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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 01.11.2025**+ **O.M.P. 379/2008 & I.A. 5684/2019, I.A. 8776/2019**

UNION OF INDIA

.....Petitioner

Through: Mr. Bhagwan Swaroop Shukla  
(CGSC) with Mr. Pradyumn Singh,  
Mr. Yash Baraliya, Mr. Abhishek  
Mishra, Advs. with Mr. Hemraj  
Meena (Deputy CMM Railway)

versus

M/S JAIN STEEL INDUSTRIES &amp; ANR.

.....Respondents

Through: Mr. Ashish Khorana, Adv.

**CORAM:****HON'BLE MR. JUSTICE JASMEET SINGH**: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking to challenge the Arbitral Award dated 17.04.2008 passed in case titled "*M/S Jain Industries & Anr. v. Union of India & Ors.*"
2. The facts of the case are that Northern Railway (respondent before the Arbitrator, hereinafter "**petitioner**") floated a tender bearing No. 293/KG/Con/91041003, due on 10.08.2004, for purchase of steel with specification ISHB 150 X 150mm conforming to IS: 2062/99 Grade-A



@ 30.6 Kg per Meter (“*steel*”)

3. The M/s Jain Steel Industries (claimant before the Arbitrator, hereinafter “*respondent*”) submitted the offer in pursuance to the above tender, which was accepted by the petitioner. Accordingly, a Purchase Order dated 02.11.2004 for supply of steel was placed with the respondent. The details of the purchase order read as under:

**PURCHASE ORDER NO. AND DATE**

*KG/CON/91041003500469 dated 02.11.04*

*Rate Rs. 25000 PMT +Excise Duty @ 12%+2% cess on excise Duty + Sales Tax @ 2% + freight @ Rs. 900/- MT.*

**QUANTITY**

*3158MT*

**VALUE OF P.O.**

*Rs. 9,32,27,949.60 (All inclusive)*

**DELIVERY PERIOD**

*To commence within 5 days of receipt of order and to be supplied as per schedule given below:-*

- i) 1500 MT-Oct,04 to Dec, 04*
  - ii) 800 MT-Jan, 05 to March, 05.*
  - iii) 858MT-April,05 to June,05*
4. The said purchase order dated 02.11.2004 initially required the supply of the first lot of 1500 MT by 31.12.2004. However, *vide* an amendment dated 28.12.2004, the delivery period was extended up to 31.03.2005, thereby stipulating that a total quantity of 2300 MT (1500 MT + 800 MT) of steel was to be supplied by 31.03.2005.
5. The respondent further issued a letter bearing No. KG/CON/91041003



dated 17.02.2005 clarifying that the extension of delivery period was granted subject to denial clause which provided that no increase in prices would be permissible on account of any statutory increase in or fresh imposition of custom duty/excise duty/sales tax. The letter dated 17.02.2005 which contains the said Denial Clause reads as under:

Office of the  
Chief Materials Manager/Const.,  
Kashmere Gate, Delhi-110006

जारी 17 FEB 2005

No. KG/CON/91041003

M/s JAIN Steel Industries  
P.B. No. 28, G.T. Road  
Mandi Gobindgarh - 147301 (Punjab)

Chief Administrative Officer/Const.  
N. Rly. K. Gate, Delhi-110006

Sub: This office supply order of evon No. placed against DGS&D No. KG/CON/91041003-  
SAO/CSA/ -J00469 dt. 02-11-04.

Ref: Your letter No. 2005/CSA/USRL/1000/Prakash Amlal dt. 12/01/05.

Sir,

Your attention is invite to the above cited S.O. according to which suppliesought to have been completed by on or before 31-12-04. In spite of the fact that the time for delivery of the stores as stipulated in the S.O. is deemed to be the essence of the contract, the balance quantity is still outstanding even though the date of delivery has expired on 31-12-04.

2. Although not bound to do so, I hereby extend the delivery date upto 31-03-05 for the schedule of 15000. You are requested to note that in the event of your failure to deliver the stores within the delivery period as hereby extended the contract shall be cancelled and the balance quantity of the stores shall be purchased at your risk and cost.

3. The above extension of delivery date will also be subject to the following further conditions:-

A. That no increase in price on account of any statutory increase in or fresh imposition of customs duty/Excise Duty/Sales Tax or on account of any other Tax or duty livable in respect of the subject stores specified in the said S.O. which takes place after 31-12-04 shall be admissible on such of the said stores as are delivered after the said date.

B. That notwithstanding any stipulation in the contract for increase of price on any other ground no such increase which takes place after 31-12-04 shall be admissible on such of the stores as are delivered after the said date.

C. But, nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, sales tax or on account of any other ground which takes place after the expiry of the above mentioned date viz 31-12-04.

4. You are requested to note that notwithstanding the extension in delivery period (if accepted by you) the time hereby extended to supply the stores shall be deemed to be the essence of the contract and failure on your part to supply the stores by the extended time shall entitle the purchaser to cancel the contract at your risk and cost without further notice or opportunity.

5. All other terms and conditions of the contract will remain unaltered. Please acknowledge the receipt.

Yours faithfully,  
Sr. Materials Manager/Const.  
N. Rly. K. Gate, Delhi-110006

FOR & ON BEHALF OF THE PURCHASERS NAMED IN THE SCHEDULE



6. Thereafter, the respondent sought a modification of purchase order *vide* letter dated 04.03.2005, for allowing the excise duty at 16.32% (16% + 2% cess) as opposed to 12% + 2% cess, mentioned in the original purchase order. The same was done in light of the budget announced on 28.02.2005 wherein the excise duty rate had increased from 12% + 2% cess to 16% + 2% cess. The petitioner declined to entertain the said request in the view of Clause No. 7.1 of Instructions to Tenderers.
7. Subsequently, the bills were issued by the petitioner with 12.24% excise duty as opposed to 16.32%. The same was pointed out by the respondent through letter dated 21.03.2005 and amendment of the rate of excise duty was sought citing Clause No. 3.1 of the Special Conditions of the Contract (“*SCC*”).
8. The petitioner again rejected the said request of the respondent citing the clarification dated 17.02.2005 issued by the petitioner. Since the increased excise was not paid, the respondent invoked arbitration as per the terms of Clause No. 2900 of the Indian Railway Standard Conditions of Contract.
9. The Arbitrator was appointed on 23.03.2006. After hearing the parties, the Arbitrator passed the impugned Award, granting the following claims-



S.N.	Description of claims	Amount of Claimed	Amount awarded
1.	Statutory hike in Central Excise Duty and Corresponding Sales Tax	Rs.15,10,912.00	Rs.15,10,912.00
2.	Price Variation Amount	Rs.3,88,009.00	Rs.3,88,009.00
3.	Imposition of Service Tax.	Rs.63,887.00	Rs.63,887.00
	Interest @ 24%. PA w.e.f. 1.4.2005 till the date of realization of claim.	Interest @ 24% P.A. w.e.f. 1.4.05 till the date of realization of claims	18% interest per annum on Rs.19,62,,808 w.e.f 1.4.2005 till actual date of payment of claim
	Total	Rs.19,62,808 + interest @ 24% PA. w.e.f. 1.4.2005 till date of realization	Rs.19,62,808 + interest @ 18% PA. w.e.f. 1.4.2005 till actual date of payment of claims.

10. The petitioner has only challenged grant of excise duty and the interest @18% p.a.
11. Mr. Bhagwan Swaroop Shukla, learned CGSC appearing on behalf of the petitioner, has argued the objections and has also handed over written submissions in Court today. The same are taken on record.
12. Mr. Shukla, argues that in terms of Clause No. 7.1 of the Instructions to Tenderers, the Arbitrator has failed to appreciate that the rates quoted by the respondent in their offer were firm and final as there was no mention of any statutory variation in the offer of the respondent. The Clause No. 7.1 of the Instructions to Tenderers read as under:

*“Clause 7. Excise Duty. sub clause 7.1 is as under: - "If reimbursement of excise duty is intended as extra over the*



*quoted price, the supplier must specifically say so. In the absence of any such stipulation, it will be presumed that the prices quoted are firm and final and no claim on account of excise duty will be entertained as per the opening of tenders.”*

13. He states that there was no agreement for payment of excise duty to statutory variation and in the original offer, the statutory variation was not incorporated in the Purchase Order and hence, no payment due to increase in excise could have been granted in the favour of the respondent.
14. He further states that Clause No. 7.1 of the Instructions to Tenderers is clear in this regard. If any reimbursement of excise duty was intended as extra payment over the quoted price, the respondent was required to specifically say so. Since the respondent has neither said so in the offer nor anywhere else, the Arbitrator exceeded his jurisdiction in terms of the Contract by awarding increased excise duty.
15. It is also submitted that Clause No. 3.1 of the SCC, which allows the payment of increased excise duty due to statutory variation can only be applicable if asked specifically by the respondent in their original offer. The respondent had not specifically asked for any variation of excise duty in the original offer, hence the same was not part of the Contract and consequently, could not have been granted by the Arbitrator. Reliance has been placed on *ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705*.
16. Additionally, the learned CGSC states that the award of interest @ 18% is excessive and could not have been granted. For the same he relies on the judgment of *State of Rajasthan v. Nav Bharat Construction Co.,*



**(2006) 1 SCC 86.**

17. Mr. Ashish Khorana, learned counsel for the respondent supports the Award.
18. Mr. Khorana, learned counsel, states that neither in the tender enquiry not in the contract there is a prohibition clause not there is a negative covenant that the respondent is not entitled to the statutory increases. He places reliance on Clause No. 3.1 of the SCC and argues that Clause No. 3.1 makes it evident that any change in excise duty which is a direct result of statutory variation which are made after the contract has been signed shall be allowed to the extent of quantum of excise duty actually paid by the respondent.
19. He further states that the petitioner has not denied that there was an increase in excise duty due to statutory variations and there was no negative covenant in the Contract. The finding of the Arbitrator is correct and plausible and therefore, the Arbitrator's interpretation of terms cannot be challenged.
20. On the point of interest, learned counsel submits that the respondent has claimed the interest by their notice dated 03.12.2006 on the amount due. The respondent claimed the interest at 24% per annum but the arbitrator allowed the same at 18% per annum which is in line with Section 31(7)(b) of the 1996 Act as the Arbitrator is competent to award interest at 18% per annum. Reliance has been placed on *Indian Oil Corporation Ltd. v. Indian Carbon Ltd., 1988 SCC Online SC 126.*
21. I have heard the learned counsels of the parties and perused the material on record.



22. Before delving into the facts of the present case it is important to highlight the scope of Section 34 of the 1996 Act. The principles with regard to limited scope of interference by a Court under section 34 of 1996 Act against the Arbitral Award have been reiterated time and again by the Hon'ble Supreme Court and this Court. Reliance is placed on *Consolidated Construction Consortium Ltd. v. Software Technology Parks of India*, (2025) 7 SCC 757, wherein the Hon'ble Supreme Court observed as under: -

*“23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral Award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral Award. An arbitral Award is not liable to be interfered with only on the ground that the Award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral Arbitrator. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral Arbitrator is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond*



*Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The Award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.”*

23. In the present case, the Arbitrator under Claim No. 1 has held as under:

*“Reasons for Award*

*Claim No.-1 Statutory hike in Central Excise Duty and corresponding Sales Tax ;-*

*The Excise Duty was raised from 12.24% to 16.32% w.e.f 1.3.2005. As per clause 3.1 under Clause 3 of special conditions to contract, any change in excise duty upward/ downward as a result of any statutory variation taking place within contract period shall be allowed as per contract provision, to the extent of quantum of Excise Duty actually paid by the Supplier. As per item-6 of Annexure to Purchase Order, Excise Duty was very much payable and hence change in duty is also very much payable. Other clauses like 3.2, 3.3 & 7.1 do not nullify clause 3.1. Clause 7.1 states that if reimbursement of Excise Duty is intended as extra over the quoted prices, the Supplier must specifically say so. It is already said so in the Purchase Order that excise duty will be payable extra and hence Clause 7.1 goes to support clause 3.1”*

24. The Arbitrator has relied on Clause No. 3.1 of the SCC for grant the



increased excise duty. The same reads as under:

*“Clause 3.1 Any change in Excise Duty upward / downward as a result of any statutory variation in Excise Duty taking place within contract period shall be allowed as per contract provision. to the extent of quantum of Excise Duty actually paid by the supplier. Similarly, in case of downward revision in Excise Duty, the actual quantum of reduction of Excise Duty shall be passed on to the purchaser by the supplier. All such adjustments shall include all relief, exemption, rebates, concessions etc., if any, obtained by the supplier”*

25. A perusal of Clause No. 3.1 clearly shows that any change in the rate of excise duty being levied during the continuance of the Contract was to be paid by the petitioner.
26. Item 6 of the Annexure to the Purchase Order dated 02.11.2004 reads as under:

*“12% + 2% cess extra against documentary evidence. The firm has taken into account entire credit on Inputs available under CENVAT scheme. The firm will however pass on such additional duty set off as may become available in respect of inputs used in manufacture of final products on the date of supply by way of reduction of price and advise the purchaser accordingly.”*
27. It is evident from the bare reading of the said Item 6 that the excise duty was payable. Therefore, it is clear that any change in excise duty was also payable.
28. To my mind, the reasoning of the Arbitrator is correct and plausible.



The Arbitrator carefully examined and appreciated the said Clause No. 3.1 of the SCC and Item 6 of the Annexure to the purchase order and arrived at the finding that any increase in excise duty shall be paid and borne by the petitioner. Moreover, Clause No. 7.1 of the Instructions to Tenderers cannot be relied on as they are general in nature.

29. In the view of my analysis above, I am in agreement of the findings of the Arbitrator that the excise duty is payable by the petitioner and therefore the change in excise duty is also payable by the petitioner. Hence, reliance placed on Clause No. 3.1 of the SCC is reasonable.
30. This Court has held that if the view is reasonable and plausible, the court need not interfere under Section 34 of the 1996 Act.<sup>1</sup>
31. For the said reasons, as far as claim No. 1 is concerned, I find no infirmity in the findings of the Arbitrator. The grant of the same is upheld.
32. As regards the interest is concerned, Mr. Khorana, learned counsel, on instructions, states that the respondent is agreeable to reduction of interest @12% per annum.
33. Reliance is placed on *Shakti Nath v. Alpha Tiger Cyprus Investment No. 3 Ltd., (2020) 11 SCC 685*, wherein the interest was modified with the consent of the parties. The relevant paragraph reads as under:

*“4. After having heard the counsel appearing for all the parties, the challenge to the ICC award is hereby rejected. With respect to the amount awarded towards interest and penal interest under the award, the same has been modified by*

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<sup>1</sup> *Netaji Subhash Institute of Technology v. M/S Surya Engineers & Another passed in OMP (COMM) 48/2020 & connected, on 19.11.2024. (ref. paragraph No. 89).*



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*consent of parties, as a prudent commercial decision...”*

34. In the view of the above, taking the statement of Mr. Khorana on record and with the consent of the respondent, claim No. 4 is modified and the respondent shall be entitled to interest @12% p.a. from 01.04.2005 if the amount is paid by the petitioner within 5 weeks from today.
35. The petition is disposed of in aforesaid terms along with applications, if any.

**JASMEET SINGH, J**

**NOVEMBER 1, 2025/sp**

*(Corrected and released on 19.11.2025)*