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

% **Judgment reserved on: 12.02.2026**
Judgment pronounced on: 18.02.2026

\+ O.M.P. (COMM) 233/2025 & I.A. 15455/2025
STEEL AUTHORITY OF INDIA LIMITED .....Petitioner

Through: Mr. Rajshekhar Rao, Sr. Adv. with Mr. Samaksh Goyal, Adv.

versus

PRIMETALS TECHNOLOGIES INDIA PVT. LTD. .....Respondent

Through: Mr. Rajesh Markanda, Mr. Keshri Kumar & Mr. Saurav Markanda, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') challenging the arbitral award dated 28.08.2024 read with the addendum dated 22.11.2024.

FACTS

2. The brief facts are that the parties to the *lis* entered into a contract on 03.03.2008 for setting up a Hot Dip Galvanising Line (HDGL) and Electrolytic Cleaning Line (ECL). The contract amount was Rs.223,78,09,443/- for HDGL and Rs.67,77,77,720/- for ECL and was to be executed within twenty-eight months. The projects were successfully commissioned by the respondent on 26.06.2018 and 20.02.2017 respectively. The final acceptance certificates were issued on 05.05.2023 and 15.02.2019 respectively.

2.1 The contract provided for a minimum guaranteed CENVAT

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credit (for short 'MGCC') to be passed on to the petitioner. Deduction for shortfall in MGCC from the net contract value led to the invocation of arbitration proceedings.

2.2 The Arbitral Tribunal (for short 'tribunal') decided the issue against the petitioner relying upon the decision of this court in **Steel Authority of India Limited v. M/s Primetals Technologies India Pvt. Limited (formerly known as Siemens VAI Metals Technologies Pvt. Ltd.) 2020 SCC OnLine Del 2496.** It was considered that the issue has been finally decided *inter se* the parties by learned single judge of this court and the decision was upheld by the Division Bench and the SLP was dismissed.

CONTENTIONS OF PETITIONER

3. Learned senior counsel for the petitioner contends that claim no.1 relating to the deduction made on account of shortfall in MGCC is barred by limitation. It is submitted that the cause of action arose on expiry of forty-five days after submission of the invoices dated 03.04.2017, 10.09.2018 and 30.10.2018 but the arbitration proceedings were invoked on 02.03.2022 i.e. beyond three years. The argument is that clause 12.1.6 of the General Conditions of Contract (for short 'GCC') provides that payment was to be made within forty-five days of submission of the invoices and thereafter the respondent had cause of action.

3.1 Claim no. 2 pertaining to reimbursement of excise duty is contested to be barred by limitation in view of clause 12.1.6 of the GCC. It is submitted that payment of the invoices issued between 28.11.2009 and 07.12.2016 was to be made within forty-five days and

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thereafter grievance if any arose however, the arbitration proceedings were invoked after expiry of three years on 02.03.2022.

3.2 The contention is that in terms of clause 14.5.6 of the GCC in the eventuality of a shortfall in MGCC the petitioner was entitled to deduct the corresponding amount from the net contract value to compensate for the shortfall. Lastly, it is submitted that the tribunal ignored the terms of the contract in holding that the deduction could have been made either from the gross or the net contract value.

ARGUMENTS OF RESPONDENT

4. Learned counsel for the respondent defends the impugned award and submits that neither claim no. 1 nor claim no. 2 is barred by limitation. Vis-a-vis claim no.1 it is argued that the cause of action arose upon deduction of the amount on 09.03.2019 and not upon submission of the invoices. Qua claim no.2 it is emphasized that till 14.02.2022 the reimbursement of excise duty was under active consideration by the petitioner.

4.1 The submission is that the tribunal while interpreting clause 14.5.6 of the contract relied upon the judgment of this Court in **Steel Authority of India v. Primetals Technologies India Pvt. Ltd.** (supra) wherein it was held that deduction on account of shortfall in MGCC was to be made from the gross contract price and not from the net contract value**.** It is argued that the decision of this court on the issue of deduction on account of shortfall in MGCC attained finality *inter se* the parties. It is contended that the view taken is the only possible interpretation of the terms of the contract.

5. Heard learned counsel for the parties at length, no submission

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other than those noted above was pressed.

RELEVANT CLAUSES

6. Before proceeding further it would be fruitful to quote the relevant portions of clauses 12 and 14 of the GCC dealing with Terms of Payment and Taxes and Duties respectively, as well as the note in Appendix-I:

> **"12. Terms of payment**
>
> 12.1.6. The Employer shall release the payment to the Contractor within 45 days from the date of receipt of the complete and correct invoices and relevant documents.
>
> 12.1.7. All interim/ progress payments shall be regarded as payment is by way of advance against the final payment only and not as payment for work completed and shall not preclude defective/imperfect/incomplete facilities to be removed. It will not be considered as an admission by the Employer of the due performance of the contract, or any part thereof by the Contractor nor shall it preclude, determine or affect in any way the powers of the Employer under these conditions or in any way vary or affect the contract.
>
> **14 Taxes & Duties**
>
> 14.5.6. Contractors to indicate Minimum Guaranteed CENVAT Credit that can be availed by the Employer against materials supplies for subject work. In case of any shortfall in CENVAT Credit from that Guaranteed by the Contractor the shortfall shall be deducted by the Employer from the Contractor. In case of excess of CENVAT, 50% of the excess CENVAT amount will be paid.
>
> **Note:** All the necessary documents for availing the CENVAT credit shall be furnished, else balance shortfall shall be deducted from the contract price item serial no.12 above."

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ANALYSIS

7. Clause 12.1.6 of the GCC provides that payment of invoices is to be made within a period of forty-five days of submission of the invoices. The bone of contention is not of non-payment of the invoiced amount within the stipulated time under the GCC but the deduction made towards the shortfall in MGCC. The tribunal rightly held that the cause of action vis-a-vis claim no.1 accrued on 09.03.2019 when the shortfall in MGCC was deducted from the net contract value.

8. The argument that the claim for reimbursement of excise duty is time barred, is ill-founded. Albeit, the invoices were submitted between 28.11.2009 and 07.12.2016 but the conciliation proceedings between the parties continued till 14.02.2022 when the petitioner refused to reimburse the excise duty. The right to invoke arbitration accrued only upon failure of the conciliation proceedings in February, 2022 and the invocation of arbitration on 02.03.2022 was within limitation.

9. The tribunal considered clause 14.5.6 as well as the note in Appendix-I. The clause stipulates deduction for shortfall in MGCC and that in case of excess CENVAT credit, 50% of the excess amount would be paid to the respondent. The clause does not specify the contract value from which the deduction is to be made. However, the note is unambiguous that the shortfall in MGCC shall be deducted from the contract price mentioned at serial no.12 of the chart i.e. the gross contract price including the CENVAT credit. This very issue

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with regard to the similar clause of MGCC and an identical note was the subject matter before this court in **Steel Authority of India v. Primetals Technologies India Pvt. Ltd. (supra).** It was held that the deduction for shortfall in MGCC is to be made from the contract price mentioned in the note. The note in that case as well as the relevant portion of the judgement is reproduced below:

> "Note: All the necessary documents for availing the CENVAT credit shall be furnished, else balance shortfall shall be deducted from the contract price item serial no.12 above.
>
> 17. Upon a perusal of the relevant clauses, more specifically Clause 14.5.6 of the contract, I find that the contract specifically envisages that in case of any shortfall in the CENVAT credit as against the minimum guaranteed CENVAT Credit, the same shall be deductible from the amount payable to the contractor. However, since this clause does not specify the amount from which the said shortfall would be deductible, the answer to this quandary lies in the note at the bottom of the summary price schedule appended to the contract. A plain reading of this note makes it evident that the only logical interpretation of the phrase 'contract price' for the purpose of Clause 14.5.6 of the contract is that any deduction on account of shortfall viz. the guaranteed CENVAT credit had to be made from the gross contract price at serial No. 12 and not from the net contract price at serial No. 15.
>
> 18. In the light of this position, I find no merit in Mr. Sethi's primary contention that the sum of Rs. 5,01,47,631/- towards the admitted shortfall in CENVAT credit was required to be deducted from the net contract price mentioned at serial no. 15 of the summary price schedule and not from the gross

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Signing Date:18.02.2026 15:31:55

contract price mentioned at serial no. 12 thereof. In fact, the petitioner's submission that a deduction from the gross contract price at serial No. 12 also contemplated deduction from the net contract price at serial no. 15 is in the teeth of the plain language employed in the contract.

19. I find that the learned Arbitrator has, after considering the summary price schedule as also the terms of the contract, come to a categorical conclusion that the deduction could be made only from the gross contract price referred to at serial no. 12. Thus, I have no hesitation in concurring with the findings of the learned Arbitrator that any shortfall in the CENVAT credit payable by the respondent, could be recovered only by making requisite deductions from the gross contract price mentioned at serial No. 12 of the summary price schedule……..”

10. The contention that in case of a shortfall in MGCC the petitioner was entitled to make a deduction from either the gross or the net contract value is noted to be rejected. The language of the note in Appendix-I clearly stipulates that deduction is to be made from the gross contract value. The gross contract price pertains to the work done and is inclusive of taxes and duties. The net contract price is arrived at after deducting MGCC and remains unaffected in spite of shortfall in MGCC. The non-reimbursed shortfall in MGCC remains with the petitioner. If deduction were to be made from the net contract value, the effect would be that on the one hand the shortfall in MGCC would not be reimbursed and on the other hand the net contact value would be reduced by deducting shortfall in MGCC which would not be permissible in the absence of specific conditions in the contract.

10.1 The position can be demonstrated by way of an example. The

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Signing Date:18.02.2026 15:31:55

gross contract value inclusive of taxes and duties (as on the base date) was Rs.1,50,000/-. The MGCC component was Rs.35,000/-. The net contract value was Rs.1,15,000/-. In the event of a shortfall of Rs.5,000/- in MGCC, the respondent will reimburse Rs.30,000/- instead of Rs.35,000/-. The net contract value remains Rs.1,15,000/- and the non-reimbursed amount of Rs.5,000/- will remain with the petitioner.

SCOPE UNDER SECTION 34

11. The scope of interference under Section 34 of the Act is well defined, the court can interfere only on the grounds of patent illegality, perversity or if the award is against the public policy of India as mentioned under Section 34 of the Act. No interference is to be made merely because another view is possible. Reference in this regard be made to the following decisions of the Supreme Court:

11.1 In **Ramesh Kumar Jain vs. Bharat Aluminium Company Limited 2025 SCC OnLine SC 2857** it was 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

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Signing Date:18.02.2026 15:31:55

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."

11.2 In **Prakash Atlanta (JV) v. National Highways Authority of India 2026 INSC 76** it was 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."

11.3 In **Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar, (2022) 4 SCC 463** it was held as under:

"45. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or

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Signing Date:18.02.2026 15:31:55

> perverse. Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one."

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

> "9.1 ..... 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

12. The tribunal has considered the clauses of the GCC and the

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conclusion arrived at is a plausible one, more so when a similar view has been upheld by this court and the SLP has been dismissed.

13. The view taken by the tribunal 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.

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

AVNEESH JHINGAN, J.

FEBRUARY 18, 2026
Ch

Reportable:- **Yes**

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