.01.2013 made a suggests Minutes of Meeting of the Respondent's evaluation Committee as part of it. Further, the Claimant is not a party to the said Minutes of the Meeting of the Respondent's Evaluation Committee, rather the last para of it is self-explanation that "The evaluation committee recommended to award the work to the lowest bidder i.e. "M/s. S&P Infrastructure Developers (P) Ltd at a bid amount of Rs.11,19,76,925/- (Rupees Eleven Crore Nineteen Lakhs Seventy Six Thousand Nine Hundred Twenty Five only) subject to the submission of performance security of 10% as per Clause 33.1 of the bid document and to furnish additional BG corresponding to 1% amount of the quoted rates i.e. 11,19,769/- due to the bid being below more than 15%". Accordingly, the Respondent issued Letter of Acceptance dated 06.12.2012 stating*

the Contract Price of Rs.11,19,76,925/-and the Contract Agreement dated 09.01.2013 was signed by the parties referring the Contract price of Rs.11,19,76,925/- for completion of whole works and more so, the Respondent did not raise such a contention either in their earlier Reply to the Claim statement or in the Evidence by way of Affidavit, further there is no document on record which suggests the Contract was for Rs.6,96,19,750/- or such Minutes of Meeting are part of the Letter of Acceptance or it has effect of reducing the scope of Agreement or the Claimant was aware of such reduction in the scope of Agreement. The observation of the Evaluation Committee in the Minutes of Meeting that the Project Director of the Respondent be directed not to get executive positive and negative variation about 25% in respect of specified items does not conclude or suggest that the Letter of Acceptance was de fecto limited to Rs.6,96,19,750/-.

65.21. Thus, for the facts as aforesaid, the AT does not agree with the Respondent's submission that the total value of the Contract was Rs.6,96,19,750/-by referring to the minutes of meeting of its evaluation committee contending that the Letter of Award was de facto limited to the said amount of Rs.6,96,19,750/- as it is a part of the Agreement. However, AT accepts the submissions of the Claimant that the tendered/Contract amount for which Letter of Acceptance & the execution of Agreement was for Rs.11,19,76,925/-

65.22. With regard to the Respondent's submission the Claimant hardly completed the work of Rs.3,18,66,923/- against the Indents value of Rs.5,91,68,860/- despite having issued Indent as per Clause 27.1 of Agreement, the AT noticed that admittedly, totally value of the work done by the Claimant during contractual period till 24.01.2014 is Rs.3,18,66,623.93. It is also an admitted fact that the Respondent's Project Director is his Office Note dated 12.09.2014 (filed by the Claimant along with its Rejoinder at Page 457) confirmed that "The Contractor was mobilized at site and commenced the work from 25.01.2013. The Contractor took up the work as per the programme given by the Engineer..... The Original Contract period of one year expired on 24.01.2014 and accordingly the defect liability period of 6 Months is expired on 24.07.2014. The Contractor has completed the work and the Defect Liability period is over so the bank guarantee may be released (Clause 33, 44.2 & 47.1 of the Contract Agreement). Accordingly, Performance Bank Guarantee were released by the Respondent. However, the Respondent did not produce any letter/notice on record or the Engineer's Report that the Claimant was not having the required manpower or machinery since 25.01.2013 over the period till completion of Contract i.e. 24.01.2014 or it has caused delay in execution of that it was not interested in execution of work beyond

Rs. 3,18,66,623.93 despite availability of work fronts. The Respondent also did not clarify and substantiate:

(i) Why no notice was issued to the Claimant for completing remaining works of the indents;
(ii) Why no action was initiated under risk & cost for the balance incomplete work of the Indents:
(iii) What is the exact location of the work fronts for the balance works of Indents stated to be-not executed by the Claimant?
(iv) Why no action was initiated under Clauses 45 & 53 of the Contract Agreement;
(v) Why Indents were not issued confirming to provisions of contact data (Page 95,/C.A) in piecemeal?
(vi) Why the indents contract/tendered for entire amount of Rs.1,19,76,925/- were not issued as per Clause 27.1 of the Agreement within the contract period of 12-months;
(vii) Why the time was not extended for completing the balance intended work and/or for the balance contract value/tendered amount.
(viii) Why no Management meetings were called by the Engineer as per the provision of contract Clause 3G(Page 81, Contract Agreement, C.A.), when the Claimant contractor was not executing the work for months together?

65.23. The Respondent also did not deny or dispute the correctness of facts recorded in its Office Note dated 12.09.2014 wherein admitting that The Contractor was mobilized at site and commenced the work from 25.01.2013. The Contractor took up the work as per programme given by the Engineer. The Original Contract period of one year expired on 24.01.2014 and accordingly the defect liability period of 6 Months is expired on 24.07.2014. The Contactor has completed the work and the Defect Liability Period is over so the bank guarantee may be released (Clause: 33. 44.2 & 47.1 of the Contract Agreement). The Respondent further failed to furnish any reason as to why Performance Bank Guarantees were released by it, when it is contended that the Claimant did not complete the work of the value of Rs.5,91,68,860/- indented.

65.24. Thus, AT does not agree with the Respondent's submission that the Claimant hardly completed the work of Rs.3,18,66,923/- against the Indents value of Rs.5,91,68,86/- despite having issued the Indents as per Clause 27.1 of Agreement. However. AT is of the consul view that the Claimant has completed the entire work of Rs.3,18,66,623.93 on the work fronts made available to against the tendered/contract amount of Rs.11,19,76,925/-and agree with the Claimant's submissions that it was prevented from completing balance tendered/contract amount of Rs.8,01,10,301/- (Rs.11,19,76.925.00- Rs.3,18,66,623.93) due to it non-handling over the work fronts for such balance work of Rs.8,01,10,301/-.

65.25. Herein, AT does not find necessary that the Claimant has to make a prayer separately for deciding the breach in respect of its Claim, when the Claim of the Claimant is itself for the breach of the Respondent for allowing the execution of work of Rs.3,18,66,623.93 only against the tendered/contract amount of Rs.11,19,76,925/- resulted in loss of profit due to very less work provided by the Respondent.

65.26. With regard to the claim in respect of Dispute No.l has not been included in the final bill, hence it is barred, in this context the finding of the AT are given in para 31 to 60 above.

65.27. The reference to the provisions contained in Clause 39 & 41 of the Agreement in defence to the claim of the Claimant are not applicable, as the present claim of the Claimant is neither under the 'Compensation Events' described under Clause 41 or for the Variation. Thus, it was not necessary upon the Claimant to raise such a claim for the loss of profit due to very less work provided by the Respondent in the Bills or the Final Bill. This claim of the Claimant is well maintainable under the law. namely Sections 73 & 54 of the Contract Act, 1872.

65.28. The Respondent's submission that the Claimant had failed to demonstrate the rate of profit, it is noticed that the Respondent does not deny or dispute the 10% profit claimed by the Claimant as per usage of trade referred in the Standard Data Book for Analysis of Rates of MORTH applicable in its Department.

65.29. Considering the evidence on record. AT is of the considered view that the Claimant had deployed the required manpower and machinery all throughout over the Project length of113.82 Km as per detail furnished in its letter dated 07.03.2016, samely the Claimant's own machinery and the machinery arranged on lease and deployed the required manpower for carrying on the work of Rs.11,19,76,925/-within the contract period months commencing of 12-from 25.01.2013 to 24.01.2014. The claimant was having the required machinery and the manpower at Site for completing balance work of Rs.8,01 J 0.301/-within the contractual period of 12 months and thus, entitled for loss of profit due to very less work provided by the Respondent and hold that the breach is on the part of the Respondent in not providing the work fronts for the balance tendered/contract amount of Rs.8,01,10,301/-.

65.30. For the reasons aforesaid, AT agrees with the arguments of the Claimant that it was prevented in completing the balance work of Rs.8.01.10,301/- as such entitled to the Loss of Profit @10% on less work provided by the Respondent. Accordingly, AT accept the *claim of the Claimant for loss of profit @10% based upon Standard Data Book for Analysis of Rates of MORTH, UPPWD and the citations (judgments on record) due to very less work provided by the Respondent."*

38. The contention advanced by the Petitioner that there is a dichotomy in the findings of the Tribunal, inasmuch as it applied different standards by rejecting one claim due to lack of contemporaneous evidence and accepting another claim based largely on a disputed letter dated 12.04.2014, also does not merit acceptance since Claim Nos.1 and 2 were completely different. Claim No.1 was for loss of profits for the non-executed amount of present contract, which was granted by the Tribunal as it was attributable to the Petitioner for not providing the complete work front. On the other hand, Claim No.2 was for the loss of profits due to idling of machines and other resources, which could have been earned by the Respondent in the time period when the delay was caused and it could not take up another work due to utilization of resources in the current contract. This claim was denied by the Tribunal since no "contemporary record" or other sufficient evidence was produced to this effect and that the Respondent did not mention this before or while invoking arbitration. Thus, the distinction drawn by the Tribunal between loss of profit on unexecuted contract value and idling charges is sound and legally sustainable. While the former concerns loss arising from non-execution of the balance work due to alleged breach, whereas the latter requires specific proof of actual idling of resources, deployment and corresponding financial loss. Therefore, rejection of idling charges while allowing loss of profit does not by itself constitute an inconsistent or contradictory approach.

39. Similarly, the other ground taken by the Petitioner relating to the finance charges and RO/HO overheads being wrongly awarded separately because the Standard Data Book already includes such components within overheads, is again based on re-appreciation of evidence. Thus, in substance, the Petitioner's challenge in this regard is limited to the Tribunal's evaluation of the evidence led by parties. As noted above, the scope of examination of an arbitral award is extremely limited. Nonetheless, this contention is also not factually correct in view of the specific finding in the award that the Respondent can make separate claim for the constituents falling under "overheads" so long as they do not exceed the maximum threshold of 10% of the tendered amount, as provided by the Standard Data Book. Thus, the Arbitral Tribunal did not permit any unrestricted or double recovery. The objection raised by the Petitioner essentially concerns the manner in which the Tribunal appreciated contractual provisions and assessed evidence regarding entitlement. Unless such appreciation results in a finding which ignores the contract altogether or clearly permits double recovery, the same cannot constitute patent illegality within the meaning of Section 34 of the Act.

40. Regarding the final bill and EOT bills, the Tribunal considered the rival assertions regarding recoveries, deductions and outstanding payments. The existence of disputed factual issues itself shows that the matter falls within the domain of the Tribunal. This Court, while exercising jurisdiction under Section 34, cannot reassess whether the deductions claimed by the Petitioner ought to be accepted or rejected, unless the findings of the Tribunal are shown to be perverse, irrational, or contrary to the fundamental legal principles. The Tribunal, after

considering the material placed before it, arrived at a cogent conclusion regarding entitlement of the Respondent towards the outstanding amounts. Such a determination, being based on appreciation of evidence and interpretation of contractual terms, does not warrant interference merely because a different view is possible.

41. In the present case, no case has been made out by the Petitioner that the arbitral award is contrary to the fundamental policy of India. The arbitral award cannot, by any stretch of imagination, be considered to be opposed to justice or morality as well.

42. The grounds essentially raised in the instant petition under Section 34 of the Act only pertain to re-appreciation of evidence and seeks a review on merits. Needless to state that there is no question that such an approach falls beyond the permissible limits of judicial interference under the statute.

43. Insofar as the ground of patent illegality is concerned, it is clearly established in ***Associate Builders*** *(supra),* this Court does not sit in appeal while undertaking whilst scrutinising an arbitral award from the lens of public policy. Thus, an award merely based on little evidence or an award not of stout quality will not render it otiose. At the cost of repetition, the arbitrator *"is the ultimate master of the quantity and quality of evidence"*. Therefore, the correctness of the Tribunal's factual conclusions cannot be tested by undertaking a fresh evaluation of the evidence. The limited question before this Court is only whether the view taken by the Tribunal is a possible and plausible view based upon the material placed before it and within the parameters of the contract. Only if the award is based on no evidence, or if irrelevant evidence is considered or if something material has been overlooked, can this Court come to the rescue of the Petitioner.

44. Accordingly, once this Court is of the view that the Tribunal's approach is not arbitrary or capricious and is founded upon a reasonable appreciation of the material available on record, then the Tribunal has the last word on facts. The aforesaid view is also reiterated by the Supreme Court in ***P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd***[20]**.**

45. As is apparent from the foregoing, the evaluation of evidence by the Tribunal may, at best, be alleged to be erroneous and perhaps this Court may have taken a different view but that is not the scope of examination under Section 34 of the Act and this Court cannot interfere with the arbitral award merely on the ground that it does not concur with the inference drawn by the Tribunal from the evidence led by the parties. The legislative intent behind Section 34 is to restrict judicial intervention and not to provide a forum for an appeal on merits against the findings of the Tribunal. In ***Ssangyong Engineering*** *(supra)*, the Supreme Court had authoritatively held 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."*

46. Turning to the precedents relied upon by the Petitioner, the reliance placed on ***Kanchan Udyog Ltd.*** *(supra)*, ***Board of Trustees of***

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[20] **(2012) 1 SCC 594**

V.O. Chidambaranar Port Trust *(supra)*, ***Batliboi Environmental Engineers Ltd.*** *(supra)*, ***Unibros*** *(supra)* and ***C&P Haulage*** *(supra)* is of no avail. Judgments are to be applied keeping in mind the entirety of facts and circumstances of the case at hand and not like Euclid's theorem. These decisions do not come to the rescue of the Petitioner particularly in view of the cogent findings returned by the Tribunal based on evidence on record including the Petitioner's admission in its office note that the Respondent had completed the work, which is also evident from release of the security deposit and performance guarantee and the categorical conclusion of the Tribunal that the Petitioner is liable for not providing the remaining work to the Respondent.

47. As a sequitur to the foregoing, the Petitioner has failed to establish the existence of any ground contemplated under Section 34 of the Act warranting interference with the impugned award. The challenge raised by the Petitioner essentially seeks re-appreciation of evidence and re-consideration of the merits of the dispute, which is impermissible within the limited scope of jurisdiction available under Section 34 of the Act.

48. This Court is unable to accept the contention that interference in the arbitral award is warranted merely because the Tribunal has arrived at an erroneous conclusion on the evidence led by the parties.

49. In my considered view, the arbitral award does not offend any of the grounds envisaged under Section 34 of the Act. The findings of the Tribunal well-reasoned and are based on cogent inference and interpretation of the material on record. Therefore, no grounds for any

interference with the arbitral award are made out in terms of Section 34 of the Act.

50. The petition is accordingly dismissed. No order as to costs.

51. Pending applications, if any, are disposed of.

OM PRAKASH SHUKLA, J.

JULY 30, 2026/*gunn*