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

% Date of decision: 05.11.2026

\# **CNR No. DLHC010647572025**

\+ FAO (COMM) 249/2025 & CM APPL. 55794/2025

BHARAT HEAVY ELECTRICALS LTD. (TRICHY)

.....Appellant

Through: Mr. Suraj Kumar Singh, Mr. Bharat Singh, Ms. Julie Singh, Advs.

versus

SARR FREIGHT CORPORATION & ANR. .....Respondents

Through: Mr. Rohan Chandra, Mr. Divyam Agarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

AVNEESH JHINGAN, J. (ORAL)

1. The present appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') assailing the judgment dated 17.05.2025 (for short 'the impugned judgment') passed by the District Judge (Commercial Court-03), Patiala House Courts, New Delhi (hereinafter 'the Commercial Court').

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BRIEF FACTS

2. The appellant, Bharat Heavy Electricals Limited (hereinafter 'BHEL') is a public sector undertaking engaged in the manufacture of power boilers and their components. BHEL floated tender (LOG/CCC/14-15/4017E) dated 26.07.2014 for handling and transportation of boiler components from Sone Nagar Railway Siding, Bihar to the Nabinagar, site of M/s Nabinagar Power Generation Company Limited (for short 'NPGC'), the project owner. Sarr Freight Corporation (hereinafter 'the respondent') was the successful bidder and was awarded the work vide Letter of Intent dated 11.09.2014 (for short 'LOI').

2.1 During execution of the work a dispute arose between the parties to the *lis* with regard to non-payment of the outstanding transportation charges by BHEL to the respondent.

2.2 The arbitration invoked by the respondent culminated in the award dated 28.10.2022. The pleaded case of BHEL was that the respondent had subcontracted the work to Anuj Kumar in contravention of Clause 7 of the General Terms and Conditions of Contract (for short 'GCC'). BHEL further pleaded that it had paid Rs.18,30,220/- to the respondent towards the work executed. Subsequently, Anuj Kumar approached NPGC alleging non-payment of dues by the respondent. On 31.03.2016, NPGC paid Rs.19,80,849/- to Anuj Kumar and adjusted the amount against the running bills of

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BHEL. The arbitrator held that BHEL had failed to establish that the work was subcontracted to Anuj Kumar. It was observed that Anuj Kumar was engaged in limited capacity. The respondent was awarded Rs.13,73,260/- as outstanding transportation charges, Rs.1,83,022/- for security deposit, Rs.1,50,000/- towards earnest money deposit and Rs.41,000/- for bank guarantee along with interest @8% per annum till actual payment. The counter claims of BHEL were rejected.

2.3 The Commercial Court vide the impugned judgment dismissed the objections filed by BHEL under Section 34 of the Act. Hence, the present appeal.

SUBMISSIONS OF THE PARTIES

3. Learned counsel for BHEL contends that the Commercial Court failed to consider the relevant documents on record and erroneously dismissed the objections observing that the arbitrator had examined the evidence adduced by the parties. Reliance is on ***M/s. Divyam Real Estate Pvt. Ltd. v. M/s. M2K Entertainment Pvt. Ltd.***, O.M.P. (COMM) 162/2020 decided on 22.05.2024 and ***I-Pay Clearing Services (P) Ltd. v. ICICI Bank Ltd.,*** (2022) 3 SCC 121 to contend that an award is liable to be set aside where material evidence is ignored.

3.1 The submission is that Clause 7 of the GCC prohibited the respondent from subcontracting the work without prior written approval of BHEL yet the respondent subcontracted the entire work to

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Anuj Kumar. Reliance is placed on the letter dated 15.12.2014 written by Anuj Kumar to BHEL, emails dated 23.09.2014, 10.10.2014 and 23.11.2014 sent by the respondent to Anuj Kumar, the letter dated 15.01.2016 issued by NPGC and the work order dated 22.09.2014 issued by the respondent in favour of Anuj Kumar, to buttress the submission.

4. *Per contra*, the impugned judgment is defended. The contention is that the scope of interference under Section 37 of the Act is limited. The Court cannot sit in appeal over the award or the impugned judgment. The well-reasoned award taking a plausible view was upheld by the Commercial Court under Section 34 of the Act and calls for no interference.

5. Heard learned counsel for the parties at length. Though written submissions are on record, no contentions other than those noted above were pressed.

ANALYSIS

6. It is settled law that in an appeal under Section 37 of the Act, the Court is only required to examine whether the exercise of jurisdiction under Section 34 of the Act was within the four corners of the provision. Reference in this regard be made to the following decisions of the Supreme Court:

6.1 In ***AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai***,

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(2025) 5 SCC 321 it was held:

> "29. The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, para 52] The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds specified in Section 34 and the court cannot undertake an independent assessment of the merits of the award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the Arbitral Tribunal. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14 : (2019) 2 SCC (Civ) 293; Konkan Railway Corpn. Ltd. v. Chenab Bridge Project, (2023) 9 SCC 85, para 25 : (2023) 4 SCC (Civ) 458.] The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceeding its scope. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14 : (2019) 2 SCC (Civ) 293; Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218, para 26.]"

6.2 In ***SEPCO Electric Power Construction Corpn. v. GMR Kamalanga Energy Ltd.,*** (2026) 2 SCC 542 it was held:

> "72. The decision in MMTC [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , as referenced recently by a coordinate Bench of this Court in Reliance Infrastructure Ltd. [Reliance Infrastructure Ltd. v. State of Goa, (2024) 1 SCC 479 : (2024) 1 SCC (Civ) 412] , unfolds in an involute manner that a court under Section 37 of the 1996 Act can only determine as to whether the court concerned under Section 34 has not travelled beyond the parameters of the scope therein. No independent evaluation is permitted on the merits of the award."

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(Emphasis supplied)

7. The contention of learned counsel for BHEL that the Commercial Court ignored material evidence on record while upholding the finding that there was no subcontracting between the respondent and Anuj Kumar, lacks merit. The Commercial Court held that the finding returned by the arbitrator was supported by cogent reasons. The arbitrator upon consideration and appreciation of the evidence recorded a factual finding that the arrangement between the respondent and Anuj Kumar was not of subcontracting. The engagement of Anuj Kumar by the respondent in a limited capacity to provide transportation vehicles was permissible under the terms and conditions agreed between the parties.

8. The letters, emails and work order relied upon by learned counsel for BHEL to establish that the entire work awarded to the respondent was subcontracted to Anuj Kumar are not substantiating the contention.

8.1 The letter dated 15.12.2014 issued by Anuj Kumar to BHEL sought release of payment to the respondent for the work awarded and contains nothing to prove that the work was subcontracted to Anuj Kumar.

8.2 Learned counsel for BHEL pressed into service the email dated 23.09.2014, sent by the respondent to Anuj Kumar wherein it was stated that the work order for the subject work was attached. However,

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no details of the work order were mentioned nor the attachment was produced.

8.3 The e-mail dated 10.10.2014, addressed by the respondent to Anuj Kumar pertained to the loading of trucks and is not evidence of the awarded work having been sub-contracted.

8.4 The email dated 23.11.2014 sent by the respondent to Anuj Kumar was for taking up the issue of pending payments with the Accounts Department.

8.5 The letter dated 15.01.2016 issued by NPGC to BHEL pertains to the issue of non-payment to Anuj Kumar and requests BHEL to resolve the same.

8.6 Learned counsel for BHEL relied upon the work order dated 22.09.2014 issued by the respondent in favour of Anuj Kumar. The subject of the work order refers to the handling and transportation of panels, headers and boiler components etc., by road from Sone Nagar (Bihar) Railway Siding to NTPC. It is pertinent to note that the entire work order was not produced. Only the first page of the work order was placed on record which does not advance the case of BHEL.

9. The law is well-settled that the scope of interference under Section 34 of the Act is limited and the Court cannot reappreciate the evidence or substitute its own view for the plausible view taken by the arbitrator. In the present case, no ground is made out to interfere with

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the plausible view taken by the arbitrator. Reference in this regard be made to the following decisions of the Supreme Court:

9.1 In ***Prakash Atlanta JV v. National Highways Authority of India,*** 2026 INSC 76 it was held:

> "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."

9.2 In ***Punjab State Civil Supplies Corporation Limited & Anr. V. M/s Sanman Rice Mills & Ors***., 2024 INSC 742 is was held:

> "In paragraph 11 of Bharat Coking Coal Ltd. v. L.K. Ahuja, it has been observed as under:
>
> "11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be

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Signing Date:06.11.2026
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> said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."
>
> (Emphasis supplied)

10. In the impugned judgment the plausible view taken by the arbitrator after considering the evidence adduced was rightly upheld. The evidence even now relied upon by learned counsel for BHEL to contend that there was a violation of the contractual terms by subcontracting the awarded work to Anuj Kumar does not substantiate the case set-up by BHEL. There is no factual or legal error much less perversity in the impugned judgment.

11. It is a trite law that the quality of evidence to be considered falls within the exclusive domain of the arbitrator. Reference in this regard be made to the following decisions of the Supreme Court:

11.1 In ***Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd***., (2019) 7 SCC 236 it was held:

> "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

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Signing Date:06.11.2026
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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."

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11.2 In ***Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.***, (2018) 3 SCC 133 it was held:

> "51. Categorical findings are arrived at by the Arbitral Tribunal to the effect that insofar as Respondent 2 is concerned, it was always ready and willing to perform its contractual obligations, but was prevented by the appellant from such performance. Another specific finding which is returned by the Arbitral Tribunal is that the appellant had not given the list of locations and, therefore, its submission that Respondent 2 had adequate lists of locations available but still failed to install the contract objects was not acceptable. In fact, on this count, the Arbitral Tribunal has commented upon the working of the appellant itself and expressed its dismay about lack of control by the Head Office of the appellant over the field offices which led to the failure of the contract. These are findings of facts which are arrived at by the Arbitral Tribunal after appreciating the evidence and documents on record. From these findings it stands established that there is a fundamental breach on the part of the appellant in carrying out its obligations, with no fault of Respondent 2 which had invested whopping amount of Rs 163 crores in the project. A perusal of the award reveals that the Tribunal investigated the conduct of the entire transaction between the parties pertaining to the work order, including withholding of DTC locations, allegations and counter-allegations by the parties concerning installed objects. The arbitrators did not focus on a particular breach qua particular number of objects/class of objects. Respondent 2 is right in its submission that the fundamental breach, by its very nature, pervades the entire contract and once committed, the contract as a wholestands abrogated. It is on the aforesaid basis that the Arbitral Tribunal has

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> come to the conclusion that the termination of contract by Respondent 2 was in order and valid. The proposition of law that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinised as if the Court was sitting in appeal now stands settled by a catena of judgments pronounced by this Court without any exception thereto."
>
> (Emphasis supplied)

12. In view of the above, the appeal is dismissed. The award dated 28.10.2022 and the impugned judgment are upheld.

13. Pending application also stands dismissed.

AVNEESH JHINGAN, J

SHAIL JAIN, J

NOVEMBER 5, 2026
'JK'

Reportable: **Yes**

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