



2025:AHC-LKO:83328-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

**APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION
ACT 1996 No. - 75 of 2024**

M/S Regenvo Mobile Private Limited Lucknow
Thru Its Director Rahul Singh And Anr.

.....Appellant(s)

Versus

M/S Siyogi Enterprises Thru Managing Director
And Others

.....Respondent(s)

Counsel for Appellant(s)	: Mohammad Rashid
Counsel for Respondent(s)	: Amitabh Singh Raikwar, Archana Kamal, Gyan Singh Chauhan, Manju Devi

A.F.R.

Judgment Reserved : 21.11.2025

Judgment Delivered : 12.12.2025

Chief Justice's Court

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.**

(Per : Jaspreet Singh, J.)

1. The instant appeal preferred, under Section 37 of the Arbitration and Conciliation Act 1996, by the appellants assails the judgment and order dated 06.11.2024 passed by the Commercial Court No.1, Lucknow in Arbitration Case No.35 of 2019, whereby the petition preferred by the appellants under Section 34 of the Arbitration and Conciliation Act 1996 was dismissed and as a consequence the award passed by the Sole Arbitrator dated 31.12.2018 was affirmed.
2. The controversy involved in the instant appeal is ensconced in a narrow compass. The core contention revolves around the scope of the arbitration clause vis-a-vis the area of operation of the agreement dated 01.08.2016, containing the arbitration clause.
3. In order to resolve the controversy, it will be necessary to take note of certain facts giving rise to the instant appeal.
4. The appellants are a Corporation engaged in the sale and distribution of mobile phones/handsets and accessories under the brand of 'VIVO

Mobile'. The respondent no.1, on the other hand, is a partnership firm of which the respondents no.2 and 3 are the partners who are engaged in the business of advertising and providing marketing services.

5. On 01.08.2016, an agreement was entered between the appellants and the respondents and in furtherance of the said agreement, the respondents had agreed to act as an advertising agent for the appellants. The agreement stated that the appellants were the exclusive dealer of 'VIVO Mobile' Handsets and Accessories for the State of Uttar Pradesh and it was desirous to engage the services of an advertising agency for advertising the products in the city of Lucknow. The said agreement also contained an arbitration clause.

6. The agreement between the parties was acted upon and accordingly the appellants' Corporation assigned advertising work to the respondents from time to time. Work Orders issued by the appellants was executed by the respondents, who in turn raised invoices for the work done and the same was paid by the appellants.

7. Certain disputes arose between the parties and the appellants by means of its email dated 28.03.2017 terminated the agreement dated 01.08.2016. The respondents invoked the arbitration clause and the Indian Council of Arbitration appointed Dr. Dharmesh Sharma as the Sole Arbitrator.

8. On 27.06.2017, a statement of claim was filed by the respondents which contained claims relating to non payment of the invoices for the work done by the respondents not only within the city of Lucknow but also in respect of work done by the respondents in districts other than Lucknow, however, within the State of U.P. The appellants filed their statement of defence before the Sole Arbitrator and inter alia raised a defence, that in so far as the claims raised by the respondents relating to non payment of invoices for the work done in the districts other than Lucknow was concerned, it was beyond the scope of arbitration clause and agreement.

9. It was also alleged that once the agreement dated 01.08.2016 was terminated and the respondents were put to notice then it should have desisted from carrying out any further work. Moreover, any work done by

the respondents was beyond the authority and any claim arising there from was not admissible for adjudication nor the appellants could be compelled to honour the same.

10. The Sole Arbitrator after considering the pleadings, evidence and contentions went on to make its award dated 31.12.2018 and awarded a sum of Rs.4,22,82,216/- towards the pending bills and also awarded a sum of Rs.1,11,36,586/- as interest. The Sole Arbitrator further awarded a sum of Rs.3,14,915 towards the tax deducted at source while making the payments to the respondents but not deposited with the Income Tax Department. A sum of Rs.18,6,275/- was awarded under the head of costs and as such a total amount of Rs.5,55,39,992/- was awarded and it was directed to be paid within a week, failing which, the said amount would attract interest at the rate of 15% per annum from the date of the award till the date of actual payment.

11. This award was assailed by the appellants by filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 before the Commercial Court No.1, Lucknow which was registered as Case No.1357 of 2019. The Commercial Court No.1, Lucknow vide its judgment and order dated 06.11.2024 did not find any error in the award and it dismissed the petition, upholding the award.

12. Being aggrieved, the appellants have approached this Court by means of the instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

13. Shri Sumeet Kaul, learned counsel for the appellants alongwith Shri Kaif Najmi and Shri Mohammad Rashid has contended that the judgment and order passed by the Commercial Court No.1, Lucknow dated 06.11.2024 is patently erroneous as it has ignored the relevant clauses of the agreement which had restricted the scope of disputes which could be referred for arbitration as a result the award was made in respect of the subject matter which was not covered by the arbitration agreement.

14. Learned counsel for the appellants has further urged that both the Sole Arbitrator and the Commercial Court No.1, Lucknow exceeded its jurisdiction in allowing claims of the respondents which did not fall

within the four-corners of the arbitration agreement.

15. Elaborating his submission, the learned counsel for the appellants pointed out that the scope of the agreement entered between the parties dated 01.08.2016 was confined to the advertisements and work done within the city of Lucknow. Any dispute arising between the parties relating to unpaid bills if related to the city of Lucknow could at best be adjudicated but both the Sole Arbitrator and the Commercial Court No.1 overstepped its jurisdiction by entering into the disputes which fell beyond the limit of Lucknow and the same was neither consented nor it could be inferred by evidence that at any point of time the appellants agreed to enhance the scope of the arbitration clause to include disputes relating to the work done beyond the district of Lucknow.

16. It was further submitted that the respondents had raised claims relating to unpaid invoices, 67 in number, total amounting to Rs.4,22,82,216/-. However, only bill relating to the work done within the city of Lucknow could have been adjudicated and not in respect of bills relating to the work done in districts other than Lucknow.

17. It was also submitted that after signing of the agreement dated 01.08.2016 there was no corrigendum/supplementary agreement or any office note by which it could be inferred or deciphered that the parties had extended the scope of the arbitration clause in the agreement dated 01.08.2016 and in absence thereof the Sole Arbitrator as well as the Commercial Court No.1, Lucknow committed a patent illegality of having entered into a domain of disputes which were not arbitrable and were beyond the scope of the arbitration agreement.

18. It was thus urged that the award suffers from patent illegality and perversity and the Commercial Court No.1, Lucknow also committed a grave error in ignoring this aspect and by affirming the award it has given a seal of judicial acceptance to a perverse award and this in itself is contrary to law and public policy, hence the award dated 31.12.2018 and the order passed by the Commercial Court No.1 dated 06.11.2024 deserve to be set aside.

19. Per contra, Shri Gyan Singh Chauhan, learned counsel for the

respondents alongwith Smt. Manju Devi submitted that it could not be disputed by the appellant that it did not enter into an agreement with the respondents which contained an arbitration clause. It also cannot be disputed by the appellants that in furtherance of the agreement dated 01.08.2016, the appellants had issued work orders to the respondents which was duly executed and as and when the invoices were raised, the same was paid to the respondents and they related to the work done not only within the city of Lucknow but even relating to the work executed in other districts of the State of U.P.

20. It was also urged that the agreement dated 01.08.2016 envisaged the concept of variation and a specific mention was made and attention was drawn to clause 7 and 9 of the agreement dated 01.08.2016. It was urged that undisputedly the appellants issued work orders even for the work done beyond the city of Lucknow. Part payments were made to the respondents and the work done by the respondents was also approved. This would indicate that the appellants as well as the respondents clearly understood that the agreement for advertising was not only confined to the city of Lucknow but extended to other districts of U.P. as well.

21. Whenever a work order was issued for any place other than Lucknow, the respondents executed the work and the respondents would raise its invoices which were paid and at no point of time any such dispute or objection was raised by the appellants. It is only when the agreement dated 01.08.2016 was terminated and when the appellants was required to settle the outstanding bills that the appellants with a malafide intent of not honouring the said bills, as an afterthought, created this dispute and refused to pay which forced the respondents to invoke the arbitration clause.

22. It was further urged that even before the Sole Arbitrator no material or evidence was placed which could indicate that the parties had confined their transactions under the agreement dated 01.08.2016 only to the city of Lucknow. On the contrary, both the parties clearly understood that the agreement would operate throughout the State of Uttar Pradesh and it was evidenced from the conduct as the bills raised by the respondents relating to the work done beyond the city of Lucknow were also cleared by the appellants. Now during the arbitral proceedings and to cause financial

harm to the respondents, the appellants raised the objections relating to scope of disputes which could be referred for arbitration, which are not sustainable.

23. Learned counsel for the respondents further urged that Section 28(3) of the Arbitration and Conciliation Act, 1996 mandates adherence to the terms of a contract keeping in mind the principle of 'party autonomy'. It is urged that where both the parties agreed to expand the scope of the arbitration agreement, in such circumstances, the Sole Arbitrator was justified in giving a complete meaning to the contract noticing the conduct of the parties. In the instant case, the parties by their own conduct had varied or modified the terms of the agreement hence, the Arbitrator was bound to take note of it and applying the aforesaid principle, the Arbitrator made his award which cannot said to be bad in the eyes of law or patently erroneous which may require the intervention of the Court either in terms of Section 34 of the Act, 1996 which needless to say is a restricted jurisdiction and moreover the scope of Section 37 of the Act of 1996 is further restricted.

24. It was further urged by the counsel for the respondents that the appellants do not deny their liability to pay bills which are 18 in number relating to the work done in the city of Lucknow. However, in so far as the bills other than that are concerned, it is not disputed by them that the work was not done or that the appellants did not issue the work order for such work or the work done was below par, in such circumstances, where the quantum and the liability to pay is not disputed but on technical ground of territorial jurisdiction, the objections are raised and they cannot be sustained in law. Accordingly, the appeal deserves to be dismissed with costs.

25. The Court has heard the learned counsel for the parties and also perused the material on record.

26. At the outset, it will be relevant to notice the scope of jurisdiction exercised by this Court in terms of Section 37 of the Act of 1996 which has been duly considered and explained by the Apex Court in **UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116**, wherein the apex court observed as under :-

"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In *MMTC Ltd. v. Vedanta Ltd.* [*MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and *Wednesbury* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

17. A similar view, as stated above, has been taken by this Court in *K. Sugumar v. Hindustan Petroleum Corpn. Ltd.* [*K. Sugumar v. Hindustan Petroleum Corpn. Ltd.*, (2020) 12 SCC 539] , wherein it has been observed as follows : (SCC p. 540, para 2)

“2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of

commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator.”

18. It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.* [*Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1] , the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus : (SCC p. 12, para 24)

“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.”

19. In *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.* [*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , adverting to the previous decisions of this Court in *McDermott International Inc. v. Burn Standard Co. Ltd.* [*McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181] and *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* [*Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran*, (2012) 5 SCC 306] , wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus : (*Parsa Kente Collieries case* [*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , SCC pp. 244-45, para 9)

“9.1. ... 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.

9.2. Similar is the view taken by this Court in *NHAI v. ITD Cementation India Ltd.* [*NHAI v. ITD Cementation India Ltd.*, (2015) 14 SCC 21 : (2016) 2 SCC (Civ) 716], SCC para 25 and *SAIL v. Gupta Brother Steel Tubes Ltd.* [*SAIL v. Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16], SCC para 29.”

(emphasis supplied)

20. In *Dyna Technologies* [*Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1], the view taken above has been reiterated in the following words : (SCC p. 12, para 25)

“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.”

21. An identical line of reasoning has been adopted in *South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd.* [*South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd.*, (2020) 5 SCC 164 : (2020) 3 SCC (Civ) 1] and it has been held as follows : (SCC p. 172, paras 12-13)

“12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in *Dyna Technologies (P) Ltd.*

v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] laid down the scope of such interference. This Court observed as follows : (SCC p. 12, para 24)

‘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.’

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] observed as under : (SCC p. 12, para 25)

‘25. Moreover, umpteen number of judgments of this Court have categorically held that the Court 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.”

27. Keeping the aforesaid principles and scope for intervention in mind, it will be appropriate now to consider the relevant clauses of the agreement

dated 01.08.2016, on which the respective parties have based their submissions.

28. The agreement dated 01.08.2016, in its introductory covenants defines the purpose and scope of the agreement which is being reproduced hereinafter for ready reference:-

"WHEREAS the company is exclusive dealer in the State of Uttar Pradesh for 'VIVO' mobile handsets and accessories etc. hereinafter referred to as "the said products" and desirous to engage the services of an advertising agency for the purpose of advertisement of their products in the City of Lucknow.

AND WHEREAS the agency has agreed to act as advertising agents for the company on the terms and conditions hereinafter mentioned."

29. The clauses of the agreement relating to its workability which are relevant for the present controversy are clause 5, 6, 7, 9 and 10 which are being reproduced hereafter under:-

"5.... Quality of the said product should be as per specification mentioned in Annexure-A if quality is not as per standard, company is liable to cancel that order and if occur twice, can cancel this agreement also. Also the size should be accurate and also installation is finely done. If size and installation is not fine, agency have to change it free of cost and will be penalize to same amount of that issued branding thing is not changed, also they have to change it within three days if they don't want to get penalized.

6. The work must be completed whatever time is told by vendor and it must be satisfactory, after that approval will be given on email, if fall to give installation within time, company have the right to penalize them 1% per day.

7. In special cases if company provide extra work to agency then they can ask for more time and also need approval for that. After approval given agency have to provide the final date of installation, as required.

* * * * *

9.... Whenever the company offers any new product and launches the same in the market for sale, the Agency shall undertake special advertisement campaign for the said new product in consultation with the company.

10. The Agency will have to follow our guidelines while making our product, if they falls, company has to the authority

not to accept that product."

30. The language of the arbitration clause in the agreement is also important and the said clause 11 reads as under:-

"11. All disputes between the parties hereto arising out of this Agreement or in relation thereto or regarding the interpretation of this Agreement shall be referred to an arbitrator appointed by the Indian Council of Arbitration and the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof shall be applicable to such reference."

31. The respondents invoked the arbitration clause and after appointment of the Sole Arbitrator the respondents submitted its statement of claim, a copy of which is on record as Annexure 5 with the paper book. In the said statement of claim, the respondents clearly raised its money claims relating to unpaid invoices which were relatable to the work done in the City of Lucknow and also done in other districts of U.P. Simply put, the claim as indicated in the statement furnished before the Arbitrator was that the respondents in furtherance of the agreement dated 01.08.2016 had worked and provided the necessary services to the appellants. Invoices relating to the work orders were furnished which remained unpaid apart from the fact that the appellants had arbitrarily terminated the agreement and in the given circumstance the appellants were required to pay the outstanding amount for the work done to the respondents.

32. The appellants filed their statement of defence wherein inter alia it had specifically raised a plea that the agreement dated 01.08.2016 was confined to engaging the services of the respondents for advertising in the City of Lucknow. The Sole Arbitrator can only adjudicate the disputes arising from the work allegedly done in the City of Lucknow and all additional claims which relate to the work done outside the City of Lucknow and in other districts cannot be clubbed nor could be referred for arbitration.

33. In the aforesaid backdrop, the Sole Arbitrator in its award considered the plea of limited scope relating to the disputes to be referred for arbitration, in the following words which is being reproduced hereinafter for clarity:-

"....Bare reading the agreement shows that Regenvo is desirous to engage services of an advertising agency for the purpose of advertisement of their products in the city of Lucknow. In the subsequent narration, stipulating terms and conditions of the agreement, it is not mentioned that this agreement applied to work carried out only in the city of Lucknow. This agreement does not bar claimant to work outside Lucknow. On the contrary para 9 of agreement makes it mandatory to undertake special advertisement campaign for the said new products in consultation with the Company, whenever the Company offers a new product and launches the same in market for sale. Further from the records, it is quite evident that respondents have been regularly paying the bills for the assignments, carried out in cities other than Lucknow. During the pendency of agreement, respondents did not raise this issue and in fact respondents have been granting approval of designs at site locations all over the state. Regenvo launched new products and carried out special advertisement campaign in all cities and towns. Thus it appears that respondents plea regarding jurisdiction limited to Lucknow city is an afterthought and is not supported by any documentary evidence and even agreement does not debar claimant from working outside Lucknow once an approval is granted.

Considering facts and circumstances of case, I find no merit and force in this argument and rule that claimant was entitled to work all over the state once an approval is accorded against design at any location. Thus this plea of respondents is rejected and claimant is entitled for payment for work done by him all over the State of U.P...."

34. Having considered the rival submissions and the relevant material available on record including the relevant terms and conditions, the pleadings as well as findings returned by the Sole Arbitrator, this Court finds that as far as the agreement is concerned, it clearly indicated in the introductory covenants that the appellants were the exclusive dealer of 'VIVO Mobiles' in the State of Uttar Pradesh and the respondents were engaged for the purposes of advertising and that too was confined to provide such services in the city of Lucknow.

35. In this context, at the cost of repetition, this Court finds that it will be gainful to notice that the said introductory paragraph and the arbitration clause together and both are being reproduced hereinafter:-

"WHEREAS the company is exclusive dealer in the State of Uttar Pradesh for 'VIVO' mobile handsets and accessories etc. hereinafter referred to as "the said products" and desirous to engage the services of an advertising agency for the purpose of

advertisement of their products in the City of Lucknow."

"11. All disputes between the parties hereto arising out of this Agreement or in relation thereto or regarding the interpretation of this Agreement shall be referred to an arbitrator appointed by the Indian Council of Arbitration and the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof shall be applicable to such reference."

36. If these two paragraphs, which admittedly are part of the agreement dated 01.08.2016, are read together it would indicate that as far as the status of the appellants are concerned, they have been clearly defined to be the dealer of 'VIVO Mobiles' and handsets and accessories for the State of Uttar Pradesh. In the very same paragraph, it has clearly been indicated that the appellant Corporation was desirous to engage the services of an advertising agency for the purposes of advertisement for their products in the city of Lucknow.

37. Apparently, if the parties had agreed for engaging the respondents for advertising services for the entire State of Uttar Pradesh, it could have very easily mentioned it in the agreement itself but it has been conspicuously left out and it has been restricted only to the city of Lucknow. It is in this context that the arbitration clause provides that any dispute arising out of this agreement or in relation thereto shall be referred to arbitration and the Arbitrator was to be appointed by the Indian Council of Arbitration.

38. It will be relevant to examine how an arbitration clause is to be interpreted. Whether it requires strict or liberal interpretation so as to expand the scope of arbitral disputes, even though they may not have been explicitly provided in the clause/agreement, was considered by the Apex Court in (i) **Harsha Constructions v. Union of India**, (2014) 9 SCC 246, (ii) **United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd.**, (2018) 17 SCC 607, (iii) **Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd.**, (2018) 6 SCC 534. The aforesaid judgments were relied upon by the Apex Court in its later judgment in **Indian Oil Corpn. Ltd. v. NCC Ltd.**, (2023) 2 SCC 539 and **Emaar (India) Ltd. v. Tarun Aggarwal Projects LLP**, (2023) 13 SCC 661. To avoid duplicacy, the relevant paragraphs of Emaar (supra) is being reproduced hereinafter:-

"14. In Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd. [Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd., (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484], it is observed and held by this Court that the parties are bound by the clauses enumerated in the policy and the Court does not transplant any equity to the same by rewriting a clause. It is further observed and held that an arbitration clause is required to be strictly construed. Any expression in the clause must unequivocally express the intent of arbitration. It can also lay the postulate in which situations the arbitration clause cannot be given effect to. It is further observed that if a clause stipulates that under certain circumstances there can be no arbitration and they are demonstrably clear then the controversy pertaining to appointment of arbitrator has to be put to rest (paras 10-23).

15. In Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. [Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] , it is observed and held by this Court that a party cannot claim anything more than what is covered by the terms of the contract, for the reason that the contract is a transaction between two parties and has been entered into with open eyes and by understanding the nature of contract. It is further observed that thus the contract being a creature of an agreement between two or more parties has to be interpreted giving literal meanings unless there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the Court to make a new contract, however reasonable, if the parties have not made it themselves. It is further observed that the terms of the contract have to be construed strictly without altering the nature of a contract as it may affect the interest of either of the parties adversely (para 23).

16. In Harsha Constructions v. Union of India [Harsha Constructions v. Union of India, (2014) 9 SCC 246 : (2014) 4 SCC (Civ) 803] , it is observed and held by this Court in paras 18 and 19 as under : (SCC p. 251)

"18. Arbitration arises from a contract and unless there is a specific written contract, a contract with regard to arbitration cannot be presumed. Section 7(3) of the Act clearly specifies that the contract with regard to arbitration must be in writing. Thus, so far as the disputes which have been referred to in Clause 39 of the contract are concerned, it was not open to the arbitrator to arbitrate upon the said disputes as there was a specific clause whereby the said disputes had been "excepted". Moreover, when the law specifically makes a provision with regard to formation of a contract in a particular manner, there

cannot be any presumption with regard to a contract if the contract is not entered into by the mode prescribed under the Act.

19. If a non-arbitrable dispute is referred to an arbitrator and even if an issue is framed by the arbitrator in relation to such a dispute, in our opinion, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to the arbitrator. In the instant case, the respondent authorities had raised an objection relating to the arbitrability of the aforestated issue before the arbitrator and yet the arbitrator had rendered his decision on the said “excepted” dispute. In our opinion, the arbitrator could not have decided the said “excepted” dispute. We, therefore, hold that it was not open to the arbitrator to decide the issues which were not arbitrable and the award, so far as it relates to disputes regarding non-arbitrable disputes is concerned, is bad in law and is hereby quashed.”

* * * * *

19. On the question, who decides on non-arbitrability of the dispute, after referring to and considering the earlier decisions on the point, more particularly, the decisions in *Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd.* [*Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd.*, (2019) 9 SCC 209 : (2019) 4 SCC (Civ) 324] , *United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd.* [*United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd.*, (2018) 17 SCC 607 : (2019) 2 SCC (Civ) 530] and *Narbheram Power & Steel [Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd.*, (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484] , it is observed and held in *Vidya Drolia* case [*Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] that the question of non-arbitrability relating to the inquiry, whether the dispute was governed by the arbitration clause, can be examined by the courts at the reference stage itself and may not be left unanswered, to be examined and decided by the Arbitral Tribunal. Thereafter, in para 153, it is observed and held that the expression, “existence of arbitration agreement” in Section 11 of the Arbitration Act, would include aspect of validity of an arbitration agreement, albeit the Court at the reference stage would apply the prima facie test. It is further observed that in cases of debatable and disputable facts and, good reasonably arguable case, etc. the Court would force the parties to abide by the arbitration agreement as the Arbitral Tribunal has the primary jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability.”

39. The concept of arbitration is based on the principle of party autonomy with full leverage given to the parties throughout the arbitral proceedings.

This aspect was also noticed by the Apex Court in Central Organisation for Railway Electrification (CORE), 2024 SCC OnLine SC 3219 wherein in para 22 of the Apex Court noticed as under :-

"22. The basis of any arbitration is the freedom of the parties to agree to submit their disputes to an individual or to a panel of individuals whose judgment they are prepared to trust and obey. Party autonomy is fundamental to international commercial arbitration because it allows the parties to design the arbitration proceedings to suit their needs and commercial reality. Party autonomy has been described by this Court as the "brooding and guiding spirit" [Balco v. Kaiser Aluminium Technical Services Inc., (2016) 4 SCC 126, para 5 : (2016) 2 SCC (Civ) 580] and "backbone" [Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd., (2017) 2 SCC 228, para 38 : (2017) 1 SCC (Civ) 593] of arbitrations. The principle of minimum judicial interference supplements the autonomy of parties by prohibiting courts from interfering in arbitral proceedings unless mandated by the law. [Section 5, Arbitration Act. It reads:"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."] This principle respects the autonomy of the parties to mutually chart the course of the arbitral proceedings.

23. The Arbitration Act has given pre-eminence to party autonomy throughout the arbitral process. The Arbitration Act has used phrases such as "unless otherwise agreed by the parties" [Sections 3, 11(1), 14(2), 15(3), 15(4), 20(3), 21, 23(3), 24(1), 26, 29(1), 31(7)(a), 33(4), Arbitration Act.] , "failing any agreement" [Sections 11(3), 11(5), 13(2), 19(3), 20(2), 22(2), Arbitration Act.] , "the parties are free to agree" [Sections 11(2), 13(1), 19(2), 20(1), 22(1), Arbitration Act.] , "failing such agreement" [Section 34(2)(a)(v), Arbitration Act.] , and "unless the agreement on the appointment procedure provides other means" [Section 11(6), Arbitration Act.] to recognise the autonomy of parties to determine the arbitral proceedings. The use of the above phrases also indicates that an arbitrator is bound by the procedures agreed upon between the parties. [N.S. Nayak & Sons v. State of Goa, (2003) 6 SCC 56, para 14; Sree Kamatchi Amman Constructions v. Railways, (2010) 8 SCC 767, para 19 : (2010) 3 SCC (Civ) 575]"

40. The Apex Court in in Pam Development Private Limited vs State of West Bengal, (2024) 10 SCC 715 had the occasion to consider the effect of excepted/prohibitory clauses in an agreement and in this regard it held as under:-

"12. This submission is persuasive, but the contract clauses speak for themselves. In fact, the High Court did what the arbitrator should have done. Examine what the contract provides. This is not even a matter of interpretation. It is the duty of every Arbitral Tribunal and court alike and without exception, for contract is the foundation of the legal relationship. Having considered the abovereferred clauses in the contract the High Court came to the conclusion that awarding any amount towards idle, machinery, etc. is prohibited under the "Special Terms and Conditions" of the contract. The arbitrator did not even refer to the contractual provisions and the District Court dismissed the objections under Section 34 with a standard phrase as extracted hereinabove. The High Court exercising jurisdiction under Section 37 did its duty and we are of the opinion that the conclusions of the High Court are correct and cannot be interfered with."

41. Applying the principles to the case at hand, it could not be demonstrated from the material brought on record including the evidence as to how the parties by their own conduct had enlarged the scope of the arbitration agreement to include such disputes which related to work done beyond the city of Lucknow to be encapsulated within the existing arbitration clause.

42. Admittedly, there was no exchange of correspondence or any corrigendum or any additional agreement which was entered between the parties which could indicate that the same terms and conditions including the arbitration clause as provided in the principal agreement relating to the city of Lucknow would be made applicable to the parties in respect of the work done in other districts within the State of Uttar Pradesh.

43. In absence of any material or evidence on record, it cannot be said that the parties by conduct had expanded the scope and had varied or modified the terms of the agreement dated 01.08.2016. On the contrary what is reflected from the record is the fact that after the agreement was terminated and the disputes emerged and the respondents had filed their claim which was denied by the appellants in respect of those claims which were relating to the work done beyond the city of Lucknow. Even for the Arbitrator to have come to a conclusion that the scope of the arbitration clause took within its fold disputes relating to the work done not only within the city of Lucknow but also relating to the work done in other districts of Uttar Pradesh, then it had to be based on some evidence or

material but there is no reference to any such evidence. The Sole Arbitrator has given his conclusion and interpreted the clause without discussing the material evidence led by the parties hence the said finding is rendered vulnerable to be examined by the Court.

44. Apparently, in an agreement of this nature which is the subject matter of the instant proceedings, it would reveal that it is open for the parties to cull out their respective rights and obligations by their choice. The parties are necessarily bound by the agreed terms of the contract. In case if any party pleads modification, variation or novation of the contract or any term then the burden is on such a party to prove it.

45. It is always open for the parties to enhance the area of operations within which the parties agree to operate. Arbitration clause is always seen independently to the agreement, of which it is a part. Hence the parties by choice can make the arbitration clause restricted to certain types or nature of disputes or it can be made vide and open enough to encapsulate all possible types of disputes.

46. However, unless and until there is a clear indication supported by evidence that the principle agreement was modified to enhance the scope of applicability of arbitration clause to apply to such enhanced area of operation or all type of disputes relating to all districts to be made arbitral, till then it cannot be presumed that merely because work has been done under the agreement in an area beyond the agreed area of operation then the arbitration clause itself would also stand extended to such disputes arising beyond the agreed terms of arbitration clause as provided in the agreement.

47. The instant case is not one where there is any dispute of territorial jurisdiction as understood in the classic sense relatable to the courts or adjudicating authorities. The issue involved rather is regarding the area of operation of an agreement and the scope of applicability of the Arbitration clause. In law, Arbitration clause is treated as a separate independent clause altogether and its validity is not depended on terms of the principle agreement wherein it is incorporated.

48. In the instant case, it would reveal that the arbitration clause relates to

all sorts of disputes which may occur between the parties arising out of the agreement dated 01.08.2016 but restricted to such disputes which relate to the work done in the city of Lucknow.

49. The Arbitrator while giving his finding that the appellants had not raised this issue earlier rather the appellants had granted approval of the design, site location all over the State especially noticing that the appellants had launched new products in all the cities and towns and also carried out special advertisement campaign, hence the Arbitrator treated the plea raised by the appellants relating to limited applicability of Arbitration clause in arbitral proceedings as an afterthought and that the said plea was not supported by any documentary evidence and moreover the agreement did not debar the respondents from working outside the city of Lucknow, apparently, the said reasoning may not be sound and cogent for the reason that clause 9, which has already been reproduced in the earlier part of this judgment, would indicate that special advertisement campaign were covered by the agreement. However, the underlying principle being that the arbitration clause would relate to such disputes arising out of the agreement relating to the city of Lucknow and only such disputes could be referred for Arbitration.

50. Thus, such disputes could be referred to Arbitration, as per the clause 11 of the agreement dated 01.08.2016, which passed the twin conditions:

- (i) Dispute must emanate from the work governed and arising out of the agreement;
- (ii) Such dispute must be related to the work done within the city of Lucknow.

51. In light of the aforesaid discussion the reasoning and the finding given by the Arbitrator that there was no bar to work outside the district of Lucknow and once the approval was granted by the appellants, it would have the impact of expanding the scope of the area of operation including enhancing the scope of disputes to be referred for arbitration is not just and proper.

52. Needless to say that even the Commercial Court No.1, Lucknow while dealing with the application under Section 34 of the Act, 1996 did not

notice the aforesaid distinction regarding the area of operation and the Arbitration clause. This apparently is an error which vitiates the order passed by the Commercial Court No.1, Lucknow while exercising powers under Section 34 of the Act, 1996 and falls foul of the patent illegality test.

53. The Sole Arbitrator by returning a finding which is not based on any evidence and material on record and merely is based on presumption coupled with the fact that it has the effect of modifying the terms of the agreement and also amounts to reading something in the clause, which the parties conspicuously left out from being incorporated and this exercise apparently is beyond the jurisdiction of the Arbitrator and thus vitiates the award.

54. This Court had also made an attempt to examine as to whether the claims relating to the work done in Lucknow could be severed in light of the principles laid down by the Apex Court in **Gayatri Balasamy v. ISG Novasoft Technologies Limited (2025) 7 SCC 1**. However, upon perusal of the statement of claim, the evidence and the award, this Court find that the guidelines as laid in **Gayatri Balasamy (supra)** are not met, hence this Court is constrained to set aside the award as a whole .

55. In view of the aforesaid discussions, this Court finds that the order passed by the Commercial Court No.1 dated 06.11.2024 and the award passed by the Sole Arbitrator dated 31.12.2018 cannot be sustained and is accordingly set aside. It will be open for the parties to get the disputes settled relating to the money claims for the work done in the city of Lucknow and arising out of the contract dated 01.08.2016 through arbitration and in so far as other money claims relating to the work done in other districts of Uttar Pradesh except Lucknow are concerned, they can be agitated before an appropriate forum, which needless to say shall be decided in accordance with law, on its own merits.

56. Accordingly, the appeal is allowed in the aforesaid terms. There shall be no order as to costs.

(Jaspreet Singh,J.) (Arun Bhansali,CJ.)

December 12, 2025

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