



2025:CHC-OS:238

**IN THE HIGH COURT AT CALCUTTA
(COMMERCIAL DIVISION)
ORIGINAL SIDE**

**RESERVED ON: 13.11.2025
DELIVERED ON: 04.12.2025**

**PRESENT:
HON'BLE JUSTICE GAURANG KANTH**

AP-COM 21 OF 2023

**MANAGING DIRECTOR BIHAR STATE POWER
GENERATION CO LTD AND ANR**

VERSUS

R S CONSTRUCTION AND ANR

**Mr. U. P. Singh, Sr. Adv.
Mr. Kumar Manish, Adv.
Mr. S. K. Poddar, Adv.
Mr. Abin Lal Chakravarty, Adv.**

..... for the petitioners

**Mr. Prashant Kumar, Adv.
Ms. Bhawna Tekriwal, Adv.**

..... for the respondent no. 1

JUDGMENT

Gaurang Kanth, J.:-

1. The Petitioner in the present Arbitration petition under Section 34 of the Arbitration and Conciliation Act, 1996 is challenging the Award dated 17.09.2023 passed by the Learned Sole Arbitrator Mr. Justice D.K Seth (Retd).
2. The facts relevant for adjudication of the present petition are as follows.
3. The Respondent was declared as the successful bidder in an e-auction floated by the Petitioner through MMTC (proforma Respondent herein) for the dismantling, demolition and disposal of unserviceable and obsolete decommissioned 3 ×15 MW units of the Barauni Thermal Power Station at



Begusarai. Pursuant to the auction, the Respondent deposited a sum of Rs. 2,00,05,100/- on 06.12.2012, whereupon the Petitioner issued the acceptance/sale order in favour of the Respondent.

4. As per the said contract, the Respondent had to complete the dismantling, demolition and disposal of the said three obsolete thermal units within 356 days from the date of acceptance, i.e. by 05.12.2013.
5. Under the terms of the sale order, the total sale consideration was to be paid in three instalments. The Respondent deposited the first instalment on 27.12.2012, the second instalment on 25.02.2013, and the third instalment on 25.03.2013. Consequent upon payment of the first instalment, the Petitioner issued the first delivery order on 31.12.2012. The site was handed over to the Respondent for the first time on 16.01.2013, and the Respondent commenced dismantling and disposal activities pursuant to the dismantling-cum-disposal order issued by the Petitioner.
6. During the execution of the contract, several disputes and differences emerged between the parties. Ultimately, on 10.12.2013, the Petitioner No.1 issued an order directing stoppage of all work.
7. It appears from the record that during the subsistence of the contract, the Respondent repeatedly sought extension of the validity period of the contract. The Petitioners, however, did not accede to any such request, nor were the grievances raised by the Respondent addressed.
8. In view thereof, the Respondent thereafter invoked the arbitration clause contained in the tender document (Buyer's Specific Terms and Conditions). On 01.02.2014, the Respondent issued a notice invoking arbitration and requested MMTC to appoint an arbitrator in terms of the arbitration



clause. Shri S.S. Choudhuri was appointed as the Sole Arbitrator, who conducted the arbitral proceedings and published an award on 02.07.2019. Both parties assailed the said award before this Court. By order dated 24.03.2022, this Court set aside the said award and appointed Mr. Justice Dilip Kumar Seth (Retd.) as the Sole Arbitrator to adjudicate the disputes afresh, with a direction to proceed on the basis of the pleadings already filed by the parties in the earlier reference.

9. In compliance with the said direction, the newly appointed Sole Arbitrator entered upon the reference and, after conclusion of the arbitral proceedings, passed the impugned award dated 17.09.2023. By the said award, the Sole Arbitrator awarded a sum of Rs. 29,96,18,025/- to the Respondent together with future interest @ 9% per annum, subject to the condition that if the awarded amount was paid within 120 days, no interest would be payable.
10. Aggrieved thereby, the Petitioner has approached this Court by way of the present petition under Section 34 of the Arbitration and Conciliation Act, 1996.

Submission on behalf of the Petitioner

11. Learned counsel for the Petitioner submits that the impugned award dated 17.09.2023 is liable to be set aside under Section 34(1)(a) and/or Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1996 on the ground of incapacity and misjoinder. It is urged that the Award has been made against the Managing Director, Bihar State Power Generation Company Limited and the Chairman, Bihar State Power Holding Company Limited, persons who neither in their personal capacity nor in their official capacity were parties to, or privy to, the arbitration agreement. Learned counsel



relies upon the pleadings to show that a specific objection as to misjoinder was taken in the reply to the Statement of Claim but no amendment was permitted or made in the Statement of Claim thereafter.

12. Learned counsel further points out that the first award rendered by Shri S.S. Choudhuri, the earlier arbitrator, was an award against the Company. That award was, by consent of the parties, set aside by this Court by order dated 24.03.2022 and a fresh reference was directed to be adjudicated by Mr. Dilip Kumar Seth (Retd.). Despite the setting aside of the earlier award and the re-reference, the present Award has been rendered against persons who were never proper parties to the arbitration.
13. Learned counsel further submits that no notice under Section 21 of the Arbitration and Conciliation Act, 1996 was ever issued to or served upon the Petitioners. In the absence of such mandatory notice invoking arbitration, the arbitral proceedings stand vitiated at their very inception.
14. To support the proposition on incapacity and misjoinder, learned counsel relied upon the judgments of the Hon'ble Supreme Court in **Tata Engineering & Locomotive Co. Ltd. Vs State of Bihar**, reported as **1964 (6) SCR 885**; **S.N. Prasad Vs Monnet Finance Ltd.**, reported as **(2011) 1 SCC 320**; and **Deutsche Postbank Home Finance Ltd. Vs Taduri Sridhar**, reported as **(2011) 11 SCC 375**, **West Bengal Power Development Corporation Ltd Vs Sical Mining Ltd.** pronounced on 30.09.2022, **Adavya Projects Pvt Ltd Vs Vishal Structurals Pvt Ltd** reported as **2025, SCC OnlineSC 806**, **Vidya Drolia Vs Durga Trading Corporation** reported as **2021 (2) SCC 1.** Learned counsel submits that the legal principles laid down in those decisions are attracted in the present case and warrant the setting aside of the Award in question.



15. It is further contended by the Petitioner that the arbitration clause is narrowly worded and does not provide for reference of “*all disputes arising out of or in relation to the agreement*”. Reliance is placed on ***Oriental Insurance Company Ltd. Vs Narbheram Power & Steel (P) Ltd.***, reported as **(2018) 6 SCC 534**, and ***United India Insurance Co. Ltd. Vs Hyundai Engineering & Construction Co. Ltd.***, reported as **(2018) 17 SCC 607**, to submit that where the arbitration clause is restrictive in scope, only those disputes expressly covered by the clause can be referred to arbitration, and the Tribunal lacks jurisdiction to adjudicate issues falling outside its explicit ambit.
16. It is next urged that the Sole Arbitrator misconstrued the contractual timeline. Clause 7.3 of the tender documents and the acceptance letter/sale order dated 06.12.2012 expressly provided for 365 days from the date of the acceptance letter for taking delivery and removal of materials by way of dismantling and demolition for all main packages; this position is reiterated in the first Delivery Order dated 31.12.2012. On these terms, the contractual tenure expired on 05.12.2013. The Petitioner’s stoppage-of-work order dated 10.12.2013 was therefore issued five days after the expiry of the contractual period. Despite these clear contract terms, the Sole Arbitrator erroneously held that the 365-day period commenced from the date of the dismantling/demolition-cum-disposal order on 02.04.2013/15.04.2013, and on that incorrect premise concluded that the stoppage order was invalid and contrary to the contract.
17. Learned counsel for the Petitioner submits that the Sole Arbitrator has committed patent errors of fact and law by returning findings on the basis



of purported admissions that do not exist on record. It is urged that the Arbitrator repeatedly used the expression “*admittedly*” to support conclusions, despite there being no admission by the Petitioner in the pleadings or evidence. Reliance is placed on ***National Textile Corporation Ltd. Vs Naresh Kumar Badrikumar Jagad***, reported as ***(2011) 12 SCC 695***, wherein the Supreme Court held that in the absence of pleadings, no amount of evidence can be looked into, and any finding based on non-existent or assumed admissions is legally unsustainable.

18. Learned counsel further submits that the Sole Arbitrator committed a patent error in law by holding that “*time was not the essence of the contract*”, despite the contract expressly stipulating a defined delivery/removal period and incorporating time bound obligations. It is contended that the Arbitrator effectively re-wrote the terms of the contract by unilaterally fixing 02.04.2013/15.11.2013 as the dates of commencement of the contract, dates which find no basis in the contractual framework and appear to have been inferred solely on the Arbitrator’s own assumptions. Reliance is placed on ***Indian Oil Corporation Ltd. Vs Shree Ganesh Petroleum***, reported as ***(2022) 4 SCC 463***, and ***South East Asia Marine Engineering & Constructions Ltd. Vs Oil India Ltd.***, reported as ***(2020) 5 SCC 164***, wherein the Supreme Court has reaffirmed that arbitral tribunals cannot re-write contractual terms and must give effect to the express stipulations agreed between the parties.
19. Learned counsel for the Petitioner submits that the Sole Arbitrator further erred in law in concluding that a sum of Rs.14,29,22,468/- represented the value of the materials allegedly remaining unlifted, despite the



complete absence of evidence on record to support such a determination. It is contended that the finding is wholly conjectural and contrary to the evidentiary record. Reliance is placed on ***Bharat Coking Coal Ltd. Vs L.K. Ahuja***, reported as **(2004) 5 SCC 109**, and ***Unibros Vs All India Radio***, reported as **2023 SCC OnLine SC 1366**, which reiterate that arbitral awards cannot be sustained where the findings are unsupported by evidence or are based on mere assumptions. It is further urged that the Sole Arbitrator erred in law in awarding interest @ 10% on the claim for loss of profit; that rate and the manner of computation are contrary to the ratio laid down by the Hon'ble Supreme Court and result in an award unsupported by law and inconsistent with established principles relating to damages and interest.

20. Finally, learned counsel submits that the Arbitrator determined the costs of the arbitration without any evidentiary foundation and in the absence of any pleading to justify the quantum of costs awarded. Such an exercise, according to learned counsel, is arbitrary and contrary to law.
21. Learned counsel therefore prays that the Award dated 17.09.2023 be set aside in its entirety as the sole Arbitrator exceeded his jurisdiction and misconducted the proceedings.

Submission on behalf of the Respondent

22. Per contra, learned counsel for the Respondent supports the impugned Award and submits that the Petitioner has failed to make out any ground under Section 34 of the Arbitration and Conciliation Act, 1996, warranting interference by this Court. It is submitted that the present Petition is nothing but an attempt to re-argue the merits of the case, which is impermissible in proceedings under Section 34.



23. Learned counsel for the Respondent submits that the objection regarding misjoinder of parties is wholly misconceived. The claims were at all material times directed against Bihar State Power Generation Company Ltd. and Bihar State Power Holding Company, the principal contracting entities, and the impleadment of their Managing Director and Chairman was only in a representative capacity. No relief was sought against them in their personal capacity, and the Award is enforceable solely against the corporate entities. Learned Counsel places reliance on **Bhupesh Rathod Vs Dayashankar Prasad Chaurasia**, reported as **(2022) 2 SCC 355**, wherein the Hon'ble Supreme Court clarified that arraying a party in a representative capacity does not vitiate the proceedings unless prejudice is demonstrated. He further relies on **OPG Power Generation Pvt. Ltd. Vs Enexio Power Cooling Solutions India Pvt. Ltd.**, reported as **(2025) 2 SCC 417**, which reiterates that technical objections such as misjoinder cannot defeat an otherwise valid arbitral proceeding where the real parties to the dispute were properly before the arbitrator. Accordingly, the objection raised by the Petitioner is without merit and deserves rejection.
24. Learned counsel further submits that the plea of absence of notice under Section 21 is an afterthought. The Respondent states that the notice invoking arbitration was duly issued on 01.02.2014 and was acted upon by the Petitioner itself, as evidenced by the appointment of the first arbitrator, Shri S.S. Choudhuri. Once the Petitioner voluntarily participated in the proceedings and filed pleadings before both the earlier and subsequent Arbitrators, it cannot now contend that no notice was served. Participation in arbitration without demur constitutes valid waiver within the meaning of Section 4 of the Act.



- 25.** On the question of the contractual period of 365 days, learned counsel submits that the Arbitrator's interpretation is both reasonable and consistent with the conduct of the parties. The dismantling and demolition work could commence only upon issuance of the dismantling-cum-disposal order and actual handing over of the site. Therefore, the Arbitrator correctly held that the period of 365 days would run from the date on which effective possession and operative orders were issued. The stop-work order dated 10.12.2013 was therefore premature and contrary to the terms of the contract.
- 26.** Learned counsel submits that the Petitioner's grievance regarding the Arbitrator's use of the expression "Admittedly" is baseless. The Arbitrator referred only to facts established either through documentary evidence or through uncontroverted testimony. The mere use of the expression does not vitiate the Award.
- 27.** With regard to the issue of whether time was the essence of the contract, learned counsel submits that the Arbitrator correctly applied the settled principles of law. In contracts involving dismantling, demolition and disposal of large industrial units, time is ordinarily not regarded as the essence unless the contract expressly stipulates otherwise. No such express stipulation exists in the present case.
- 28.** With respect to the rate of interest, it is contended that the Arbitrator exercised his discretion under Section 31(7) of the Act. Courts ought not to interfere with the Arbitrator's discretion unless the rate awarded is arbitrary or perverse, which the Petitioner has failed to demonstrate.
- 29.** Learned counsel further argues that the fixation of costs by the Arbitrator falls squarely within his jurisdiction under Section 31A of the Act. The



Petitioner has neither established illegality or shown any perversity in the manner in which costs were awarded.

30. The Respondent submits that the present challenge is outside the narrow scope of Section 34. The Hon'ble Supreme Court in **Consolidated Construction Consortium Ltd. Vs JMC Projects (India) Ltd.**, reported as **2025 (7) SCC 757** has reaffirmed that a court cannot re-appreciate evidence or substitute its own view where the arbitrator's interpretation is a plausible one. Likewise, in **Ssangyong Engineering & Construction Co. Ltd. Vs NHAI**, reported as **(2019) 15 SCC 131**, the Hon'ble Supreme Court held that interference is permissible only when the award is perverse or patently illegal, not merely because another interpretation is possible. In the present case, the learned Arbitrator has adopted a reasonable, evidence based and commercially sensible view. The Petitioners are essentially seeking a re-evaluation of facts and interpretation, which is expressly impermissible under the law laid down in the above decisions. The Award, therefore, warrants no interference.
31. Learned counsel submits that the Award is reasoned, internally consistent, and founded on a proper appreciation of facts and evidence. No ground under Section 34(2) or 34(2A) of the Arbitration and Conciliation Act, 1996, has been made out. Accordingly, the Petition deserves to be dismissed.

Legal Analysis

32. This Court has heard the submissions advanced by learned counsel for both parties and has meticulously examined the record, along with the judicial precedents cited at the Bar. The objections raised by the



Petitioners are now considered under the respective heads outlined hereinbelow.

Preliminary Objection Regarding Misjoinder of Parties and the Impermissible Passing of an Award Against Non-Signatories to the Arbitration Agreement.

33. The principal contention advanced by the Petitioners is that the Award stands vitiated as it has been passed against individuals who were not parties to the arbitration agreement, namely the Managing Director of Bihar State Power Generation Company Ltd. and the Chairman of Bihar State Power Holding Company Ltd. According to the Petitioners, the impleadment of these officers, who had no privity to the arbitration clause, renders the Award without jurisdiction.
34. This Court, upon considering the arbitral record, finds no merit in the objection raised by learned counsel for the Petitioner. At the outset, the Petitioners did not actively pursue this objection before the Arbitral Tribunal. Although the issue of maintainability was framed, the Petitioners confined their challenge to (i) the scope of the arbitration clause and (ii) whether disputes arising after completion of the contract could be referred to arbitration. No submissions were advanced with respect to alleged misjoinder of parties. This omission amounts to a clear waiver of this objection. Having failed to raise this plea at the appropriate stage, the Petitioners cannot now be permitted to resurrect it in proceedings under Section 34 of the Act.
35. Secondly, the pleadings unequivocally establish that the substantive contractual relationship existed solely between the Respondent and Bihar State Power Generation Company Ltd., while Bihar State Power Holding Company Ltd. was arrayed as a party owing to its position as the holding



company. All claims were raised exclusively against these corporate entities. Being juristic persons, they were necessarily represented through their principal officers, i.e., the Managing Director and the Chairman, who were impleaded merely in a representative capacity. Their inclusion did not create any personal liability. The Award itself fastens liability exclusively upon the corporate entities that were signatories to the arbitration agreement and is neither directed against nor executable against the individual officers in their personal capacity.

36. An examination of the relevant Supreme Court jurisprudence shows that in **Bhupesh Rathod** (supra), the Court held that the impleadment of officials in a representative capacity does not vitiate the proceedings unless specific prejudice is demonstrated. No such prejudice has been shown in the present case. Further, in **OPG Power Generation Pvt. Ltd.** (supra), the Supreme Court reiterated that technical objections such as misjoinder or non-joinder cannot defeat arbitral proceedings where the contracting parties were before the arbitrator and the Award operates solely against them. A pragmatic and non-technical approach is mandated under the Arbitration and Conciliation Act, 1996.
37. Applying these principles, the Petitioners' argument that the Award has been passed against "non-signatories" is untenable. The individuals named in the arbitration were not independent parties but merely represented the corporate entities that were privy to the arbitration agreement and were the true subjects of the adjudication.
38. Learned counsel for the Petitioners has relied upon various judgments to contend that arbitral proceedings can be initiated only against parties to the arbitration agreement, and that the Managing Director and Chairman



were not such parties. This Court is in respectful agreement with the legal principle laid down in those precedents. However, the reliance is misplaced in the context of the present factual matrix. It is neither the Respondent's case nor does the record suggest that arbitration was initiated against the Managing Director or the Chairman in their personal capacity. The arbitral proceedings were always directed against the corporate entities who were signatories to the contract, and the officers were impleaded merely in a representative capacity. Consequently, the cited judgments do not advance the petitioners' case and have no application to the facts of the present case.

39. Consequently, the contention that the Award is liable to be set aside on the ground that it has been rendered against persons who are not parties to the arbitration agreement is misconceived, unsupported by the record, and contrary to established legal principles.

Objection Regarding Non-Compliance with the Mandatory Notice Requirement Under Section 21 of the Arbitration and Conciliation Act, 1996

40. Learned counsel for the Petitioner further contended that no notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued, and therefore the arbitral proceedings stand vitiated. This objection also deserves rejection. The Petitioner never raised this plea before the Arbitral Tribunal at any stage. The record indicates that arbitration was invoked by notice dated 01.02.2014, pursuant to which the Arbitrator was appointed in accordance with the contractual clause. The Petitioners participated fully in the arbitral proceedings, the Sole Arbitrator rendered an Award, and thereafter this Court on the consent of both parties set aside the Award and appointed a fresh arbitrator. The Petitioners again participated



in the subsequent proceedings without ever raising an objection under Section 21. Having consciously participated throughout without protest, the Petitioner cannot now be permitted to raise this objection after the Award has been rendered. The contention is therefore devoid of merit and stands rejected.

Objection concerning Extension of the Contractual Timeline

41. Another point raised by the learned counsel for the Petitioners is that the sole arbitrator misconstrued the contractual timeline. According to the Petitioners, the Contractual period of 365 days was to be computed from the date of issuance of the letter of acceptance, which would result in the completion date being 05.12.2013. Whereas the Sole Arbitrator held that the said time period of 365 days is to start from the date of issuance of the dismantling/demolition-cum-disposal order 02.04.2013/15.04.2013.
42. This Court has carefully examined the Arbitral Award in detail. The Sole Arbitrator analysed the issue comprehensively and arrived at his findings upon a considered interpretation of the relevant contractual clauses. Clause 7.3.1 of the contract stipulates that the duration of the contract shall be 365 days from the date of issuance of the acceptance letter and/the dismantling/demolition-cum-disposal order and/or up to the validity period of the delivery order/release order. Further, Clause 7.3.3 provides that the contract shall remain valid up to the validity period of the delivery order/release order or the extended period thereof, in the event such extension is granted by the principal.
43. Having regard to these two clauses, the Sole Arbitrator observed that the Letter of Acceptance (LOA) was not the sole basis for computing the 365-



day contractual period. The contract expressly permitted extension of time at the discretion of the Respondent, and in the presence of such an enabling provision, the contract could not be construed as one in which time was the essence. The Arbitrator further held that the date of entering into the contract is distinct from the validity period of the contract, which is dependent upon the issuance of the acceptance letter and/the dismantling/demolition-cum-disposal order. Consequently, the 365-day period was required to be computed from the date of issuance of any of these operative documents. Applying this interpretation, the Sole Arbitrator concluded that the starting point for calculating the 365-day period must be the date of the first dismantling/demolition-cum-disposal order, since the buyer was contractually prohibited from commencing dismantling/demolition activities without such an order. Prior to the said order, the buyer had no opportunity to undertake any substantive activity except mobilization of resources, notwithstanding that the site was handed over on 13.01.2013. Given that the plant consisted of three units requiring dismantling and demolition prior to removal from the site, the issuance of the dismantling/demolition-cum-disposal order was the operative trigger. Since the first such order was issued on 02.04.2013/15.04.2013, the sole arbitrator correctly computed the 365-day period from that date. In light of this well-reasoned interpretation, the Petitioner's objection to the computation of the contractual period stands negated.

- 44.** This Court finds that the reasoning adopted by the learned Arbitrator constitutes a plausible and judicious view based on a proper interpretation of the contractual clauses. No ground for interference is made out, and hence, no intervention is warranted on this issue.

**Objection concerning quantification of goods which are not lifted**

45. The next objection advanced by the Petitioners is that the Learned Sole Arbitrator erred in concluding that a sum of Rs. 14,29,22,468/- represented the value of the materials alleged to have remained un-lifted, despite there being, according to the Petitioners, no evidence on record to support such a finding.
46. This Court finds no merit in the submission advanced by learned counsel for the Petitioner. The Learned Sole Arbitrator undertook a detailed examination of this issue. It was noted that the underlying transaction was a contract for the sale of goods, with the Petitioner as the seller and the Respondent as the purchaser. The total value of materials agreed to be dismantled and lifted under the contract was Rs. 21,21,54,087.52/-. The Respondent led expert evidence through CW-2 to establish that materials worth Rs. 6,99,37,000/- had in fact been lifted from the site. On the basis of this evidence, and in the absence of any contrary evidence, the Arbitrator concluded that the remaining materials valued at Rs. 14,29,22,468/- were lying un-lifted.
47. It is significant that no evidence whatsoever was led by the Petitioners, who were in custody and control of the un-lifted materials, to demonstrate that the value of the materials lying at site was different or lesser. The Petitioners, having exclusive possession of the un-lifted goods, were in the best position to place such evidence but failed to do so. Conversely, the Respondent, not being in possession of the remaining goods, produced the best possible evidence available to it, namely, the quantification of the materials actually lifted. In these circumstances, the Arbitrator's reliance on the Respondent's evidence was fully justified.



- 48.** The Arbitral Tribunal also undertook a comprehensive analysis of the contractual terms and held that the stoppage-of-work notice dated 10.12.2013 was illegal, as the 365-day contractual validity period had not expired. The Tribunal recorded that the Respondent had already paid the entire contract value and that its inability to lift the remaining materials was directly attributable to obstructions created by the Petitioner. The Tribunal further noted that although the site was formally handed over only on 13.01.2013, the first dismantling/demolition-cum-disposal order without which dismantling could not commence was issued only in April 2013. Thus, the Respondent could not undertake dismantling or lifting before that date.
- 49.** The Tribunal further observed that the Petitioner, instead of extending the contractual period and permitting the Respondent to lift the materials for which payment had already been made, chose to issue the stoppage-of-work order on 10.12.2013, thereby preventing the removal of dismantled goods. On these findings, the Arbitrator held that the Respondent was entitled to refund of Rs. 14,29,22,468/-, being the value of the un-lifted materials.
- 50.** This Court finds that the conclusions drawn by the Learned Sole Arbitrator constitute a plausible and well-reasoned view based on a proper appreciation of evidence, including expert testimony. In a petition under Section 34, this Court cannot re-appreciate evidence or substitute its own conclusions for those of the Arbitral Tribunal. As the findings are neither perverse nor contrary to the express terms of the contract, no ground for interference is made out.

**Objection concerning loss of profit and Cost of Arbitration.**

- 51.** The final objection raised by the learned counsel for the Petitioners pertains to the award of Rs. 1,42,92,247/- towards loss of profit, which, according to the Petitioners, has been granted in the absence of any specific evidence. The Petitioners further challenge the award of costs, contending that the fixation of arbitration costs lacks evidentiary basis and is unsupported by any pleadings justifying the quantum awarded.
- 52.** This Court has carefully examined the findings recorded in the Award. The Arbitral Tribunal has returned a categorical finding of fact that the Petitioner was responsible for the breach of contract. Consequently, the Respondent became entitled to compensation/damages on account of loss of business and loss of profit attributable to the Petitioner's breaches. While the Tribunal noted the absence of direct evidence quantifying loss of profit, it applied a reasonable measure by assessing loss of profit at 10% of the value of the unlifted materials, thereby arriving at an amount of Rs. 1,42,92,247/-. This method of assessment is a recognised and judicially accepted approach, particularly in cases involving breach by a seller in a contract for the sale of goods.
- 53.** With respect to costs, Section 31A(3) of the Arbitration and Conciliation Act, 1996 expressly empowers the Arbitral Tribunal to determine the costs of arbitration. Applying the principles underlying Section 31A, the Tribunal found it appropriate to award the costs incurred by the Respondent in conducting the arbitral proceedings, particularly as the Respondent had been compelled to pursue arbitration owing to the Petitioner's refusal to extend the time period for lifting the goods for which payment had already



been made. On this basis, the Tribunal awarded Rs. 27,76,000/- as costs of arbitration.

- 54.** This Court finds no infirmity in the approach adopted by the Tribunal. The conclusions reached are based on a plausible appreciation of the facts and the law governing quantification of damages and the award of costs. The Petitioner has failed to demonstrate that the Tribunal's findings are perverse, irrational, or contrary to the terms of the contract. Accordingly, the objections raised on this ground are also rejected.

Conclusion

- 55.** Having considered the rival submissions, examined the arbitral record, and evaluated the findings recorded by the Learned Sole Arbitrator, this Court is of the view that none of the objections raised by the Petitioners fall within the limited grounds permissible for interference under Section 34 of the Arbitration and Conciliation Act, 1996. The judicial review contemplated under Section 34 is supervisory and not appellate in nature, and the Court cannot reappreciate evidence or substitute its own conclusions merely because another alternative view may be possible.
- 56.** The objections relating to alleged misjoinder of parties, absence of notice under Section 21, erroneous interpretation of contractual clauses governing to the validity period of the contract, assessment of the value of unlifted materials, quantification of loss of profit, and award of arbitration costs have all been duly considered and stand rejected. The findings of the Arbitral Tribunal are based on a logical, reasoned, and plausible interpretation of the contractual terms and on a proper appreciation of both expert and documentary evidence. None of these findings can be said to be perverse, irrational, or violative of the public policy of India.



57. This Court reiterates that an arbitral award is to be accorded finality and minimal judicial interference is the governing principle. The Petitioners have failed to establish that the award suffers from any patent illegality or contravention of the fundamental policy so as to attract the provisions of Section 34 of the Act.

58. For all the reasons discussed hereinabove, this Court holds that the impugned award does not warrant interference. The petition under Section 34 of the Arbitration and Conciliation Act, 1996 is accordingly dismissed.

(GAURANG KANTH, J.)

Sakil Amed P.A.

