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

% **Judgment reserved on: 19 January 2026**
Judgment pronounced on: 2/2/26

\+ O.M.P. (COMM) 249/2023 & I.A. 14284/2025

ZREYAH SEMICONDUCTORS PVT. LTD. .....Petitioner

Through: Mr. Ashish Dholakia, Sr. Adv. with Mr. Gautam Bajaj, Mr. Akash Panwar, Ms. Meghna Jandu, Mr. Lakshay Nagpal & Ms. Saumya, Advs.

versus

OYO HOTELS AND HOMES PVT. LTD. .....Respondent

Through: Mr. Sumant Nayak, Mr. Ankit Premchandani & Ms. Smriti Shukla, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. M/s Zreyah Semiconductors Private Limited has filed the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') aggrieved of the arbitral award dated 03.04.2023.

FACTS

2. The brief facts are that the petitioner is engaged in the business of manufacturing and supply of electronic components. The respondent is a Private Limited Company engaged in the business of managing hospitality establishments. The respondent placed a

purchase order dated 26.09.2019 upon the petitioner (hereinafter 'the PO') for supply of 52360 switches valuing Rs.10,34,89,540/-, inclusive of taxes. Subsequent to the placement of the PO, the parties entered into a vendor agreement dated 23.12.2019 (hereinafter 'the VA'). The PO though prior in time was governed by the terms and conditions of the VA. After the placement of the PO the respondent paid an advance of fifty percent of the invoice value.

2.1 Prior to the placing of the PO, the parties had business transactions wherein the petitioner was assembling switches for the respondent and the entire material was being supplied by the respondent. The scenario changed and pursuant to the PO the petitioner had to procure the components for the switches and five major components were to be procured from vendors specified by the respondent in Schedule 'A' to the VA.

2.2 A dispute arose between the parties due to non-delivery of the switches and arbitration proceedings as provided under the VA were initiated at the instance of the respondent. The arbitrator framed the following issues:

(i) Whether the respondent has committed the breach of the Vender Agreement dated 23.12.2019? If so, its effect.

(ii) Whether the respondent has committed the breach of the P.O.s dated 26.09.2019 and 22.09.2020? If so, its effect.

(iii) Whether the claimant is entitled to the reliefs as claimed in the SOC?

2.3 The arbitrator after considering the pleadings and appreciating the evidence adduced directed the petitioner to deliver 11000 switches

claimed to be ready and to pay Rs.2,84,00,000/- along with interest at the rate of nine percent per annum.

CONTENTIONS

3. Learned counsel for the petitioner relies upon clauses 2.1, 2.3 and 3.1 of the VA to contend that the petitioner was an assembler and not a manufacturer, the arbitrator erred in holding that the petitioner was a manufacturer. Reliance is placed upon the correspondence between the parties to show that the terms and conditions of the Chinese vendors (hereinafter 'the vendors') were provided by the respondent to the petitioner. It is submitted that clause 12.1 of the VA relied upon by the arbitrator deals with liability of petitioner towards employees and not with the nature of relationship between the parties and it was wrongly recorded that there was a principal to principal relationship between the parties.

3.1 It is argued that the arbitrator relying on clause 14.10 concluded that all prior discussions, negotiations and agreements were superseded by the VA, if this is taken to its logical end the PO no longer existed and consequently no liability could be casted upon the petitioner.

3.2 The averment is that some of the components were to be procured from the vendors identified by the respondent and the advance amount was to be paid by the respondent for these procurements. On failure of the respondent to make hundred percent advance payment the components could not be procured and the switches were not supplied. It is stated that there was no fault on the part of the petitioner and the fifty percent advance paid by the

respondent was utilised for procuring components from which 11000 switches were made. Reliance is placed upon the cross-examination of CW-1 Nikhil Ranjan to fortify the contention that prior to the PO the advance payments were made to the vendors.

3.3 The plea is that the delay in supply was not attributable to the petitioner. The revised purchase order for 11000 switches was a unilateral action of the respondent and was not issued at the request of the petitioner. Rather the petitioner refused to accept the revised purchase order on the existing terms and conditions.

4. *Per contra* the interpretation of the arbitrator of the terms of the contract is plausible and a possible second view cannot be a ground for interference under Section 34 of the Act. It is admitted that the petitioner was an assembler and not a manufacturer but had to procure the components.

4.1 The plea taken is that the VA superseded all prior discussions, negotiations, agreements and there was no clause for payment of hundred percent advance to the petitioner. Further that payment of fifty percent advance was merely a goodwill gesture. The cross-examination of RW-4 Rajesh V.K. is relied upon to submit that no advance was to be paid yet the respondent paid fifty percent advance. RW-1 Sujan Nailady admitted in cross-examination that the advance payment to the vendors was to be made by the petitioner.

4.2 The email dated 20.10.2020 is relied upon to substantiate that the petitioner failed to supply 52360 switches and that the revised purchase order was issued at the request of the petitioner.

4.3 Lastly it is submitted that the petitioner failed to comply with

the PO for more than one year and three months and thereafter the termination notice was issued on 06.01.2021.

5. Heard learned counsel for the parties at length and perused the record with their able assistance.

ISSUE

6. The main controversy involved is as to whether the respondent had to pay hundred percent advance to the petitioner for procurement of components.

CLAUSES OF VENDOR AGREEMENT

7. The relevant clauses of the VA are reproduced below:

> "H. Based on the representations made by the Vendor, the Client is desirous of purchasing the Products from the Vendor on the terms and conditions set out in this Agreement.
>
> xxx xxx xxx
>
> 2. **AGREEMENT TO SELL**
>
> 2.1 The Vendor agrees to sell such number of Products as detailed in Schedule-A and the Client agrees to purchase the Products, as may be specified in one or more purchase orders issued by the Client to Vendor in accordance with this Agreement.
>
> xxx xxx xxx
>
> 2.3 The Vendor agrees to purchase the 5 (five) major components for assembling of the Product from the supplier identified by the Client. The Vendor will assemble all the components and supply the product as detailed in Schedule A to this agreement.
>
> xxx xxx xxx
>
> 3.2 Delivery and Delays: Unless, otherwise agreed in writing by the Parties, the Products shall be delivered at the place set out in the Purchase Order. The delivery date

stated in the Purchase Order shall be the agreed delivery date ("Agreed Delivery Date") and time for delivery shall be of the essence, unless Vendor notifies the Client in writing within 5 (five) days of issuance of a Purchase Order that it cannot, using best efforts, meet the delivery date specified in the Purchase Order. In the event that Vendor is unable to meet the delivery conditions under the Purchase Order, the Client may, without prejudice to its rights for refund of the amounts paid and at its sole option, (a) negotiate in good faith for an alternative Agreed Delivery Date, or (b) may cancel the Purchase Order(c)Procure the Products in from a third Party, costs of which shall be borne by the Vendor on account of non performance of obligations.

xxx xxx xxx

3.4 Defects and Returns: The Client will be liable to accept the Products only if the Products comply fully with the specifications set out by the Client and with other requirements of this Agreement. The Client shall notify the Vendor in writing within 15 (Fifteen) business days following the receipt by the Client of such Products of any deficiencies in the Products, including any defects in the Products or of any failure of the Product to comply with the required specifications in the Purchase Order and the Agreement. Where the Client provides such notice to the Vendor, the Vendor shall rectify such deficiencies in the Products within 10 (ten) days from the date of receipt of such notice and if the Vendor fails to rectify such deficiencies, the Client shall be entitled to return the Products and obtain full refund from the Vendor for the same if this is attributable to the assembling of the product or on the component procured from the Vendor's direct source. If the product is deficient due to the failure of the components supplied by the Supplier identified by the Client then the refund will be based on the back to back refund from that Supplier. The Parties in accordance with this Agreement shall mutually resolve any disagreement relating to the deficiencies.

Notwithstanding anything to the contrary, failure by the Client to give notice of or particularize the Deficiencies within the Inspection Period shall not constitute the Client's acceptance of the Products.

xxx xxx xxx

4. **PAYMENT TERMS**

4.1 For the Products purchased under this Agreement, the Vendor shall raise invoices on the Client for the amounts specified in the Purchase Orders executed between the Parties from time to time and in accordance with the terms of this Agreement and the relevant Purchase Order. Subject to Clause 3.2 below, all undisputed invoices shall be paid by the Client within thirty (30) working days of the receipt of the undisputed invoice. In case of any delay then the Client agrees to pay @2% (two percent) for every week of delay. All invoices shall be mandatorily submitted to the Client in hard copy. The Client may, without limiting any other rights and remedies that it may have under applicable law, contract and equity, set off any amounts owed to it by the Vendor against either the amount payable to Vendor by the Client under the subject Purchase Order, or against any other invoice raised under any future. Purchase Orders with Vendor, at the Client's discretion. The Client may ask Vendor to submit necessary documentary proof in order to make the payment of the invoices. If Vendor fails to fulfil its obligations under this Agreement and the relevant Purchase Order, the Vendor may be liable to pay damages to the Client amounting to up to 2% (two percent) per week of the latest invoice raised under this Agreement for such delay, in addition to other remedies available to the Client. Such damages shall be deducted in accordance with this Clause.

4.2 If the Client disputes an invoice raised by the Vendor, it may withhold any disputed sum until the dispute is resolved, but shall pay the undisputed portion as per the terms of this Agreement. The Vendor shall not be

excused from performing its obligations under this Agreement while an invoice is disputed by the Client.

xxx xxx xxx

4.4 The Vendor shall raise an invoice for supply of the Products purchased under the relevant Purchase Order as per invoice rules applicable under GST Laws after appropriate communication of acceptance on the Products is given by the Client to the Vendor. However, in case of continuous supply or provision of Products/ Services, the invoices shall be raised at the end of the agreed payment cycle as per the terms of this Agreement. In addition to the above, if any advance payments apply under this Agreement, Vendor shall issue an advance receipt note ("ARN").”

ANALYSIS

8. From perusal of the VA, it emerges that the respondent on the basis of the representations made by the petitioner desired to purchase products. The petitioner agreed to sell the products detailed in Schedule ‘A’ and in accordance with the terms of the VA. The petitioner agreed to procure five major components from the vendors identified by the respondent.

8.1 As per clause 3.2, the delivery date of the PO was to be agreed and the time for delivery was of the essence. The petitioner was entitled within five days of issuance of the PO to notify the respondent that the delivery date cannot be met. In such circumstances, the respondent without prejudice to the right to seek refund of the amount could negotiate for an alternative delivery date, cancel the PO or procure the product from a third party and the cost was to be borne by the petitioner.

8.2 Clause 3.4 deals with defects and return of the goods. It states that acceptance of the goods by the respondent was subject to compliance of the products with the specifications prescribed. The respondent shall notify the deficiencies in the products within fifteen days of receipt of the goods. The petitioner had to rectify the deficiencies within ten days of receipt of notice. Failure on the part of the petitioner to remove the defects entitled the respondent to return the product and seek refund in case deficiencies were attributable to assembly or to products directly procured by the petitioner from direct sources. In case of defect in a component procured by the petitioner from the vendors identified by the respondent, the refund was based on a back-to-back refund from the vendors. Failure of the respondent to notify the deficiencies within fifteen days of receipt of the goods shall be treated to be acceptance of the product.

8.3 Clause 4 deals with the payment terms. The petitioner subject to clause 3.2 had to raise invoices for the amounts specified in the PO. The payment of undisputed invoices was to be made by the respondent within thirty working days of receipt of the invoices. Clause 4.4 provides that the invoice for the PO shall be issued after communication of acceptance of the products by the respondent.

9. The only possible interpretation of the VA is that payment was to be made by the respondent to the petitioner after acceptance of the goods. The respondent had to point out deficiencies in the products within fifteen days of receipt of goods and thereafter the petitioner had to rectify the defects within ten days. Failure of the respondent to particularise the deficiencies within a period of fifteen days of receipt

of the goods would be deemed to be acceptance of the products. It is not disputed that in the case in hand no products were supplied.

10. In view of the undisputed fact that the petitioner had to procure components and make switches, the issue as to whether the petitioner was a manufacturer or an assembler and whether there was principal to principal relationship between the parties or not loses relevance.

11. The petitioner set up a case that prior to the PO hundred percent advance was being paid by the respondent and the VA would not affect the PO placed prior in time. None of the parties raised an issue that clauses of the VA were not applicable to the PO rather for resolving the dispute submitted to arbitration in consonance with clause 13.1 of the VA. The arbitrator rightly concluded that there was no clause for payment of hundred percent advance payment by the respondent. Moreover, earlier all components were being supplied by the respondent but now for the PO the components were to be procured by the petitioner with the condition that five components were to be procured from vendors specified by the respondent.

12. Be that as it may the petitioner failed to substantiate that even under the PO there was a term or condition providing for payment of hundred percent advance to the petitioner for procurement of components. The finding recorded by the arbitrator suffers from no factual or legal error much less perversity.

13. The emails dated 25.07.2019 and 28.10.2019 sent by the respondent mentioning the terms and conditions between the vendor and the respondent and instructing the petitioner to proceed with procurement of the components as the advance had been paid, does

not come to the rescue to take home the claim that the respondent had to make hundred percent advance payment.

14. It is not the case of the petitioner that 52360 switches were ready or the petitioner was in a position to comply with the PO, rather the non-payment of hundred percent advance by the respondent is stated to be the reason for non compliance of PO. Vide email dated 13.08.2020 the petitioner requested the respondent to pick up the inventory procured for the manufacture of switches which was lying in its stores. There is no mention in the email that the switches as per the PO were ready for delivery.

15. The argument that in view of the clause 14.10, if all prior discussions, negotiations and agreements have come to an end then the PO does not survive, lacks merit. Clause 14.10 is reproduced below:

> "14.10 Entire Agreement. This Agreement and the schedules hereto shall constitute the entire and final statement of the Agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous discussions, communications, negotiations and agreements, written or oral, with respect to the subject matter hereof."

From the reading of the clause it is evident that it does not cancel the purchase orders placed earlier but settle the terms and conditions for supply of material.

16. The challenge to the findings of the arbitrator that the products were not to be procured from the identified vendors and that no advance was to be given to the petitioner, lacks merit. The identification of the vendors for procurement of five components does not lead to the conclusion that hundred percent advance was to be paid

by the respondent. In cross-examination, the CW-1 Nikhil Ranjan stated that the respondent while procuring the components used to make advance payments to the vendors, it was admitted that the petitioner was aware that advance payment was to be made to the vendors. There is no deposition by the witness that the hundred percent advance payment was to be paid by the respondent.

17. The issue as to whether the revised purchase order for 11000 switches was a unilateral decision of the respondent or was issued at the request of the petitioner need not be dilated upon. The dispute referred to the arbitrator arose out of the termination of the PO and for refund of fifty percent advance paid to the petitioner.

18. It cannot be lost sight of that the 11000 switches claimed by the petitioner to be ready were directed by the arbitrator to be supplied to the respondent and while allowing the claim proportionate deduction of value of 11000 switches was made in the award.

SCOPE UNDER SECTION 34 OF THE ACT

19. It is trite law that upon re-appreciation of evidence a possible second view cannot be a ground for interference under Section 34 of the Act unless the conclusion arrived at is perverse. The interpretation of the terms of the contract by the arbitrator in normal course is not to be interfered with. Reliance in this regard be placed on the following decisions of the Supreme Court:

19.1 In **Prakash Atlanta (JV) v. National Highways Authority of India 2026 INSC 76** held as under:-

> "59. (vi) If an arbitral tribunal's view is found to be a possible and plausible one, it cannot be substituted

merely because an alternate view is possible. Construction and interpretation of a contract and its terms is a matter for the arbitral tribunal to determine. Unless the same is found to be one that no fair-minded or reasonable person would arrive at, it cannot be interfered with. If there are two plausible interpretations of the terms of a contract, then no fault can be found if the arbitrator accepts one such interpretation as against the other. To be in conflict with the public policy of India, the award must contravene the fundamental policy of Indian law, which makes it narrower in its application."

19.2 In **Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO) 2025 INSC 1457** held as under:-

"28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited[14], this court held that an award can be set aside under Section 34 on the following grounds: "(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

19.3 In **Parsa Kente Collieries Limited. v. Rajasthan Rajya Vidyut Utpadan Nigam Limited (2019) 7 SCC 236** held as under:-

> "9.1. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court had an occasion to consider in detail the jurisdiction of the Court to interfere with the award passed by the Arbitrator in exercise of powers under Section 34 of the Arbitration Act. In the aforesaid decision, this Court has considered the limits of power of the Court to interfere with the arbitral award. It is observed and held that only when the award is in conflict with the public policy in India, the Court would be justified in interfering with the arbitral award. In the aforesaid decision, this Court considered different heads of "public policy in India" which, inter alia, includes patent illegality. After referring Section 28(3) of the Arbitration Act and after considering the decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , SCC paras 112-113 and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] , SCC paras 43-45, it is observed and held that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if an Arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in 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."

(emphasis supplied)

CONCLUSION

20. The view taken by the arbitrator is plausible and is not vitiated by patent legality, perversity or conflict with the public policy of India. No case is made out for interference by this Court under Section 34 of the Act.

21. The petition is dismissed. Pending application stands dismissed.

AVNEESH JHINGAN,J.

FEBRUARY 02, 2026
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Reportable:- **Yes**