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

Date of decision: 02nd JULY, 2025

IN THE MATTER OF:

\+ **FAO (COMM) 89/2023**

NATIONAL PROJECT CONSTRUCTIONS CORPORATION LTD
.....Appellants

Through: Mr. Rajat Arora & Ms. Mariya Shahab, Advs.

versus

M/S S S SHARMA AND COMPANY .....Respondent

Through: Mr. S. C. Juneja, Ms. Hema Malik & Mr. Sanjay Mishra, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 assails the Order dated 20.12.2022 passed by the learned Additional District Judge, South-01, Saket (hereinafter referred to as "**ADJ**") in CS No. 146/2018 whereby the application filed by the Appellant, under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "**Act** ") challenging the Arbitral Award dated 15.10.2003, was dismissed.

2. The facts as stated in the petition are as follows

   a. National Project Construction Corporation Limited (hereinafter referred to as the Appellant) is a government company that was

awarded a contract by Sardar Sarovar Narmada Nigam Limited (hereinafter referred to as SSNNL/ principal employer) for the construction of four (4) aqueducts at rivers Deo, Karad, Mesari and Kun.

b. The impugned judgment pertains to the dispute arising out of the construction of aqueducts over river Kun which was also the subject matter of the award dated 15.10.2003.

c. The construction of these aqueducts involved operations of civil construction, and well sinking was an integral part of the said construction process.

d. The Appellant issued a work order for sinking of circular wells and other connected works *vide* work order no 32/0007, for an amount of Rs. 23,34,000/- (Rupees Twenty-Three Lakh Thirty-Four Thousand Only) in favor of M/s S.S. Sharma and Company (hereinafter referred to as "**Respondent**"). The time period for completion of the same was 18 months.

e. The Respondent could not complete the entire awarded work within the stipulated time and could rather only complete work worth Rs. 1,69,937/- (Rupees One Lakh Sixty-Nine Thousand Nine Hundred Thirty-Seven Only) in about six and a half months. Consequently, the Principal Employer terminated the contract on 14.05.1992.

f. Even prior to termination of the Contract the Respondent had stopped the work w.e.f. 28.02.1992 on account of its failure to pay its workmen irrespective of having its bills cleared by the Appellant.

g. On 05.05.1997, the Respondent submitted a claim before the learned Sole Arbitrator for an amount of Rs. 18,00,000/- (Rupees Eighteen Lakhs Only) along with interest payable at the rate of 24 % (Twenty Four Percent) per annum from the date of award till actual payment.

h. The parties were heard and upon conclusion of the proceedings the learned Sole Arbitrator passed the impugned award on 15.10.2003.

i. Aggrieved by the impugned award, the Appellant herein filed a petition under Section 34 of the Act before the learned Additional District Judge, South-01, Saket.

j. The learned ADJ dismissed the Section 34 Petition vide judgment dated 20.12.2022 (hereinafter referred to as the "impugned judgement"). It is this impugned judgement which has now been challenged in the instant appeal under Section 37 of the Act.

3. At the very outset, an objection has been raised by the learned Counsel for the Appellant which goes to the very root of this matter. He contends that although the learned ADJ has recorded the submissions advanced by the Appellant, the impugned judgment neither addresses nor engages with the submissions advanced by the Appellant on merits. Instead, the impugned judgement merely quoted the principles and judgements relating to Section 34 without demonstrating as to how they are applicable to the facts of the present case. He states that the award does not indicate as to how the Appellant's contentions are not falling under the ambit of Section 34 of the Act.

4. The learned Counsel for the Appellant has also submitted that the impugned award is based on mere conjectures and surmises. Further, the impugned judgement gives no reasons for its conclusions and is therefore bad in law. In particular, he challenges the grant of claim for idle labor and loss of profits in favor of the Respondent, contending that the impugned award does not disclose any discernable basis for such findings. The learned Counsel for the Appellant further argues that his contentions have not been dealt with, by the learned ADJ, in the impugned judgement.

5. *Per contra*, the learned Counsel for the Respondent has argued that the present appeal is essentially a last-ditch attempt by the Appellant to challenge the impugned award. He has contended that the impugned award and the impugned judgement are well reasoned and do not warrant any interference by this Court. He therefore prays that the impugned award dated 15.10.2003 and the impugned judgement dated 20.12.2022 should be upheld by this Court.

6. Heard learned Counsel for the parties and perused the material on record.

7. It is trite law that when a specific challenge against an Arbitral award is made in terms of Section 34 of the Act, the Court does not function like an appellate forum. It is not permissible for a Court under Section 34 to re-appreciate evidence or re-examine the merits of a dispute, as would ordinarily be done in a regular appeal. The Apex Court has time and again held that the jurisdiction conferred on a Court under Section 34 is narrowly tailored, and when it comes to the scope of an appeal under Section 37 of the Act, the jurisdiction of the Appellate Court in examining an order setting aside or refusing to set aside an Award is even more circumscribed. The

Apex Court in Larsen Air Conditioning & Refrigeration Co. v. Union of India, **(2023) 15 SCC 472,** has observed as under:-

> *"**15**. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the 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" [ref : Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."*

8. However, despite the limited scope and jurisdiction of a Court dealing with a challenge under Section 34, when a party raises a valid challenge against an Award under Section 34(2) of the Act, the Court must examine those objections by applying its mind and engaging with the objections raised. The narrowly tailored jurisdiction does not mean that a Court can summarily note down the objections raised by the challenger in a cursory manner without engaging with the objections on merits or assigning cogent reasons for rejecting them.

9. While Section 19(1) of the Act provides procedural flexibility and clarifies that the provisions of the Civil Procedure Code, 1908 and Indian Evidence Act, 1872 do not apply *ipsissima verba* to arbitral proceedings, it in no manner whatsoever dispenses with the requirement of adhering to the

principles of natural justice. These principles are not only relevant for conducting arbitral proceedings but also for the exercise of jurisdiction by Courts under Section 34 and the exercise of supervisory jurisdiction by the appellate Courts under Section 37. The requirement for passing a reasoned order and speaking order is one such fundamental principle which is central to the scheme of the Act.

10. It is a settled principle of law that judicial and quasi-judicial authorities must provide reasons in support of their conclusions. The Apex Court in Woolcombers of India Ltd. v. Woolcombers Workers Union & Anr., **(1974) 3 SCC 318,** has held as under:-

> *"**5**. It may be observed that the first passage quoted by us states only the conclusions. It does not give the supporting reasons. The second passage quoted by us states merely one of the reasons. The other relevant reasons are not disclosed. The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of judicial and quasi-judicial authorities to this Court by special leave*

granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the Court. The Court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. In many cases this investment of time and industry will be saved if reasons are given in support of the conclusions. So it is necessary to emphasise that judicial and quasi-judicial authorities should always give the reasons in support of their conclusions."

11. Similarly, the Apex Court in Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, **(2024) 7 SCC 218,** has reiterated that the remedy of appeal would not be effective unless there is a power of remand vested in the appellate authority. The relevant excerpts of the said Judgment read as under:-

*"**28**. The provisions of the CPC have not been made applicable to the proceedings before the learned arbitrator and the Court under Sections 34 and 37 of the Arbitration Act. The legislature's intention is reflected in Section 19(1) of the Arbitration Act, which provides that an Arbitral Tribunal is not bound by the provision of the CPC. That is why the provisions of the CPC have not been made applicable to the proceedings under Sections 34 and 37(1)(c). We are not even suggesting that because the provisions of the CPC are not applicable, the appellate court dealing with an appeal under Section 37(1)(c) is powerless to pass an order of remand. The remedy of an appeal will not be effective unless there is a power of remand vesting in the appellate authority. In the Arbitration Act, there is no statutory embargo on the power of the appellate court under Section 37(1)(c) to pass an order of remand. However, looking at the scheme of the Arbitration Act, the appellate court can exercise the power of remand only when exceptional circumstances*

make an order of remand unavoidable.

> ***29**. There may be exceptional cases where remand in an appeal under Section 37 of the Arbitration Act may be warranted. Some of the exceptional cases can be stated by way of illustration:*
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> *(a) Summary disposal of a petition under Section 34 of the Arbitration Act is made without consideration of merits;*
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> *(b) Without service of notice to the respondent in a petition under Section 34, interference is made with the award; and*
>
> *(c) Decision in proceedings under Section 34 is rendered when one or more contesting parties are dead, and their legal representatives have not been brought on record."*
>
> (emphasis supplied)

12. A perusal of the impugned judgement indicates that there is considerable weight in the arguments raised by the Appellant. The impugned judgment dated 20.12.2022 is indeed unreasoned, non-speaking and does not deals with the merits of the issued raised by the Appellant. The Trial Court has noted about 28 odd contentions raised by the Appellant and broadly clubbed these grounds under three broad heads i.e. (i) to (x), (xi) to (xix) and (xx) to (xxviii). However, upon perusal of the impugned judgement it is abundantly clear that there has been no assessment of these grounds on merits nor has it been examined whether any of these grounds cross the threshold under Section 34(2) of the Act.

13. Even though a microscopic analysis of each individual ground may not be mandatory, the impugned judgement does not demonstrate any

engagement with the allegations of perversity, irrational reasoning and absence of proper evidence. For instance, the Appellant has argued that the Arbitrator has not relied on evidence and rather acted on the basis of assumptions by presuming that about fifty (50) workmen must have been at the site while awarding idle labor charges in favor of the Respondent. While dealing with this particular objection, the Trial Court has not examined whether the learned Arbitrator actually relied on any evidence for determining the number of workmen or not. Instead, the Trial Court engages in a somewhat circular argument and simply states that this ground is not covered under Section 34 and therefore the evidence as recorded by the Arbitrator cannot be tested unless it is covered under Section 34. The relevant excerpt from the impugned Judgment reads as under:-

> *"**17**. In so far as ground of calculating the number of workman/labour are concerned, unless the award is against the public policy or is covered by other grounds as mentioned in Section 34 of the Act the findings of the Ld. Arbitrator cannot be reversed. The main focus of the parties is with respect to arbitrator acted arbitrarily without collecting any evidence and simply on assumption and presumption with respect to number of workmen. However, this court is of the opinion that as the evidence cannot be tested and the present Court cannot interfere with the findings of the arbitrator unless it is covered under clause of Section 34."*

14. Similarly, while dealing with the three broad heads of objections the Trial Court has summarily noted them down and generically summarized the law concerning applicability of Section 34 of the Act and has in no manner whatsoever explained as to how the law is applicable to the facts of the present case. The relevant portion of the impugned Judgment, which deal

with these three broad heads, are reproduced as under:-

> ***"13.In so far as ground (i) to (x) are concerned, it has been held in catena of judgments that Section 34 petition deserves to be allowed in case the grounds as mentioned in the Section 34 are fulfilled. It has been held in Associate Builders Vs. Delhi Development Authority, AIR 2015 SC 620 that:***
>
> > *"It will be seen that none of the grounds contained in sub- clause 2 (a) deal with the merits of the decision rendered by an arbitral award. It is only when we come to the award being in conflict with the public policy of India that the merits of an arbitral award are to be looked into under certain specified circumstances.*
> >
> > *Reliance is being placed on* ***Jitender Rajpal vs. Ansal Properties & Infrastructure Ltd. (OS) (COMM) 28/19 decided on 13.02.2019*** *wherein it has been held that "It is apparent, therefore, that, while interference by court, with arbitral awards, is limited and circumscribed, an award which is patently illegal, on account of it being injudicious, contrary to the law settled by the Supreme Court, or vitiated by an apparently untenable interpretation of the terms of the contract, requires to be eviscerated. In view thereof, the decision of the ld. Single Judge that reasoning of the arbitral award in this regard was based on no material and was contrary to the contract, cannot be said to be deserving of any interference at our hands under Section 37 of the Act. In a pronouncement reported at MANU/DE/0459/2015, MTNL v. Fujitshu India Pvt. Ltd. (FAO(OS) No.63/2015), the Division Bench of this court has held that "an appeal*

under Section 37 is like a second appeal, the first appeal being to the court by way of objections under Section 34". Being in the nature of a second appeal, this court would be hesitant to interfere, with the decision of the learned Single Judge, unless it is shown to be palpably erroneous on facts or in law, or manifestly perverse."

14. In so far as ground (xi) to (xix) are concerned the same are with respect to the appreciation of evidence by the Ld. Arbitrator. It has been held in catena of judgments that once the Arbitrator has returned a finding after appreciation of evidence, the court cannot sit in appeal against the said order and re-appreciate the evidence or discern it afresh. Perusal of Arbitral record would show that the Ld. Arbitrator had discussed each claim of the claimant minutely and after discerning the evidence led by both the parties and has decided the claims. There is no error apparent in the finding returned by the Arbitrator.

***15**. Reliance is being place on **Sumitomo Heavy Industries Ltd vs ONGC Ltd (2010) 11 SCC 296**:*

*43.....The umpire has considered the fact situation and placed a construction on the clauses of the agreement which according to him was the correct one. One may at the highest say that one would have preferred another construction of Clause 17.3 but that cannot make the award in any way perverse. Nor can one substitute one's own view in such a situation, in place of the one taken by the umpire, which would amount to sitting in appeal. As held by this Court in **Kwality Mfg. Corpn. v. Central Warehousing Corpn. (2009) 5 SCC 142** the Court while considering challenge to arbitral award does not sit in*

appeal over the findings and decision of the arbitrator, which is what the High Court has practically done in this matter. The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the agreement. If he does so, the decision of the umpire has to be accepted as final and binding.

***16**. In so far as ground (xx) to (xxviii) are concerned, the same are with respect to the interpretation of the terms of contract between the parties. In so far as reconsideration of the terms of contract is concerned, it has been decided by the Hon'ble Appex court in State **Trading Corporation of India Ltd. Vs. Toepfer International Asia PTE Ltd. (2014) 7 High court Cases (Del) 504 2014 SCC Online Del 3426** that*

"5. The challenge in this appeal is on the ground that the learned Single Judge ignored that the interpretation of the contract between the parties given by the Arbitral Tribunal is contrary to the express terms and conditions thereof and the Arbitral Tribunal has given a meaning to the terms and conditions which is not contemplated in the contract. The senior counsel for the appellant thus wants us to read the contract between the parties, particularly the clauses relating to demurrage, and then to judge whether the interpretation thereof by the Arbitral Tribunal is correct or not.

6. In our view, the interpretation in Saw Pipes Ltd. supra of the ground in Section 34 of the Act for setting aside of the arbitral award, for the reason of the same being in conflict with the public policy of India, would not permit setting aside, in the aforesaid facts. A Section

34 proceeding, which in essence is the remedy of annulment, cannot be used by one party to convert the same into a remedy of appeal. In our view, mere erroneous/wrong finding of fact by the Arbitral Tribunal or even an erroneous interpretation of documents/evidence, is non-interferable under Section 34 and if such interference is done by the Court, the same will set at naught the whole purpose of amendment of the Arbitration Act.

7. Arbitration is intended to be a faster and less expensive alternative to the courts. If this is one's motivation and expectation, then the finality of the arbitral award is very important. The remedy provided in Section 34 against an arbitral award is in no sense an appeal. The legislative intent in Section 34 was to make the result of the annulment procedure prescribed therein potentially different from that in an appeal. In appeal, the decision under review not only may be confirmed, but may also be modified. In annulment, on the other hand, the decision under review may either be invalidated in whole or in part or be left to stand if the plea for annulment is rejected. Annulment operates to negate a decision, in whole or in part, thereby depriving the portion negated of legal force and returning the parties, as to that portion, to their original litigating positions. Annulment can void, while appeal can modify. Section 34 ***is found to provide for annulment only on the grounds affecting legitimacy of the process of decision as distinct from substantive correctness of the contents of the decision. A remedy of appeal focuses upon both legitimacy of the process of decision and the substantive correctness of the decision. Annulment, in the case of arbitration***

> ***focuses not on the correctness of decision but rather more narrowly considers whether, regardless of errors in application of law or determination of facts, the decision resulted from a legitimate process.***"
>
> (emphasis supplied)

15. A perusal of the foregoing paras makes it abundantly clear that there has been a vague and incomplete application of Section 34 jurisdiction. There is nothing to show as to how the judgements that have been cited in the impugned judgement concur with the observations made in the impugned judgement. Perusal of the impugned judgement also reveals that besides it being cryptic to the extent that it does not find mention of a reply, if any, filed by the Respondent, the issues flagged for consideration have been left unanswered. With these gaps and consequently unanswered issues/objections, the impugned order is rendered vague and ambiguous. In view of the same, this Court finds it difficult to comprehend how the learned Trial Court upheld the impugned award and arrived at the conclusion that the objections raised by the Appellant were not sustainable.

16. The Trial Court has mechanically rejected the substantive challenge raised by the Appellant without going into the merits of the case and this in itself is sufficient to warrant that the present case be remanded back to the Trial Court for fresh consideration on merits.

17. Therefore, this Court is of the considered opinion that the impugned judgement is liable to be set aside on the grounds that it is non-speaking, unreasoned and does not appropriately exercise jurisdiction under Section 34 of the Act. Further, this Court deems it appropriate to remand the matter back to the Trial Court for fresh consideration of the Section 34 petition on

merits.

18. However, keeping in view that the impugned award had been passed in the year 2003 and almost 22 years have since elapsed since, the Trial Court is directed to ensure that the objection petition be positively disposed of within 2 months of the date of pronouncement of this judgement. It is clarified that the observations made in this judgement are confined solely to the Trial Court's jurisdiction under Section 34 of the Act. Nothing stated herein shall be construed as an expression on the merits of this case and all right and contentions of the parties are left open for adjudication by the Trial Court.

19. In view of the above, the present appeal along with pending application(s), if any, stands allowed.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

JULY 02, 2025
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