2023INSC742

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2903 OF 2023
(Arising out of S.L.P. (C) No. 5640 of 2023)

KONKAN RAILWAY CORPORATION LIMITED ...APPELLANT(S)

VERSUS

CHENAB BRIDGE PROJECT UNDERTAKING …RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. This appeal arises out of the decision of the Division Bench of the High Court of Bombay under Section 37 of the Arbitration and Conciliation Act 1996,[1] by which the concurrent findings of the Arbitral Tribunal and that of the Single Judge of the High Court under Section 34 of the Act rejecting all claims were set aside and certain claims were allowed. This appeal by Konkan Railway Corporation Limited challenges the legality of the order passed by the Division Bench of the High Court while exercising jurisdiction under Section 37 of the Act.

[1] Hereinafter 'the Act'.

2. The short facts relevant for the purpose of this appeal are as follows: The Respondent's tender for construction of a bridge at KM 50/800, on the Katra-Laole section of Udhampur-Srinagar-Baramulla rail link, said to be the highest railway bridge in the world, was accepted by the Appellant, leading to the execution of the contract on 24.11.2004.

3. While the contract was in execution, disputes arose between the parties and through an agreement dated 28.02.2012, a Standing Arbitral Tribunal was constituted for resolution of disputes. The respondent raised 35 claims which were clubbed and classified as twelve disputes. The present proceedings arise out of the decision of the Arbitral Tribunal deciding three disputes, being Dispute I (relating to Claim 9), Dispute III (relating to Claims 12, 22 and 28), and Dispute IV (relating to Claims 13, 23 and 29).

4. The Arbitral Tribunal by its award dated 15.11.2014 considered the three disputes and rejected all the claims. The Respondent challenged the award under Section 34 of the Act. The Single Judge of the High Court confirmed the Award and proceeded to dismiss the challenge under Section 34 of the Act. The decision of the Single Judge of the High Court was appealed by the Respondent under Section 37 of the Act, and the Division Bench of the High Court, by the order impugned herein, partly allowed the appeal in the following manner. The Division Bench, while dismissing the appeal with respect to Dispute I, allowed the appeal with respect to the remaining two disputes (Disputes III and IV), and

thereby set aside the concurrent findings as regards these disputes. As there is no controversy with respect to Dispute I, we are called upon to examine the legality of the order with respect to Disputes III and IV.

5. The facts relevant for Dispute III are as follows: The contract in favour of the Respondent was entered into on 24.11.2004. At that time the Notification of the Government of Jammu and Kashmir dated 19.12.2003 exempted *Entry Tax* on earth-moving instruments. However, during the execution of the contract, on 25.01.2008, the Government of Jammu and Kashmir withdrew the exemption notification. Consequently, the Respondent raised claims for reimbursement of Rs. 1,32,29,771/- incurred on account of payment of Entry Tax.

6. In so far as Dispute IV is concerned, it relates to reimbursement of *Toll Tax* on machinery and materials. As per the extant policy in Jammu and Kashmir, the *Toll Tax* as applicable on the date of the submission of tender, that is 31.05.2004, was Rs. 400/- per MT. However, through four subsequent notifications issued under Jammu and Kashmir Levy of Toll Tax Act, 1998, the taxes were progressively increased to Rs. 650/- per MT. Consequently, the Respondent raised a claim of Rs. 5,23,279/-, incurred on account of increase in toll tax during the subsistence of the contract.

7. Claims under Dispute III as well as Dispute IV were to be considered in terms of the relevant clauses of the contract, which are Clauses 5.1.2, 7.1.1, 7.1.2, and 11.7. These clauses are extracted hereinbelow for ready reference. Relevant

part of Clause 5 of Chapter 5, titled 'Sales Tax, Turn Over Tax/Local Tax, Duties etc', is as under:

> ***"Clause 5.1 Sales Tax/Turn Over Tax/Local Tax, Duties Etc.***
>
> *...*
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> ***Clause 5.1.2*** *Sales Tax including turn over tax on works contract, octroi, royalty, toll tax, Duties/Levies as well as services and any other tax levied by central govt., state govt. or local bodies, as applicable 15 days prior to the date of opening of tender shall be considered to be included in the percentage rates quoted by tenderer/s in the Schedule of Items, Rates & Quantities. In case of any increase/decrease in the taxes during the period from 15 days prior to the date of opening of tender to the completion of the work, the net increase/decrease for the balance portion of the work shall be borne/recovered by the Corporation.*
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> *The prevailing rate of Works Contract Tax (WCT) in J & K states to be deducted at source is 4.2% for the registered firms with state taxation department from firms not having the registration, the rate is 8.2%.*
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> ***Clause 5.1.3*** *Corporation shall deduct the sales tax/Turn Over Tax or any other tax from the Contractor's bill at the rate as applicable as per rules framed by concerned Govt./Local bodies from time to time and remit it to concerned department and shall issue a certificate regarding Tax/levies so deducted on demand by the contractor."*

7.1. Clauses 7.1.1 and 7.1.2 from Chapter 7, titled 'Price Variation', are as under:

> *"**Clause 7.1.1** The rates quoted by tenderer and accepted by the Corporation shall hold good till the completion of the work and no additional, individual claim shall be admissible on account of fluctuation in market rates, increase in taxes/any other levies/tolls etc. except the payment/recovery for overall market situation shall be made as per price variation clause given below.*

> ***Clause 7.1.2*** *No cognizance shall be given for any sort of fluctuations in taxes and other market conditions etc. for any individual item for the purpose of making adjustments in payments. The contract shall, however, be governed by the general price variation clause as under."*

7.2. Clause 11.7, in Chapter 11, titled 'Schedule of Items, Rates & Quantities - Bill of Quantities', is as follows:

> *"**Clause 11.7** The rates and prices tendered in the priced Bill of Quantities, shall except in so far as it is otherwise provided under the contract, include all construction plant, labour, supervision, materials, all temporary works, false works, all leads and lifts, erection, specified finishes, maintenance, establishment and overhead charges, insurance, profits, foreign taxation and levies, taxes, royalties and duties together with all general risks, liabilities and obligations set out or implied in the contract and including remedy of any defects during the Defects Liability Period."*

8. *The Decision of the Arbitral Tribunal*: The Arbitral Tribunal interpreted the contract and construed Clause 5.1.2 of the contract as limited to taxes that could be raised by the Respondent-Contractor directly on the Appellant, as opposed to taxes that formed part of the materials quoted in the 'Schedule of Items of Rates - Bill of Quantities'. For this, the Arbitral Tribunal also relied on Clause 11.7 of the Contract. The Arbitral Tribunal was of the view that Entry Taxes on earth-moving equipment formed part of the cost of the works quoted in the Bill of Quantities. For this reason, the Arbitral Tribunal came to the conclusion that the increased liability on account of imposition of Entry Tax could not be reimbursed under Clause 5.1.2, as recoupment for the same could

only be governed by the Price Variation clauses (clause 7.1.1 and 7.1.2 in Chapter 7).

8.1 Interpreting the Price Variation clauses, the Arbitral Tribunal noted that the contract only provided for generic price variation based on a standardised formula. It also found that Clause 7.1.2 specifically barred cognizance of "*any sort of fluctuations in taxes and other market conditions for any individual item for the purpose of making adjustments in payments*". Accordingly, the Arbitral Tribunal held that the claim for recouping increased tax liability for individual or specific items, in this case, the imposition of entry tax, could not be reimbursed under Clauses 7.1.1 and 7.1.2.

8.2 The Tribunal reasoned that the contractor was aware of these conditions at the time when the prices were quoted, and therefore, the claim could not succeed under Price Variation clauses.

8.3 As regards the claim for Toll Tax which formed part of Dispute IV, the Tribunal adopted the same interpretation of the contractual clauses and rejected the claim.

9. *Decision of the High Court under Section 34 of the Act*: The Respondent's challenge to the Arbitral Award under Section 34 of the Act was considered and dismissed by the Single Judge of the High Court by its order dated 17.01.2019. The High Court concluded that there were two possible views with respect to the construction of relevant clauses of the contract. However, as the Arbitral Tribunal

adopted one interpretation and since it was a reasonable interpretation, the Single Judge of the High Court held that there was no justification for exercising jurisdiction under Section 34 of the Act to interfere with the findings of the Arbitral Tribunal.

10. *Decision of the Division Bench under Section 37 of the Act*: The Division Bench of the High Court, while considering the appeal under Section 37 of the Act, proceeded to reinterpret the contractual clauses and arrived at a distinct conclusion. The Division Bench rejected the Arbitral Tribunal's and the Single Judge's interpretation of Clause 5.1.2 of the contract and came to the conclusion that the said clause will also include indirect taxes such as service tax, GST, Works Contract Tax, etc. While doing so, the Division Bench applied the principle of *ejusdem generis* to include even Entry Tax in Clause 5.1.2. The Division Bench of the High Court reversed the conclusion of the Arbitral Tribunal and the Single Judge of the High Court on the ground that they had simply assumed that the tax liability of items forming part of the Bill of Quantities was 'inbuilt' in the quoted costs and that no evidence was supplied to substantiate the same. The Division Bench also noted that reimbursement on account of increase in 'toll taxes' was specifically provided for in Clause 5.1.2 of the contract, and hence, claim for the same could not be rejected. In view of its conclusion, the Division Bench did not find it necessary to refer to Clauses 7.1.1 and 7.1.2 relating to price variation clauses, as the claims were justified under Clause 5.1.2

itself. Finally, relying on *Radha Sundar Dutta* v. *Mohd Jahadur Rahim & Ors*,[2] the High Court came to the conclusion that it is a "*well-settled principle that if there are two constructions possible of a contract, then the one that gives effect and voice to all clauses will be preferred over the other that renders one of them otiose or nugatory*". Adopting this approach, the Division Bench of the High Court proceeded to hold that the Arbitral Tribunal failed to interpret the contractual clauses *harmoniously and holistically*. It finally concluded that the approach adopted by the Arbitral Tribunal would amount to perversity, and therefore, found it necessary to set aside the Award, and allow claims covered under Disputes III and IV.

11. This judgment of the Division Bench of the Hight Court led to the present civil appeal before us.

12. *Submissions on behalf of the Appellant*: Mr Shyam Divan, Senior Advocate, along with Mr Amlaan Kumar, Mr Musharaf Shaikh, Ms Rukhmini Bobde, Ms Soumya Priyadarshinee, Mr Ankit Ambasta, Mr Amit Kumar Shrivastava, Advocates, and Mr Vishal Prasad, AOR appeared on behalf of the Appellants. They submitted that the Division Bench of the High Court exceeded its limited jurisdiction under Section 37 of the Act by reinterpreting the contract and substituting its view for the Arbitral Tribunal's, assuming the role of a court of appeal. They relied on *UHL Power Company Limited* v. *State of Himachal*

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[2] AIR 1959 SC 24.

Pradesh[3] and *South East Asia Marine Engineering and Constructions Limited* v. *Oil India Limited*[4] for this purpose.

12.1 Next, they submitted that the parties agreed to a lump-sum contract price payable to the Respondent-Contractor. The Contractor split the agreed prices into several components and indicated the division in the 'Schedule of Items and Rates - Bill of Quantities', which inhered the cost and effort involved in execution of the items mentioned therein. There is no indication that the amount incurred in the execution of the entries therein would be separately reimbursed. They added that Clause 11.7 of the contract expressly indicates that the prices mentioned in the Bill of Quantities are inclusive of all costs that are liable to be incurred in the execution of the contract.

12.2 Further, they also submitted that the Arbitral Tribunal holistically interpreted Clauses 5.1.2, 7.1.1 and 7.1.2 of the contract to opine that individual tax claims would not be reimbursed by the Appellant-Corporation. The Arbitral Tribunal held that Clause 5.1.2 operates in a separate field, i.e., it operates in the field of taxes directly payable by the Corporation to the Contractor. They further added that the mention of toll tax and *octroi* in Clause 5.1.2 is only incidental, and does not render the recovery of taxes by the Contractor implicit. On the other hand, the fluctuations in price of entries in the Bill of Quantities (or for mobilisation of construction material and machinery) was recoverable only as per

[3] (2022) 4 SCC 116.
[4] (2020) 5 SCC 164.

the scheme of Price Variation in Clauses 7.1.1 and 7.1.2, which expressly exclude cognizance of fluctuations in price of individual items.

13. *Submissions on behalf of the Respondents*: Mr Darius Khambata, Senior Advocate, along with Mr Aveak Ganguly, Mr Manu Seshadri, Ms Pallavi Anand, Mr Abhijit Lal, Ms Soumya, Advocates and Mr Mithu Jain, AOR appeared on behalf of the Contractor-Respondent. They submitted that the High Court rightly interfered with the findings of the Arbitral Tribunal as it had rewritten the contract. They submitted that every canon of contractual interpretation provides for harmonious construction of *seemingly* contradictory clauses, and constructing contracts such that no clause is rendered otiose.

13.1 They submitted that undoubtedly, Clauses 5.1.2 and 7.1.1 operate in separate fields, i.e., Clause 5.1.2 of the Special Conditions of Contract is a special clause that deals with taxes and provides for reimbursement on account of increase of taxes by the Corporation. Clauses 7.1.1 and 7.1.2, on the other hand, prohibit additional and individual claims for price variation, apart from the ones already mentioned in Clause 5.1.2. By limiting Clause 5.1.2 to the taxes that can be billed by the Contractor on the Corporation, the Arbitral Tribunal impermissibly rewrote the terms of the contract. Instead of harmonising the provisions of the contract, it inserted new terms and contradictions to it.

13.2 The respondents submitted that the Division Bench of the High Court was well within its jurisdiction under Section 37 of the Act to partially set aside the

Award. To substantiate their submissions, they relied on *Adani Power (Mudra) Limited* v. *Gujarat Electricity Regulatory Commission and Ors.,*[5] *Radha Sundar Dutta* v. *Mohd Jahadur Rahim & Ors*. (supra), *Satyanarayana Construction Company* v. *Union of India and Ors.*,[6] and *Delhi Development Authority* v. *R.S. Sharma and Company, New Delhi*.[7]

14. *Analysis:* At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this Court in *MMTC Ltd.* v. *Vedanta Ltd.*, is akin to the jurisdiction of the court under Section 34 of the Act.[8] Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.

15. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction.[9] It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal.[10] In *Dyna*

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[5] (2019) 19 SCC 9.
[6] (2011) 15 SCC 101.
[7] (2008) 13 SCC 80.
[8] (2019) 4 SCC 163: "para 14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision."
[9] UHL Power Company Ltd. v. State of Himachal Pradesh (2022) 2 SCC (Civ) 401, para 15. *See also*: Dyna Technologies Pvt Ltd v. Crompton Greaves Limited (2019) 20 SCC 1, para 24, 25.
[10] ibid; *Ssangyong Engineering. & Construction Company Ltd. v. National Highways Authority of India* (*NHAI)* (2019) 15 SCC 131; *Parsa Kente Collieries Ltd.* v. *Rajasthan Rajya Vidyut Utpadan Nigam Ltd*., (2019) 7 SCC 236, para 11.1.

Technologies Private Limited v. *Crompton Greaves Limited* (2019) 20 SCC 1, this Court held:

> *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.*
> *25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."*

16. In the present case, the Arbitral Tribunal interpreted the contractual clauses and rejected the Respondent's claims pertaining to Disputes I, III and IV. The findings were affirmed by the Single Judge of the High Court in a challenge under Section 34 of the Act, who concluded that the interpretation of the Arbitral

Tribunal was clearly a possible view, that was reasonable and fair-minded in approach.

17. It is important to extract the relevant portion of the Award, where the Tribunal considered and interpreted the contractual clauses pertaining to Disputes III and IV:

> *"40. A careful reading of the relevant provisions of the contract shows that claimant will not be entitled to reimbursement of Entry Tax paid by it. Clause 5.1.2 of Special Conditions provides that sales tax or turnover tax on works contract or other tax on the amount billed to respondent, levied or increased during the execution of the work; shall be borne by the respondent. For example, if the price of goods sold is Rs. 2000/- and at the time of contract, the goods were not subject to Sales Tax, but subsequently during the execution of the work, the State subjected such sale of goods to Sales Tax, at the rate of 5%, the contractor will be entitled to receive under clause 5.1.2, the Sales Tax at 5% on the price of Rs. 2000/-. Similarly, if Works Contract Tax is increased from the rate of 4.2% prevailing at the time of making the contract, the contractor will be entitled to the higher rate, by claiming the difference. Therefore, what clause 5.1.2 deals with is taxes "chargeable" by the contractor on the bills raised on the respondent. It does not deal with or provide for reimbursement of increase in taxes which may indirectly be a component of the price or rate quoted and which is be governed only by the price variation clause. This is obviously because when a contractor quotes a rate for an item of work, such rate will have various components like material cost, labour cost, fuel cost, overheads and profits. The contractor does not indicate the break-up of the various components that make up the quoted price. Obviously the rates so quoted, if it involves use of a material, will include the cost of the material plus any tax paid thereon; and if it involves use of some machinery/equipment, it will include the hire charges in respect of the*

machinery/equipment and any taxes thereon. It is clear from the contract that in regard to such components of a rate, claimant is not entitled to seek reimbursement of any increase in price or taxes and all that it will be entitled to, will be an increase that is permitted in accordance with the formula in the price variation clause. The price variation clause only provides for price variation in a general manner in accordance with a standardized price variation formula, and not reimbursement of the actual increases. That is why clause 11.7 of BoQ provides that the rates/prices shall include all taxes and clauses 7.1.1 and 7.1.2 clearly provide that rates quoted by the tenderer and accepted by the KRCL, shall hold good till the completion of the work and no additional individual claim shall be admissible on account of increases in tax or other levies except for the provision made by way of price variation clause.

...

43. ... As noticed above, the contract does not contemplate reimbursement of indirect cost, taxes incurred by the claimant for executing the work. The contract contemplates the contractor quoting a price for executing a work by taking all circumstances into account and all increase that may take place. The contractor knew when it quoted, that it is entitled to only the price quoted and only variation in price as permitted by the price variation clause. The contract does not provide for payment or reimbursement of each and every increase in the price of material or tax thereon, which may go into the execution of a work."

(emphasis supplied)

18. The Single Judge of the High Court affirmed the findings of the Arbitral Tribunal. The reason for upholding the decision of the Tribunal is not that the Single Judge exercising jurisdiction under Section 34 of the Act is in complete agreement with the interpretation of the contractual clauses by the Arbitral Tribunal. The Learned Judge exercising jurisdiction under Section 34 of the Act

kept in mind the scope of challenge to an Arbitral Award as elucidated by a number of decisions of this Court. Section 34 jurisdiction will not be exercised merely because an alternative view on facts and interpretation of contract exists. In its own words, the conclusion of the Single Judge Bench of the High Court is as follows:

> *"10. ... The ambiguity does not come from clause 5.1.1, but from the fact that there are other clauses in the contract, such as clauses 7.1.1 and 7.1.2. One way to look at the co-existence of these clauses is to treat clauses 7.1.1 and 7.1.2 merely as an exclusion for working out price variation, since it is specifically provided for in clause 5.1.2. Equally, there is another way of looking at these three clauses, and that is : clauses 7.1.1 and 7.1.2 make it clear that no increase in tax in the case of any component forming part of BoQ rates, which was considered by the contractor for quoting his rates for any particular item, should be allowed to the contractor; it is only when particular taxes were actually to be paid on the deliveries of the contractor, these would be included for reimbursement by the employer under clause 5.1.2. The arbitrator adopted the latter view. It cannot be said either that it is an unreasonable view or a view which is either impossible or which no fair and judiciously minded person would have taken. The award on this dispute, thus, does not merit any interference under Section 34 of the Act, having regard to the law stated by the Supreme Court in the case of Associate Builders (supra)."*

19. In appeal under Section 37 of the Act, the Division Bench of the High Court took a different position. It opined that the construction of the clauses by the Arbitral Tribunal was not even a possible view, and observed as follows:

> *"30. ... What is more appropriate is the well-settled principle that if there are two constructions possible of a*

> *contract, then the one that gives effect and voice to all clauses will be preferred over the other that renders one of them otiose or nugatory [Radha Sundar Dutta v Mohd Jahadur Rahim & Ors, AIR 1959 SC 24]. There is some law to suggest that if an Award does not construe the contract as a whole then it is not a possible view and it is perverse [South East Asia Marine Engineering and Constructions Ltd v Oil India Ltd, (2020) 5 SCC 164; Patel Engineering Ltd v North Eastern Electric Power Corporation Ltd, (2020) 7 SCC 167]. As regards the dispute for reimbursement on account of toll tax effected by the Government of Jammu and Kashmir through various Notifications, Chenab Bridge's case stands on an even stronger footing. This is because toll tax is specifically mentioned in Clause 5.1.2 and the arbitral view amounts to an entire deletion of those two words. This is clearly impermissible."*

20. The principle of interpretation of contracts adopted by the Division Bench of the High Court that when *two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses,* does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the Arbitral Award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an Award, much less the

decision of a Single Judge, on the ground that they have not *given effect and voice to all clauses* of the contract. This is where the Division Bench of the High Court committed an error, in re-interpreting a contractual clause while exercising jurisdiction under Section 37 of the Act. In any event, the decision in *Radha Sundar Dutta* (supra), relied on by the High Court was decided in 1959, and it pertains to proceedings arising under the Village Chaukidari Act, 1870 and Bengal Patni Taluks Regulation of 1819. Reliance on this judgment particularly for interfering with the concurrent interpretations of the contractual clause by the Arbitral Tribunal and Single Judge under Section 34 of the Act is not justified.

21. As far as the decisions in *South East Asia Marine Engineering and Constructions Limited* (supra) and *Patel Engineering Limited* v. *North Eastern Electric Power Corporation Limited*[11] are concerned, in both the cases, this Court affirmed the interference by a court exercising jurisdiction under Section 37 of the Act, with the concurrent findings of the Arbitral Tribunal as well as the court under Section 34 of the Act, for good and valid reasons. In *South East Asia Marine Engineering and Constructions Limited* (supra), the Section 37 Court interfered with the Award as the Arbitral Tribunal allowed the claim for price escalation for High-Speed Diesel under the 'Change in Law' clause, by construing the circular increasing the HSD price as having "force of law". The 'Change in Law' clause therein provided for reimbursement of any additional

[11] (2020) 7 SCC 167.

costs on account of "change in or enactment of any law or interpretation of existing law". The High Court, exercising jurisdiction under Section 37 of the Act, and this Court, found that the Arbitral Tribunal incorrectly construed the 'Change in Law' clause as akin to a *force majeure* clause and allowed the claims. This was held to not be a possible interpretation of the contract and hence, the Award was set aside. Similarly, in *Patel Engineering Ltd.*(supra), the Arbitral Award was found to be based on irrelevant facts and the outcome was found to result in unjust enrichment, the latter being in violation of public policy of India under Section 34(2) of the Act. Therefore, in both these cases, this Court was convinced that the view of the Arbitral Tribunal was not even a possible view, and hence, perverse in nature.

22. In the present case, we have examined the appreciation of evidence by the Arbitral Tribunal as well as the Single Judge of the High Court. We are convinced that their appreciation of the facts and interpretation of the contract is reasonable, and comprises a possible view. Keeping in mind the mandate of Section 5 of the Act 1996,[12] we note the observation of this Court in *Vidya Drolia and Ors.* v. *Durga Trading Corporation*[13]:

> *"Arbitration is a private dispute resolution mechanism whereby two or more parties agree to resolve their current or future disputes by an Arbitral Tribunal, as an alternative to adjudication by the courts or a public*

[12] Arbitration and Conciliation Act, 1996, section 5:

> "**5. Extent of judicial intervention**.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

[13] (2021) 2 SCC 1, para 18.

> *forum established by law. Parties by mutual agreement forgo their right in law to have their disputes adjudicated in the courts/public forum. Arbitration agreement gives contractual authority to the Arbitral Tribunal to adjudicate the disputes and bind the parties."*

23. The conclusion of the Division Bench of the High Court that the Award is liable to be set aside on the ground of perversity is incorrect, as it overlooks the principle laid down in *Associate Builders* v. *Delhi Development Authority*,[14] where this Court held:

> *"32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312] , it was held: (SCC p. 317, para 7)*
> *"7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."*
> *In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held: (SCC p. 14, para 10)*
>
> > *"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.*

[14] (2015) 3 SCC 49.

> *33. It must clearly be understood 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. 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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> (emphasis supplied)

24. Having considered the matter in detail, we are of the opinion that the Division Bench of the High Court committed an error in setting aside the concurrent findings of the Arbitral Tribunal and the Single Judge of the High Court. The Award of the Arbitral Tribunal and the decision of the Single Judge of the High Court under Section 34 of the Act cannot be termed as perverse or patently illegal as concluded by the Division Bench of the High Court. The decision of the Arbitral Tribunal is a plausible view, and the Single Judge refrained from interfering with it under Section 34 of the Act. We are of the opinion that the Division Bench should not have interfered with these orders.

25. For the reasons stated above, we allow Civil Appeal No. 2903 of 2023 and set aside the judgment of the Division Bench of the High Court of Judicature at Bombay in Appeal No. 458 of 2019 dated 23.09.2022, and restore the judgment

and order of the Single Judge in Arbitration Petition No. 546 of 2015 dated 17.01.2019. No order as to costs.

……..………………………………CJI.
[Dr Dhananjaya Y Chandrachud]

……………….…………………………..J.
[Pamidighantam Sri Narasimha]

……………….…………………………..J.
[J.B. Pardiwala]

New Delhi;
August 17, 2023