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

Judgment reserved on: 12.02.2026

Judgment pronounced on: 09.03.2026

\+ FAO(OS)(COMM) 4/2024

M/s JSW ISPAT STEEL LIMITED (NOW KNOWN AS JSW STEEL LIMITED) .....Appellant

Through: Mr. Sandeep Sethi and Mr. Ramesh Singh, Sr. Advs. with Mr. Sahil Narang, Mr. Dhritiman Roy, Mr. Ayushman Kacker, Mr. Krisna Gambhir and Mr. Shreya Sethi, Advs.

versus

M/S GAS AUTHORITY OF INDIA LIMITED ..... Respondent

Through: Ms. Madhavi Divan, Sr. Adv. with Mr. Kapil Sankhla, Mr. Shubham Saigal, Mr. Vipul Grover, Mr. Saurabh Kumar Gangwar and Mr. Atharva Kotwala, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 09.03.2026

OM PRAKASH SHUKLA, J.

1. This is an appeal filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996[1], read with Section 13 of the Commercial Courts Act, against the judgment dated 20.12.2023 passed by the Learned Single Judge of this Court in the O.M.P (Comm.) No.

[1] "the Act' hereinafter

249/2020, titled *M/s Gas Authority of India Ltd. vs M/s JSW Ispat Steel Ltd*., whereby the respondent's petition under Section 34 of the 1996 Act has been partly allowed, and the award passed in favour of the petitioner (Appellant herein), has been set aside.

FACTUAL BACKGROUND

2. The brief factual matrix necessary for the purposes of adjudication of the present appeal is delineated below.

2.1 The Appellant is a company engaged in the operation of a sponge iron and hot rolled coil plant located in Dolvi, District of Raigarh, Maharashtra.

2.2 The respondent is a state owned natural gas corporation specialising in the transmission of natural gas, petrochemicals, and city gas distribution.

2.3 In order to obtain continuous supply of natural gas, the appellant and the respondent entered into a contract dated 10.09.1991 (hereinafter referred to as the "Primary Agreement"). Under this contract, the respondent agreed to supply natural gas as per the requirement of the appellant, subject to a maximum quantity of 1.00 Million Metric Standard Cubic Metres per Day (MMSCMD).

2.4 The payment structure for the gas supplied under the Primary Agreement was: (i) Price of the gas supplied, including a transportation

charge of INR 60.60 per thousand standard cubic meter, and (ii) a monthly service charge/transportation charge, calculated using a specified formula, designed to recover the operational costs and maintenance costs associated with the gas supply.

2.5 Subsequently, a supplementary agreement was entered between the parties on 30.03.1998 (hereinafter referred to as the "Supplementary Agreement"), which modified and substituted certain provisions of the Primary Agreement, particularly with respect to the charges for the gas supply.

2.6 In particular, clause 4.03 of the Primary Agreement was substituted by a new clause 4.03, which replaced the formula based monthly service charge with a fixed transportation charge of Rs. 38,67,600/- per month. The respondent contended that this fixed transportation charge was introduced to recover costs such as maintenance, operational expenses, and a minimum return on investment.

2.7 Additionally, clause 12 of the Primary Agreement was amended, specifying that the appellant had a period of 14 days from the receipt of the gas supply invoice (including the price, transportation charges, service charges and any additional charges) to raise any discrepancies or disputes with the invoice. Failure to raise such a dispute within this period was to be deemed a waiver of the right to raise claims or refer the matter to arbitration.

2.8 Thereafter, as the events unfolded, to accommodate the appellant's increasing requirement for gas to operate its sponge iron plant, a tripartite agreement was also executed between the respondent, the appellant, and M/s Kalyani Mukund Limited on 21.12.1999. This agreement resulted in the allocation of an additional 0.75 MMSCMD of gas to the appellant, which was previously allocated to M/s Kalyani Mukund Limited. As a result, the total gas allocation for the appellant was increased from 1.00 MMSCMD to 1.75 MMSCMD.

2.9 The primary dispute arose when the respondent allegedly failed to supply the committed quantity of gas to the appellant under both the Primary and Supplementary Agreement. The respondent attributed this failure to supply to government control over gas allocation, with the supply being constrained due to scarcity.

2.10 The appellant raised concerns over the respondent's invoicing practices. According to the appellant, respondent's issuance of invoices for fixed transportation charges was wrongly calculated and wrongly issued under both the contracts, despite the fact that the gas was only being supplied under the Primary Agreement and not under the tripartite agreement. The appellant argued that the respondent was wrongfully calculating and raising invoices for transportation charges that were not due.

2.11 Thereafter, according to appellant to resolve the issue, appellant made several attempts to resolve the issues through communications with the respondent, including raising formal grievances and disputing

the transportation charges and failure to supply the contracted quantity of gas. However, the respondent did not respond satisfactorily to these complaints.

2.12 Due to the ongoing disputes and the respondent's failure to resolve the issues, the appellant invoked arbitration as per the dispute resolution mechanism stipulated in the agreements between the parties.

2.13 Being aggrieved, the arbitration proceedings were initiated, and an arbitral tribunal was constituted to adjudicate the disputes between the parties.

Proceedings before the arbitral tribunal

3. Statement of claim

3.1 The appellant, in the proceedings before the arbitral tribunal, presented its claim based on a series of contentions and legal arguments which are set out in detail below.

3.2 The appellant contended that, while entering into the contract dated 10.09.1991, the respondent, by virtue of its monopoly status as a state-owned gas transmission company, took unfair advantage of its dominant position. The appellant claimed that the respondent coerced the appellant into agreeing to pay a fixed transportation charge, purportedly to recover the respondent's investments in laying the pipeline and for the maintenance thereof.

3.3 Thereafter, the appellant was persuaded to enter into a tripartite agreement with the respondent and M/s Kalyani Mukund Limited on 21.12.1999, wherein the appellant was induced to pay additional fixed transportation charges on the false assurance of receiving an additional 0.75 million standard cubic meters of gas per day. However, the respondent failed to fulfil this commitment, leading to a material breach of the agreement by the respondent. As a result, the appellant argued that this constituted a fundamental breach of contract, as the promised supply was not provided, and the fixed transportation charges were retained despite the failure to supply the agreed gas.

3.4 The appellant contended that the payment of fixed transportation charges was contingent upon the respondent fulfilling its commitment to supply the full contracted quantity of natural gas each day. According to the appellant, the respondent's failure to supply the requisite quantity of gas, as specified in the contracts, extinguished the respondent's entitlement to retain the transportation charges.

3.5 Further, the appellant asserted that the respondent's supply was not only deficient in quantity but also failed to meet the agreed upon specifications. The short supply and failure to meet specifications resulted in severe operational consequences for the appellant, including substantial production losses and a significant loss of profit.

3.6 Moreover, the appellant claimed that the financial prejudice suffered was compounded by the fact that the appellant has made significant expansion investments in reliance on the respondent's

assurances of a continuous and adequate supply of gas. These investments, which were made to scale up operations based on the expectation of the promised gas supply, were rendered unproductive due to the respondent's failure to deliver as contracted.

3.7 Accordingly, the appellant sought the following specific reliefs before the arbitral tribunal, (i) Supply of the shortfall quantity of gas or, alternatively, a refund of proportionate transportation charges; (ii) Compensation for loss of profit for Rs. 701 crores; (iii) Compensation for loss of use of money for Rs. 55 crores or interest at 20%; (iv) Compensation for failed expansion for Rs. 40 crores along with interest at 20%; (v) Reduction or refund of transportation charges, and (vi) Costs of arbitration.

4. Statement of defence

4.1 The Respondent's first line of defence was that the appellant's claims were barred by the statute of limitations and, in any event, were not suitable for resolution through arbitration.

4.2 The Respondent contended that, even accepting the appellant's case on its face, the gas supply commenced in 1994, and the contract was executed on 10.09.1991. However, the appellant raised the dispute regarding the excess transportation charges only in 2000, well beyond the three-year limitation period. The respondent argued that any claims for monetary relief that predates three years before the commencement of the arbitration proceedings are barred by limitation, and therefore,

the arbitral tribunal should refuse to entertain claims relating to periods prior to the expiration of this three-year period.

4.3 The respondent further asserted that the claims relating to the period before 1998 were invalid because the 1998 agreement replaced or superseded the earlier contractual framework of 1991. Therefore, claims relating to the pre-1998 period, should be deemed waived and non-arbitrable.

4.4 The Respondent argued that the appellant had voluntarily agreed to the modified contract terms under the 1998 agreement, which included the new fixed transportation charges. The 1998 agreement marked a conscious shift from a variable transportation charge structure, as provided under the 1991 contract, to a fixed transportation charge. This shift was not an "excess" charge but was explicitly agreed upon by both parties as part of the renegotiated contractual terms.

4.5 The respondent emphasized that the appellant, entered into the 1998 agreement with full awareness of the gas supply situation and the regulatory environment. The appellant, therefore, could not later claim that the fixed transportation charges were unfair or excessive simply because the supply situation or commercial outcomes were not as expected.

4.6 The respondent contended that it did not breach the contract by failing to meet the full gas supply commitments because the supply was subject to government control and regulations. The gas supply was

regulated by the Gas Linkage Committee and was subject to governmental directions. Due to the scarcity based allocation system, the respondent had limited control over the quantity of gas that could be supplied to the appellant. The Respondent argued that, given the regulatory control and scarcity of gas, the appellant's claims for non-supply were based on an incorrect understanding of the contract. The respondent emphasized that such contracts in the gas sector are subject to government regulations and cannot be treated like ordinary commercial contracts that are negotiated freely without such constraints.

4.7 The respondent in response to the breach of contract allegations, stated that, despite the constraints on supply, the appellant was consistently supplied with 80% of the contracted quantity of gas, which was a significant proportion of the total agreed upon supply and consistent with the government's allocation orders. Therefore, the respondent could not be held liable for a breach on the alleged shortfall in supply when the constraints were beyond its control.

4.8 The respondent further defended the fixed transportation charges, claiming that the pipeline network incur substantial fixed costs, including capital investment, the cost of terminals, meters, safety systems, telecommunications, monitoring, and ongoing operations and maintenance costs. These costs must be covered by the transportation charges, irrespective of the quantity of gas actually supplied. The respondent argued that the fixed transportation charges are widely recognized in the industry as a standard method to recover the costs of

infrastructure and sustain maintenance and expansion. The appellant's argument that the charges were "excess" was unfounded, as the charges were based on the actual costs associated with providing the necessary infrastructure, which are incurred regardless of gas throughput.

4.9 The Respondent denied that the gas supply obligations under the contract were absolute and argued that the supply was always contingent on factors beyond their control, such as gas availability and governmental directives. The supply was thus always conditional and could not be viewed as an absolute obligation that the respondent was required to fulfil regardless of the circumstances.

4.10 The Respondent further argued that the appellant was fully aware when entering into the initial agreement in 1991 and the modified arrangement in 1998 that the gas supply would be subject to availability constraints and government regulations. Therefore, the appellant could not later claim damages based on the assumption that the respondent was obligated to supply a minimum quantity of gas, unaffected by the government's allocation policies or gas scarcity issues.

5. Framing of issues

5.1 In light of the factual matrix, legal arguments, and submissions of both parties, the tribunal framed the following issues for adjudication:

"1. Are the Claims or any part of them not arbitrable?

2. Whether Respondent was justified in not supplying contracted quantity of the gas to the Claimant? If no, to what effect?

3. Does the Respondent prove that under the terms of the contract, the extent of supply to the Claimant of gas was dependent upon the availability of gas at the material time as well as upon direction of Government of India at that point of time?

4. Is the Respondent entitled to claim transportation charges from the claimant even during the period of short supply or no supply whatsoever?

5. Does the Respondent prove that the Claimant raised the objection in regard to transportation charges from the first time in the year 2000? If yes, what is the effect?

6. Does the Respondent prove that on the execution of the supply agreement dated 30.03.1998, all the claims prior thereto stood extinguished?

7. It is shown that the Claims for transportation charges pertaining to a period more than 3 years prior to date of the commencement of arbitration i.e. 7.1.2003, is not arbitrable as barred by limitation?

8. Does the claimant prove that in view of the continuous and uninterrupted process of issuing provisional invoices, the limitation does not run against the Claimant until those invoices are reconciled and made final?

9. Does the Claimant prove that the Respondent was wrong in levying and recovering transportation Charges post-tri-partite agreement for the same infrastructure against the same party under two different agreements?

10. Whether the Respondent continuously made false assurances of supplying the contracted quantity of gas so as to induce the Claimant to continue to pay transportation charges?

11. Does the Respondent prove that the Claimant is stopped from complaining about the levy of transportation charges because throughout the contract period and even upto date and even post tri-partite agreement, right upto 2000, they never disputed charges recovered / levied by the Respondent?

12. Are the Claimant entitled to claim refund of corporate income tax as per clause 4.03 of Contract?

13. Are the Claimants entitled to interest? If so, from what date and on what amount and at what rate?

14. Are the claimants entitled to all or any of the reliefs sought under the Claim- Statement?

15. What order as to costs?

16. What Award?"

6. Arbitral award

6.1 On issue no.2 and 3, the tribunal concluded that the shortfall in the supply of gas was not a breach of contract by the respondent. Instead the shortfall was caused by the non-availability of gas after supplies were first made to priority sectors as per the recommendation made by the Gas Linkage Committee (GLC). This non-availability was a direct result of governmental regulations and the allocation framework, and the respondent was unable to supply the full contracted quantity due to scarcity and governmental control over gas distribution.

6.2 The tribunal further noted that the Central Government holds the power to allocate gas to priority sectors under its policy, and this takes precedence over the contractual terms related to gas supply. The tribunal held that Articles 5.01 to 5.03 of the Gas Supply Agreement dated 10.09.1991 and relevant provisions of the Supplementary Agreement dated 30.03.1998 had to be interpreted in a manner that was consistent with the gas utilization policy enforced by the government. The tribunal specifically relied on the judgment of the Supreme Court

in ***Reliance Natural Resources Ltd. v. Reliance Industries Ltd***.[2] to establish that the government's allocation decisions override any conflicting contractual provisions, even when it results in a reduction of the contracted gas supply.

6.3 The tribunal held that the short supply of gas, even if it could be construed as a breach of contract, should be treated as a force majeure even due to the government's regulatory orders. This was seen as an external factor that disrupted the supply of gas and therefore absolved the respondent from liability for failing to meet the contractual supply targets.

6.4 On issue no. 4 and 5, the tribunal did not accept the appellant's argument that *force majeure* automatically suspends its obligation to pay the fixed transportation charges. The tribunal also rejected the appellant's claim for a proportionate reduction of transportation charges based on the principle of "part performance" under section 12(2), Specific Relief Act, 1963.

6.5 The tribunal reasoned that while a shortfall in supply could ordinarily constitute a breach of contract under Article 5.01 of the GSA, when the shortfall occurs due to a force majeure event, it is not considered a breach at all. As a result, the tribunal held that the failure to supply gas due to governmental regulations did not create a right for the appellant to suspend payment of full transportation charges. The

[2] **(2010) 7 SCC 1**

fixed transportation charge remained due regardless of the shortfall, unless the terms explicitly provided otherwise.

6.6 The tribunal dismissed the appellant's reliance on Section 12(2) and (3) of the Specific Relief Act, 1963. The tribunal found that, (i) the unperformed part of the contract was not significant enough to justify a claim for reduction of the fixed charges, as the respondent had been able to supply gas at approximately 80% of the contracted quantity, and (ii) even if Section 12(3) could apply, it would require the appellant to relinquish claims for the remaining performance and compensation. Since the appellant continued to seek damages for the shortfall, it could not invoke the provisions of the Specific Relief Act to claim a proportionate reduction in transportation charges.

6.7 Having rejected the claims based on legal grounds, the tribunal turned to a more commercially sensible interpretation of the contract, invoking the principle of business efficacy (Article 4.03). The tribunal observed that the fixed monthly transportation charge of Rs. 38,67,600/- was meant to cover the facilities available for the supply of gas up to the maximum capacity specified in Article 5.01 of the GSA. However, in light of the force majeure event, the tribunal found that it would be commercially unfair to charge the full amount when the supply was drastically reduced.

6.8 Thus, the arbitral tribunal held that that according to the principle of business efficacy, contracts should be interpreted in a manner that aligns with the commercial purpose they were meant to achieve. The

tribunal thus ruled that the fixed transportation charges should be proportionately reduced on a month-by-month basis to reflect the actual quantity of gas supplied. According to tribunal, this interpretation was consistent with the commercial realities of the situation and ensured that the respondent was not unjustly enriched at the expense of the appellant.

6.9 In addition to the contractual interpretation, the tribunal applied the principle of "partial failure of consideration", which is recognized under Indian law as a basis for adjustment of payments when a service or performance is not fully delivered. This principle allows for apportionment where part of the contracted service is not rendered. In this case, since the transportation service corresponding to the shortfall in gas supply was not performed in full, the tribunal ruled that restitution or adjustment of the charges was warranted.

6.10 Thus, the respondent submitted detailed records of the total supplies from June 1994 to January 2003, showing that the total gas supply during this period amounted to 2,450.01 MMSCM. The appellant calculated the month-wise transportation charges based on the actual quantity of gas supplied and found that the fixed monthly transportation charge should be proportionally reduced for each month. This reduction resulted in a refund amount of Rs. 14.67 crores.

6.11 Consequently, on issue no.4, the tribunal upheld the appellant's calculation and agreed that Rs. 14.67 crores represented the excess transportation charges that should be refunded. This refund amount was directly linked to the shortfall in the gas supply. The tribunal justified

this decision both through a commercially sensible interpretation of the contract and, alternatively, by applying the principle of partial failure of consideration. The tribunal found that it would be unjust to allow the full transportation charges to be paid when the full service was not rendered due to the force majeure event.

6.12 On issue no.5, the tribunal concluded that the appellant was not estopped from claiming a proportionate reduction in transportation costs, even though the issue had been raised in the year 2000. The tribunal held that the appellant was entitled to claim a refund of Rs. 14.67 crores for the period from June 1994 to January 2003. This was based on a proper computation that reflected the shortfall in the gas supply. The tribunal affirmed that the appellant's right to claim this refund was not barred by any time limitation, as the contractual terms and the principles of Indian law provided a valid basis for the claim.

6.13 On issue no. 6, the tribunal rejected the respondent's argument that all prior claims under the 1991 agreement were waived or extinguished upon the execution of the 1998 supplementary agreement. The respondent had described the 1998 agreement as an amendment to the 1991 agreement, rather than a separate, independent contract. Based on this, the tribunal held that the 1998 agreement did not extinguish the appellant's claims arising under the earlier contract, as the 1998 agreement was merely a modification of certain terms and not a complete substitution of the 1991 contract.

6.14 On Issues 7 and 8, the tribunal addressed the respondent's objection that the appellant's claims for transportation charge refunds were bared by limitation, particularly those claims pertaining to period prior to three years before the initiation of arbitration, i.e., before 07. 01.2003. The respondent argued that the invoices became final after 45 days, and any claim for refunds older than three years was time-barred and therefore not arbitrable.

6.15 The tribunal accepted the appellant's explanation that the invoices raised throughout the contract period were provisional and that the accounts had not been fully reconciled or finalized. The tribunal noted that there was no evidence to suggest that these invoices were later finalised. Even the respondent's witness did not deny that the invoices remained provisional.

6.16 The tribunal held that since the invoices were provisional and never finalized, the limitation period for the appellant's claims did not commence. The tribunal did not accept the respondent's argument that the invoices should have become final within 45 days or by the end of the financial year. Therefore, the tribunal ruled that the claim of Rs. 14.67 crores was not barred by limitation.

6.17 Therefore, under Issue 7, the tribunal held that the appellant's refund claim of Rs. 14.67 crores was not barred by limitation and was arbitrable. The claim was timely, as the limitation period has not yet begun, given the pending reconciliation of the provisional invoices. Under Issue 8, the tribunal held that the limitation period would

commence once the provisional invoices were reconciled and made final. Since this had not occurred, the claim was within the permissible time frame.

6.18 On Issue 11, the tribunal considered whether the appellant was estopped from challenging the transportation charges because it had not objected to them during the contract period or up to 29.12.2000.

6.19 The tribunal held that mere failure to object earlier or until 29.12.2000, did not create estoppel, especially since the tribunal had already determined that the claims were not barred by limitation. The tribunal also held that the 14-day dispute mechanism did not automatically impose estoppel if not invoked. Additionally, the refund of Rs. 4.22 crores after the 1998 revision did not preclude the appellant from claiming other amounts due and accepting payments or revisions without protest did not bar a lawful claim. Therefore, the tribunal ruled that the appellant was not estopped from seeking refund of proportionate transportation charges.

6.20 At last, the tribunal awarded Rs. 14.67 crores to the appellant as a refund for proportionate transportation charges, based on a commercial interpretation of the contract and the principle of partial failure of consideration. The tribunal held that fixed transportation charges should be reduced in line with the shortfall in supply due to force majeure.

6.21 The tribunal awarded interest at 6% per annum from 29.12.2000, exercising discretion under Section 31(7) of the Arbitration and Conciliation Act, 1996, as the contract did not specify interest. This decision compensated the appellant for the delayed payment of the refund.

7. Impugned Judgment

7.1 Aggrieved by the arbitral award, the respondent filed a petition under Section 34 petition of the Arbitration and Conciliation Act, 1996 before this court, seeking to set aside the award passed by the Arbitral Tribunal.

7.2 Section 34 of the Act provides the mechanism for setting aside an arbitral award in specific grounds, including when the award is in conflict with the public policy of India. In this case, the learned Single Judge of this court considered the section 34 petition and ultimately set aside the arbitral award. The reasons and findings for this decision are delineated below:

7.3 The learned Single Judge first considered the respondent's challenge to the arbitral tribunal's decision to reduce the fixed transportation charges on a pro-rata basis, as well as the tribunal's reliance on the business efficacy principle and the partial failure of consideration. The respondent argued that under the 1991 Agreement and the 1998 Supplementary Agreement, the transportation charges were fixed and not contingent on the quantity of gas supplied. As such,

they contended that reducing the transportation charges to a pro-rata basis was legally flawed.

7.4 The respondent argued that the arbitral tribunal's reliance on business efficacy was legally erroneous and inconsistent with its own force majeure findings. The tribunal had essentially found that the failure to supply gas was due to force majeure, but simultaneously applied partial failure of consideration to reduce the transportation charges. The respondent argued that this created a contradiction, as force majeure and partial failure of consideration should not co-exist in the manner applied by the tribunal.

7.5 While the learned Single Judge acknowledged the respondent's argument that the transportation charges were fixed and not linked to supply levels, the learned single Judge also noted that contractual interpretation was within the domain of the arbitral tribunal. The learned Single Judge observed that the tribunal's interpretation, although contentious, was a plausible and reasonable construction of the contract. Since the tribunal's view was within the ambit of reasonable interpretation, the learned Single Judge declined to reappraise the merits of the interpretation. In other words, the learned single Judge refused to interfere with the arbitral award on the grounds of merits-based reconsideration.

7.6 The learned Single Judge refrained from engaging in a merits-based review, reiterating that the role of the court under Section 34 is not to substitute its own interpretation for that of the arbitrator and

contractual interpretation remains a matter for the arbitral tribunal as long as the tribunal's interpretation was within the reasonable bounds of contract law, the court would not interfere.

7.7 On Issue No. 5,7,8, and 11, the learned Single Judge focused on the amended Clause/Article 12.03 of the Supplementary Agreement dated 30.03.1998. The amended clause specifically outlined the consequences of failing to lodge a claim within 14 days of receiving invoices for transportation charges. It was clearly stated that failure to do so would constitute an absolute waiver of the claim and the right to refer the matter to arbitration.

7.8 The learned Single Judge highlighted that the failure of the appellant to raise any claim within the prescribed 14-day period under Article 12.03 was a crucial aspect that had to be considered. However, the arbitral tribunal had not taken this into account, ignoring the clear stipulation in the agreement. As a result, the learned Single Judge concluded that the tribunal's failure to consider waiver meant that it had overlooked a critical issue affecting the jurisdiction of the tribunal itself.

7.9 The learned single judge found that the issue of waiver and the jurisdiction of the tribunal were not addressed by the arbitral tribunal, despite the fact that Article 12.03 of the contract was central to the dispute. The failure of the tribunal to even address this provision was found to be a serious oversight.

7.10 The learned Single Judge recorded that the framework of Article 12.03, which governs the dispute resolution process and time limits for raising claims, had been ignored by the tribunal. The tribunal's reasoning that the invoices were provisional and therefore did not trigger the limitation period was criticized. The learned Single Judge held that even if the invoices were provisional, this did not extend the time indefinitely for raising claims.

7.11 The learned Single Judge further rejected the tribunal's conclusion that the invoices being provisional prevented the limitation period from running. The learned Single Judge ruled that if the invoices were indeed provisional, they cannot be open-ended, and the appellant should have raised disputes within a reasonable time. The failure to do so was deemed a violation of the 14-day limitation period set out in the contract, which would bar the claims under Section 34 of the Limitation Act, 1963.

7.12 Additionally, the learned Single Judge pointed out that the appellant's primary claim was for loss of profit due to the wrongful levy of transportation charges. However, the tribunal had treated the claim as one for a partial refund of transportation charges, awarding Rs. 14.67 crores based on that assumption. The learned Single Judge found that this was a discrepancy, as the appellant had never formally sought a refund of transportation charges in its Statement of Claim.

7.13 The learned Single Judge further emphasized that the award granted by the tribunal did not align with the appellant's pleaded case.

The claim for loss of profit was distinct from a claim for partial refund of transportation charges, yet the tribunal awarded the latter despite the fact that the appellant had abandoned any claim related to the 1999 Tripartite Agreement, and consequently, this issue was formally framed as Issue No. 9.

7.14 The learned Single Judge noted that the appellant's primary grievance was related to the transportation charges under the 1999 Tripartite Agreement. However, during the arbitration, the appellant itself clarified that disputes under the Tripartite Agreement were not part of the reference. Despite this, the tribunal proceeded to award a refund based on the 1991 and 1998 agreements, which the learned Single Judge found to be inconsistent with the appellant's pleaded case and the issue framing.

7.15 The learned Single Judge noted that the tribunal had awarded relief under contracts other than those originally pleaded by the appellant. This was deemed an error, as it departed from the actual dispute and the issues framed during arbitration.

7.16 The learned Single Judge concluded that the arbitral award was legally flawed and inconsistent with the contractual stipulations, particularly with respect to the issue of waiver under Article 12.03 and the claims raised by the appellant. The failure to properly consider these critical issues, along with the error in awarding a refund based on a different contractual framework, led the learned Single Judge to set aside the arbitral award.

7.17 As a result of the aforementioned findings, the learned Single Judge allowed the Section 34 petition filed by the respondent and set aside the arbitral award.

Proceedings before us

8. Rival submissions

8.1 Mr. Sandeep Sethi, learned Senior Counsel for the appellant, argued that the learned Single Judge wrongly held that the appellant had waived its claim by failing to dispute the transportation invoices within the 14 day period prescribed under Article 12.03 of the Supplementary Agreement. It was submitted that the arbitral tribunal had considered and rejected the plea of waiver and estoppel under Issues 5, 6 and 11, referencing Article 12.03 in its award. The counsel argued that these factual findings by the tribunal were beyond interference by the court under Section 34 of the Act.

8.2 It was further argued that Article 12.03 itself was void under Section 28 of the Indian Contract Act, 1872, as it restricted and extinguished the rights of the appellant in an unjust manner. According to the appellant, waiver requires a positive act, not mere silence or payment of provisional invoices. The appellant maintained that Article 12.03 could not extinguish its rights to claim due to the lack of a clear and explicit waiver under Indian contract law principles.

8.3 The learned Senior Counsel submitted that the impugned arbitral award had rendered its finding only after carefully considering and setting out the submissions from both sides. As such, the counsel argued that the award expresses a clear application of mind by the tribunal and was in conformity with section 31 (3) of the Act, which mandates that an arbitral award must state the reasons for its decision.

8.4 The appellant's Senior Counsel submitted that the lack of detailed reasoning in the award should not be a ground for interference under Section 34. The counsel referred to precedents suggesting that minimal reasoning does not automatically justify setting aside an arbitral award under the Indian law framework.

8.5 It was further argued that the claims were within the prescribed period of limitation, emphasizing several grounds:

i. The Agreement for supply of gas formally ended on 31.12.2000, although the actual supply continued till January 2003. The appellant contended that it could only ascertain the total shortfall in gas supply after 31.12.2000, when the contract period formally concluded. Therefore, cause of action arose only after 31.12.2000, and the invocation of arbitration on 07.01.2003 was well within the three-year limitation period prescribed under Section 3 of the Limitation Act, 1963.

ii. Even for the alternative claim for refund of proportionate transportation charges, limitation would begin at the earliest from 31.12.2000 when the contractual period ended.

iii. The shortfall in gas supply occurred throughout the contract period, making it a continuing breach, which, according to the appellant, extends the limitation period.

iv. The invoices were marked "provisional" by the respondent, and there was no final reconciliation of accounts, meaning the claim could not properly arise until the final reconciliation took place.

v. The arbitral tribunal accepted these arguments and held that the claim was within time. The learned counsel criticized the learned Single Judge's reliance on the *Reliance Industries* case, asserting that it only upheld the tribunal's findings on limitation and that waiver/estoppel were questions of fact, not of law. The Supreme Court had clarified that legal questions in the case remained open.

8.6 It was also urged that the representations of the appellant were considered by the Respondent only on 15.07.2002, after which mutual consultations or settlement discussions ended, and the cause of arbitration arose. According to the appellant, until that point, any claim would have been premature.

8.7 Lastly, the appellant's counsel submitted that, even assuming the claims were partially barred, the Appellant would still be entitled to a sum of Rs. 8.5 Cr. (out of 14.67 Cr.) as a refund, and after calculating the interest accrued, the total amount would be Rs. 44.86 Cr. as of 10.01.2024.

8.8 *Per contra*, Ms. Madhavi Divan, learned Senior Counsel for the respondent, submitted that the appellant could not now seek a refund of the fixed transportation charges under the 1991 contract. The respondent pointed out that when the 1991 Contract was amended in 1998, the appellant did not raise any concern about the fixed transportation charges despite knowing that the charges were not linked to the actual supply of gas. The 1998 Supplementary Agreement clearly stipulated the fixed transportation charges, which were agreed to by both parties.

8.9 Learned Senior Counsel for the respondent contended that the Tripartite issue had been settled, and the respondent had refunded Rs. 4.22 crores through a credit note for the transportation charges. The appellant accepted this refund without objection, and therefore, the claims before 30.03.1998 were settled and waived. The respondent argued that the appellant had agreed in 1998 to change the transportation charges to a fixed monthly amount of Rs. 38,67,600/-, fully aware that these charges were independent of the amount of gas supplied. The respondent submitted that any objections to the invoices should have been raised within 14 days, but the appellant did not do so, creating estoppel under the terms of the contract.

8.10 The respondent submitted that it had duly supplied the contracted quantity of gas under the 1991 Contract. According to the respondent, the appellant was not entitled to claim a refund of "fixed transportation charges" on the basis of short supply, as the contractual requirement was not breached. It was noted that Clause 5.02 of the 1991 Agreement

specifically contemplated reduced supply and provided a formula for such situations. The respondent met the 80% supply threshold set in the contract, which was more than the minimum guaranteed supply required.

8.11 The respondent argued that under the amended Article 12.03 of the Supplementary Agreement, the appellant was required to raise objections to the invoices within 14 days and failing to do so meant that the appellant's claim for refunds was barred by the limitation period under the contract. The respondent emphasized that the invoices were final once the 14-day period elapsed, and any objections raised later were inadmissible.

8.12 Lastly, the respondent highlighted that the arbitral tribunal itself had acknowledged that reduced supply was contractually envisaged under the 1991 Contract. As per Article 5.01, the fixed transportation charges were not linked to the actual quantity of gas supplied. Reduced supply was always contemplated, and the Tribunal's attempt to order a pro-rata refund was inconsistent with the contractual terms. Moreover, the tribunal's conclusion on force majeure as contradictory, as it simultaneously justified reduced supply due to external factors yet ordered a pro-rata refund of transportation charged.

Reasoning and findings

9. We have heard learned senior counsel and learned counsels who appeared before us at a considerable length and on various dates. The record has also been carefully perused in its entirety.

10. Scope of interference

10.1. In a challenge to an arbitral award, the most important starting point is to recognize the limited scope of judicial interference, as enshrined in Part-I of the Arbitration and Conciliation Act, 1996 ("the Act"). The framework of the Act, particularly Section 34, is premised on minimal intervention by courts to ensure that arbitration remains an effective and efficient alternative dispute resolution mechanism. It is essential to understand that judicial review of arbitral awards is not intended to serve as an appeal on the merits of the case. Rather, it is confined to a limited set of circumstances as prescribed by the Act.

10.2. To clarify the boundaries of judicial intervention, the Supreme Court has consistently emphasized, through a catena of decisions, the restrictive and narrow nature of interference under Section 34 of the Act. The Appellate Court under Section 37 is even more constrained than the Section 34 Court, as it is not authorized to conduct a merit based review of the award. However, to avoid prolixity, and keep the analysis concise, it is best to refer only a select few key authorities to understand the binding principles without overloading the discussion with excessive details.

10.3. The apex court in its decision of ***Jan De Nul Dredging India Pvt Ltd. versus Tuticorin Port trust*** [3]**,** after taking into account the decisions in ***MMTC Limited vs. Vedanta Limited***[4]***, Konkan Railway***

[3] **2026 INSC 34**
[4] **(2019) 4 SCC 163**

Corpn. Ltd. v. Chenab Bridge[5]***, Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills Project***[6]***, UHL UHL Power Company Limited vs. State of Himachal Pradesh***[7]and ***Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani***[8] clearly stated that the appellate power under Section 37 of the Act is restricted to verifying whether the Section 34 court has exceeded its jurisdiction or failed to exercise its powers appropriately. The Supreme Court noted that appellate intervention should only occur if the Section 34 court has misapplied the scope of its jurisdiction or made an error in law. The relevant observation is as follows:

> **30.** That being the position, the award of the Arbitral Tribunal was not liable to be disturbed under Section 34 of the Act and was rightly not disturbed. It is settled in law that the appellate powers under Section 37 are limited to the scope of Section 34 and cannot exceed beyond it. Certainly, therefore, if an award is not liable to be disturbed under Section 34 of the Act, the same could not have been interfered with in exercise of powers under Section 37 of the Act.
>
> **31.** In ***MMTC Limited vs. Vedanta Limited***[9], this Court has very succinctly laid down the powers of Appellate Court under the Act. It held as under :-
>
> > **"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. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and

[5] **(2023) 9 SCC 85**
[6] **2024 SCC OnLine SC 2632**
[7] **(2022) 4 SCC 116**
[8] **(2024) 7 SCC 218**
[9] **(2019) 4 SCC 163**

by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

32. In ***Konkan Railway Corpn. Ltd. v. Chenab Bridge Project***[10], a three-judge bench of this Hon'ble Court has extensively dealt with the jurisprudence around Sections 34 and 37 of the Arbitration Act. This Court has held that:

> **"18.** 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.7, is akin to the jurisdiction of the court under Section 34 of the Act. 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.
>
> **19.** Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. 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."

33. In ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[11], this Hon'ble Court, while examining the scope of Section 34 and Section 37 of the Arbitration Act, has held that:

> ***"20.*** In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under

[10] **(2023) 9 SCC 85**
[11] **2024 SCC OnLine SC 2632**

Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

34. In ***UHL Power Company Limited vs. State of Himachal Pradesh***[12], a three judges Bench of this Court observed as under:- "The jurisdiction conferred on the 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 the Appellate Court in examining an order, setting aside or refusing to set aside an order, is all the more circumscribed."

35. In a recent case of ***Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani***[13], a Bench of this Court, of which one of us (P. Mithal, J.) was a member, had held that the jurisdiction of the Appellate Court dealing with an appeal under Section 37 of the Act against the judgment in a petition under Section 34 of the Act is more constrained than the jurisdiction of the court dealing with a petition under Section 34 of the Act.

36. The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising

[12] **(2022) 4 SCC 116**
[13] **(2024) 7 SCC 2018**

> powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.
>
> **37.** In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the Appellate Court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The Appellate Court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement.

11. In the decision of ***M/s Larsen Air Conditioning and Refrigeration Company vs. Union of India & Ors***[14] the Supreme Court held that Section 37 of the Act provides a narrower scope for reviewing arbitral awards, especially when the award has been substantially upheld under Section 34. The Court reiterated that appeals under Section 37 should be limited to ensuring compliance with the jurisdictional boundaries defined in Section 34 and cannot be used for a reassessment of facts or law.

12. Thus, the law on judicial review of arbitral awards, as crystallized by the Supreme Court, can be summarised as follows:

i. The powers of Section 37 court are strictly confined within the limits prescribed by Section 34. The section 37 court cannot go

[14] **2023 INSC 708**

beyond the grounds available for setting aside an arbitral award under section 34.

ii. Section 37 empowers the appellate court only to determine whether the Section 34 court has acted within its jurisdiction. The scope of Section 37 intervention is restricted and akin to jurisdiction of the Section 34 court, which is confined to reviewing specific grounds such as excess of authority, lack of jurisdiction, violation of public policy and patent illegality.

iii. The judicial review of arbitral awards under Section 34 and 37 is extremely limited. Courts must refrain from intervening merely because they might prefer a different view or interpretation of the facts or law. Unless these is a manifest error of law, contravention of public policy, or a substantial miscarriage of justice, the tribunal's decision should be allowed to stand.

iv. One of the primary objective of the Act is to respect the autonomy of the arbitral process and minimize judicial intervention. Therefore, judicial intervention should be exercised with extreme caution and in a restrictive manner. If courts excessively intervene in arbitral awards, it would not only undermine the efficiency and finality of arbitration but also defeat the very purpose of arbitration.

13. Thus, as discussed above, the court's role under Section 37 is confined to examining whether the Section 34 court has acted within its jurisdiction and not exceeded the limited grounds for setting aside an

arbitral award. Hence, to examine whether the learned Single Judge acted within its jurisdiction, we deem it relevant to also briefly understand the jurisdiction conferred upon section 34 courts to set aside an award.

14. The apex court in its decision of ***Consolidated Construction consortium limited vs. Software technology parks of India***[15] emphasized that an arbitral award cannot be set aside simply because the award is illegal or erroneous in law, as that would require re-appraisal of evidence, which is not permissible under Section 34. The observation with regards to section 34 reads as below:

> "22. Sub-section (1) of Section 34 provides that an application may be made to the competent court for setting aside an arbitral award. This is the only remedy available for setting aside an arbitral award. The conditions for setting aside an arbitral award are mentioned in sub-sections (2) and (2A). Sub-section (2) provides for situations such as the agreed party was under some incapacity or the arbitration agreement is not valid under the law or the aggrieved party did not receive proper notice regarding appointment of arbitrator or of the arbitral proceedings which prevented it from presenting its case or the arbitral award deals with a dispute not contemplated by or not falling within the terms of arbitration or the composition of the arbitral tribunal or the procedure adopted in arbitration were not in accordance with the agreement of the parties or the subject matter of dispute is not capable of settlement by arbitration or the arbitral award is in conflict within the public policy of India. In terms of sub-section (2A), an arbitral award may also be set aside on the ground of patent illegality appearing on the face of the award. Sub-section (3) provides for the time limit for filing of an application for setting aside arbitral award. Therefore, the grounds on which an arbitral award can be set aside are clearly mentioned in Sections 34(2) and 34(2A) of the 1996 Act. An arbitral award cannot be set aside on a ground which is beyond the grounds mentioned in sub-sections (2) and (2A) of Section 34.
>
> 23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature

[15] **2025 INSC 574**

> of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement
>
> 24. Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act."

15. Upon a plain reading of the above, it is clear that the role of Section 34 court is narrow and restricted. The court cannot re-appreciate the evidence, nor can it correct mere factual or legal errors made by the arbitral tribunal. The court is not an appellate authority and cannot substitute its own view simply because another view is possible. The principle behind Section 34 is to uphold arbitral autonomy and respect the object of the Act, and Courts must exercise a minimal-interference approach to avoid undermining the arbitral process.

16. Additionally, in the decision of ***ONGC limited v. Saw Pipes Limited***[16] the apex court enumerated the grounds under Section 34 on

[16] (2003) 5 SCC 705

which an arbitral award can be set aside. These grounds are, (a) contravention of fundamental policy of Indian law; or (b) violation of the interest of India; or (c) violation of justice or morality, or (d) patently illegal. The Court made it clear that the grounds for interference under Section 34 are limited, and an award can only be set aside on these specific grounds. Further, it was held that patent illegality, as a ground for setting aside an award, is an exception and requires a careful and cautious approach.

17. Coming to the impugned award under challenge, upon a careful perusal thereof, we find that the order does not explicitly refer to any of the aforesaid grounds while setting aside the award. However, the reasoning adopted by the learned Judge appears to proceed on the premise of patent illegality, albeit without expressly articulating this ground.

18. In light of the above, it is apposite to briefly examine the contours of patent illegality under Section 34 of the Act.

19. Apex court in its decision of ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited(BALCO)***[17] has extensively elaborated on the concept of patent illegality. The relevant observations makes an interesting read and are as follows:

> "35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't

[17] **2025 INSC 1457**

> have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts. A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference. However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence."

20. From the above exposition, it is clear that patent illegality encompasses situations where (i) the arbitrator's findings shock the conscience of the court, (ii) the findings are based on considerations that ought not to have been taken into account, (iii) the award ignores vital evidence that should have been considered, or (iv) the findings are so irrational that no fair-minded person could have arrived at the same conclusion on the available material. Also, a clear distinction is drawn between "weak evidence' and "no evidence", with interference being justified only when the tribunal's conclusions are irreconcilable with any permissible view of the evidence on record.

21. In ***Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India***[18] and ***National Highways Authority of India vs. ITD Cementation India Limited*** [19] the Apex

[18] **(2015) 15 SCC 131**
[19] **(2015) 14 SCC 21**

Court reiterated that the construction of contractual terms is primarily within the domain of the arbitrator. Judicial interference is warranted only if the arbitrator's interpretation is so unreasonable that no fair-minded person could adopt it.

22. With the above legal principles clarified, we must now examine whether the learned single judge in the impugned judgment exceeded its jurisdiction or failed to exercise the jurisdiction vested in it while setting aside the impugned arbitral award under the ground of patent illegality.

23. On a careful appraisal of the facts, it is pertinent to note that the learned Single Judge of this Court, even after affirming the arbitral award on merits, proceeded to set aside the same on the grounds of limitation and alleged ignorance of a vital contractual clause. In doing so, the court appears to have substituted its own evaluation of evidence and contractual interpretation for that of the arbitrator. This raises a critical question as to whether such interference transgressed the permissible scope of judicial review under Section 34, particularly in the context of patent illegality, which is meant to address manifestly unjust or irrational findings, and not merely to reassess the merits of the award.

Ignorance of vital contractual clause

24. One of the principle grounds for interference, as held by the learned Single Judge, was the arbitral tribunal's alleged ignorance of or

failure to take note of amended Article 12.03. According to the learned Single Judge, Article 12.03 was of direct relevance to multiple critical aspects of the dispute, namely, (i) the absolute waiver of any claim of appellant (ii) the appellant's right to refer the dispute to arbitration, and (iii) the issue of limitation. The learned Single Judge observed that, being a vital contractual stipulation going to the root of the matter, Article 12.03 ought to have been considered by the arbitral tribunal. The relevant findings of the impugned judgement on this aspect is as follows:

> "48. It is evident that Article 12.03 as amended vide the Supplementary Agreement dated 30.03.1998, clearly prescribes the consequences of the respondent/claimant not lodging the claim within the period of 14 days from the date of receipt of the relevant invoices for transportation charge. It specifically provides that failure to put-forward any claim within the said time period, shall be "an absolute waiver of the claim", as also respondent/claimant's right to refer the matter to arbitration. Although the issue of waiver squarely and clearly arose for consideration in the context of issue nos.5 and 11, the aforesaid contractual stipulation has not been taken note of while deciding the said issues, or anywhere else in the entire arbitral award. Likewise, whether or not the respondent/claimant was entitled to seek reference to arbitration in derogation of the aforesaid contractual stipulation was an issue that directly arose for consideration, and also had a direct bearing on the jurisdiction of the arbitral tribunal. The above stipulation also has a vital bearing on the issue of limitation. However, the impugned award does not even take note of the aforesaid provision, much less deal with it."

25. Consequently, the question for determination which falls before us is whether the arbitral tribunal overlooked a vital contractual clause that had a direct bearing on the matters in dispute, and if so, whether such oversight vitiates the award at its foundation.

26. Before evaluating the alleged oversight, it is essential to assess whether amended Article 12.03 is itself so relevant as tot go to the root

of the dispute. In this regard, amended and unamended Article 12.03 is reproduced:

Unamended	**Amended**
In case of any discrepancy/ dispute, the BUYER shall lodge a claim with the SELLER within the period of 14 (Fourteen) days from the date of receipt of invoice. To the extent the claim admitted by the SELLER shall issue a credit note in favour of the BUYER and adjust the same in the next invoice to be raised. The SELLER, undertakes to settle the claim of BUYER within a period of 30 (Thirty) days from the receipt of such claim, if found acceptable	In case of any discrepancy/dispute, the BUYER shall lodge a quantified claim with the SELLER within the period of 14 (Fourteen) days from the date of the receipt of the related invoice. To the extent the claims are admitted by the SELLER, the SELLER shall issue a Credit Note in favour of the BUYER and adjust the same in the next invoice to be raised. The SELLER undertakes to settle the claims with the BUYER within a period of 30 (Thirty) days from the date of receipt of such claim, if and to the extent found acceptable. Failure of the BUYER to put forward any claim within the time specified above shall be an absolute waiver of any claim as also the BUYER's right to refer the matter to Arbitration.

27. A comparison between the original and amended clauses reveals that while both clauses impose a strict 14-day window for the appellant to dispute an invoice and contemplate issuance of credit notes, the amended clause introduces an express consequence for delay. Specifically, it provides that failure to raise a claim within the stipulated time period constitutes: (i) an absolute waiver of the claim, and (ii) a waiver of the appellant's right to refer the matter to arbitration, a bar that was entirely absent in the original clause.

28. The amendment operates as a condition precedent and constitutes a contractual bar which can determine, at the threshold, whether any

claim survives at all and whether the dispute-resolution mechanism can be invoked.

29. Therefore, any failure to consider this amendment necessarily goes to the root of the matter, since it directly affects the maintainability of the claim, limitation issues, waiver, and the very jurisdictional basis upon which an arbitral reference could proceed.

30. It is settled law that non-compliance with conditions precedent to invoking arbitration can be treated as a jurisdictional objection. The jurisdiction of the arbitral tribunal is contingent upon the existence of a dispute that the contract permits to be referred to arbitration.

31. In the present case, the facts and circumstances compel the conclusion that whether the appellant was entitled to seek reference to arbitration in view of amended Article 12.03 was a critical issue directly arising for consideration. Further, this issue had a direct bearing on the jurisdiction of the arbitral tribunal.

32. On a detailed perusal of the arbitral award, it is evident that the arbitral tribunal has not dealt with the amended clause at all. Although the arbitral award records submissions pertaining to Article 12.03, it does not return any finding thereon, nor does it provide reasoning for ignoring or bypassing the clause. In other words, the award fails to interact with crucial material on record. By rendering the award without considering this vital clause, the arbitral tribunal overlooked evidence that had direct bearing on: (i) the waiver of the appellant's claim, (ii)

the appellant's right to refer the dispute to arbitration, and (iii) the issue of limitation.

33. The contention of the appellants that the arbitral tribunal had effectively addressed Article 12.03 under Issues 5, 6, and particularly Issue 11, cannot be accepted. A thorough reading of the award reveals no reasoning or explanation as to Article 12.03.

34. As regards the submission that Article 12.03 is hit by Section 28 of the Indian Contract Act, 1872, it is pertinent to note that the learned Single Judge rightly relied on the decision in ***Reliance Industries Limited*** (supra). Mere labelling of charges as "provisional" cannot override statutory limitation, and therefore cannot render the clause irrelevant.

35. In view of the foregoing, it is evident that the learned Single Judge correctly concluded that the arbitral tribunal ignored a vital contractual stipulation, and such omission directly affected the jurisdiction, limitation, and maintainability of the claim.

Limitation

36. Another ground for interference, as relied upon by the learned Single Judge, was that the arbitral tribunal's treatment of the issue of limitation. According to the learned Single Judge, the view adopted by the arbitral tribunal was not a possible or tenable view. Simply labelling the invoices as "provisional" does not, in law, result in an indefinite

extension of the limitation period. It was further observed that the impugned award does not contain any cogent reasoning as to why the objections raised by the petitioner deserve to be rejected.

37. In this regard, it is instructive to refer to the decision of the Supreme Cout in ***OPG Power Generation Private Limited vs Enexio Power Cooling solutions India Private Limited & Anr.***[20]**,** which provides guidance on the standard of reasoning expected in arbitral awards. The Court observed that an arbitral tribunal's reasoning, (i) need not be a long or detailed narration of every submission or evidence exchanged between the parties;(ii) is not required to set out every step of reasoning or respond to every argument; (iii)is sufficient if the tribunal states its findings and explains the evidentiary path by which it reached such finding. The relevant portions reflecting the observation of the apex court are reproduced below, –

> "71.1 As to the form of a reasoned award, in Russell on Arbitration (24th Edition, page 304) it is stated thus:
>
> > "6.032. No particular form is required for a reasoned award although 'the giving of clearly expressed responsive to the issues as they were debated before the arbitrators reduces the scope for the making of unmeritorious challenges'. When giving a reasoned award the tribunal need only set out what, on its view of the evidence, did or did not happen and explain succinctly why, in the light of what happened, the tribunal has reached its decision, and state what that decision is. In order to avoid being vulnerable to challenge, the tribunal's reasons must deal with all the issues that were put to it. It should set out its findings of fact and its reasoning so as to enable the parties to understand them and state why particular points were decisive. It should also indicate the tribunal's findings and reasoning on issues argued before it but not considered decisive, so as to enable

[20] **2024 INSC 711**

the parties and the court to consider the position with respect to appeal on all the issues before the tribunal. When dealing with controversial matters, it is helpful for the tribunal to set out not only its view of what occurred, but also to make it clear that it has considered any alternative version and has rejected it. Even if several reasons lead to the same result, the tribunal should still set them out. That said, so long as the relevant issues are addressed there is no need to deal with every possible argument or to explain why the tribunal attached more weight to some evidence than to other evidence. The tribunal is not expected to recite at great length communications exchanged or submissions made by the parties. Nor is it required to set out each step by which it reached its conclusion or to deal with each and every point made by the parties. It is sufficient that the tribunal should explain what its findings are and the evidential route by which it reached its conclusions.

71.2 On the requirement of recording reasons in an arbitral award and consequences of lack of, or inadequate, reasons in an arbitral award, this Court in Dyna Technologies (supra) held:

"34. The mandate under section 31 (3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided in section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the court while exercising jurisdiction under section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated

> in a precise manner as the same would depend on the complexity of the issue even if the court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the tribunal, the court needs to have regard to the document submitted by the parties and the contentions raised before the tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."

71.3. We find ourselves in agreement with the view taken in Dyna Technologies (supra), as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:

> (1) where no reasons are recorded, or the reasons recorded are unintelligible;
>
> (2) where reasons are improper, that is, they reveal a flaw in the decision- making process; and
>
> (3) where reasons appear inadequate.

71.4. **Awards falling in category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the 1996 Act. Therefore, such awards are liable to be set aside under Section 34, unless (a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award on agreed terms under Section 30**.

71.5. Awards falling in category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act. 7

71.6. Awards falling in category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair-reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. However, if

> gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award."

38. The Apex Court also categorized awards under review for reasoning deficiencies into three broad categories, (i) where no reasons are recorded or reasons are unintelligible, such awards are vulnerable and liable to be set aside, (ii) where reasons are improper or reveal a flow in decision making, such awards can be challenged on the ground of perversity, (iii) where reasons are adequate, these awards must be approached with judicial restraint.

39. The arbitral tribunal, in the present case, recorded its reasoning on the issue of limitation as follows:

> *"In our opinion, the contention of the learned senior counsel for the claimant is correct and we agree that the invoices were provisional and they continued to be provisional. We are unable to accept that beyond 45 days of the presentation of the invoice, they would become final. As these invoices were and continued to be provisional, the question of the bar of limitation does not arise. Therefore, the issue is arbitrable."*

40. Thus, applying the principles laid down by the Apex Court, it is clear that while the arbitral tribunal was not required to set out every step of its reasoning, it was nonetheless required to indicate the evidential route by which it reached its conclusions. Upon examination of the submissions made before the tribunal, it is evident that the issue of limitation warranted reasoned examination, particularly given that the respondent had substantially raised the objection regarding limitation.

41. The respondent contended, inter alia, that (i) invoices cannot remain provisional indefinitely; and (ii) in terms of Article 12.03, the dispute had to be raised within 45 days of presentation of the invoice. However, the arbitral tribunal fails to record any reason as to why these contentions of the appellant were accepted or rejected. The so only reasoning in the award i.e. "*the contention of leaned senior of counsel for the claimant is correct*" and "*we are unable to accept that beyond 45 days of the presentation of the invoice, they would become final*", does not disclose the evidentiary path or reasoning by which the tribunal arrived at its conclusion.

42. In the absence of any intelligible reasoning, no fair-minded person could adopt the reasoning of the arbitral tribunal as proper or adequate. The award, therefore, falls squarely within Category (i) as classified by the Apex Court and is consequently liable to set aside on this ground.

43. The appellant contended that the limitation could only be determined after the agreement concluded and that the shortfall persisted throughout the contractual period. The learned Single Judge, however, rightly referred to the decision in ***Reliance Industries Limited v. Gail (India) Limited(supra),*** wherein it was held that merely labelling an invoice as provisional cannot extend the period of limitation indefinitely**.**

44. The learned counsel for the appellant sought to distinguish the ***Reliance Industries*** decision on two grounds, (i) that the judgment

concerned the issue of gas price, and (ii) that the respondent contended that its provisional invoices never triggered limitation.

45. Such attempts to distinguish the ***Reliance industries limited v. Gail (India) limited (supra)*** are untenable as labelling invoices as provisional cannot indefinitely postpone limitation and the issue of limitation cannot be distinguished on the ground that it concerned gas price or transportation charges. Thus, the aforesaid judgment is equally applicable to the present dispute. The respondent's attempt to achieve a result by indefinitely labelling invoices as provisional is squarely contrary to settled law. Accordingly, the learned Single Judge did not err in relying upon the said judgment.

46. In view of the foregoing, we find no error in the reasoning adopted by the learned Single Judge on the issue of limitation. The findings of the learned Single Judge are legally sound, intelligible, and in conformity with established principles of law relating to limitation and arbitral awards.

Cross objections

47. The respondent has filed cross-objections challenging the observation recorded in Para 45 of the judgment, where the learned Single Judge upheld the arbitral award on merits and held that the view taken by the arbitral tribunal was a "plausible view". According to the learned counsel for the respondent, the arbitral tribunal, in granting the relief, effectively re-wrote the contract and blurred the distinction

between two types of transportation charges. In the submission of the respondents, such an approach cannot be characterised as a plausible or reasonable view within the ambit of judicial review under Section 34 of the Act.

48. According to respondent, the arbitral tribunal has observed that the reduced supply of gas by the respondent was justified on the grounds of *force majeure,* and therefore, did not affect the obligation to pay fixed transportation charges. Despite this, the tribunal proceeded to grant a proportionate reduction in the transportation charges.

49. The tribunal justified the reduction on the principles of business efficacy and partial failure of consideration, effectively recognising that while the contractual obligation to pay transportation charges existed, the reduced performance warranted a proportionate adjustment.

50. Thus, the question for determination is whether the arbitral tribunal took a plausible view in granting reduced transportation charges in light of the business efficacy model and partial failure of consideration.

51. The principle of business efficacy has been extensively explained and summarised by the Apex Court in ***M/s Adani Power (Mundra) Ltd. vs. Gujarat Electricity Regulatory Commission and Ors,*** [21], wherein the Court underscored that the doctrine of business efficacy allows an

[21] **(2019) 19 SCC 9**

implied term to be read into a contract only under very limited circumstances. The relevant observation reads as under

> "20. It could thus be seen that it is more than well settled that the clauses in the agreement ought to be given the plain, literal and grammatical meaning of the expression used in the same. No doubt, that the courts will also try to gather as to what intention the parties wanted to give them. As has been held by Ranjan Gogoi, J. (as His Lordship then was) the principle of business efficacy could be invoked only if by a plain literal interpretation of the term in the agreement or the contract, it is not possible to achieve the result or the consequence intended by the parties acting as prudent businessmen. This test requires that a term can only be implied, if it is necessary to give business efficacy to the contract, to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. If the contract makes business sense without the term, the courts will not imply the same. It is amply clear that courts can imply a clause only if it is found that the plain and literal meaning given to the expression used in the terms is not in a position to make out the intention of the parties. Reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by and between the parties thereto. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. It must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract. As held in the case of Nabha Power Ltd. (supra), for invoking the business efficacy test and carving out an implied condition, not expressly found in the language of the contract, the following five conditions will have to be satisfied:
>
> (1) Reasonable and equitable;
>
> (2) Necessary to give business efficacy to the contract;
>
> (3) It goes without saying i.e. the Officious Bystander Test;
>
> (4) Capable of clear expression; and
>
> (5) Must not contradict any express term of the contract.

52. From the judicial exposition, it is clear that the principle of business efficacy can be invoked only if the plain meaning of the express terms of the contract does not disclose the intention of the parties. In other words, the reading of an unexpressed term in an agreement is justified only if such a term was obviously intended by the parties at the time of contracting. Further, it is not sufficient that the court considers that term would have been reasonable or desirable from the perspective of a third party; rather, it must be a term which the parties must be taken to have intended, though left unexpressed, because it is so obvious as to "go without saying.

53. The "officious bystander" test, as explained in the said judgment, provides a practical method to determine whether a term can be implied. Under this test, a term may be implied only if it is so obvious that, had an independent bystander asked the parties at the time of contracting whether such a term applies, both parties would have immediately responded, "Of course". If the proposed term could have elicited any real possibility of a different answer from either party, it cannot be treated as an implied term.

54. In view of the above, the arbitral award must be examined against the twin principles of, Business Efficacy, which permits implying terms necessary to make the contract workable when the parties' intention is otherwise ambiguous; and The Officious Bystander test, which ensures that no term is implied unless it is so obvious and self-evident that the parties must be taken to have intended it.

55. The enquiry, therefore, focuses on whether the tribunal's grant of proportionate reduction in transportation charges, despite recognising force majeure and fixed payment obligations, falls within the ambit of a plausible view consistent with these principles, or whether it constitutes an impermissible rewriting of the contract.

56. Upon a careful perusal of the arbitral award, the tribunal has articulated its reasoning for invoking the principle of business efficacy and granting proportionate reduction of transportation/service charges in the context of reduced gas supply due to force majeure. The tribunal's reasoning may be summarized and elaborated as follows:

> "1) Interpretation of Article 4.03 of the 1998 contract in a commercial and business sense:
>
> It is well settled that a commercial the contract must be construed in a manner that yields business common sense and reflects the commercial intentions of the parties. Courts and tribunals, in interpreting contracts in commercial transaction, should not defeat the efficacy of documents upon which the parties have acted, and should adopt a practical approach that gives effect to the substance rather than the form. This principle has been repeatedly emphasized in Mulla's Commentary on the Contract Act (14th Edition 2012, p.213), wherein it is stated that judicial interpretation should uphold the commercial purpose of contractual provisions.
>
> Applying these principles to the present case:
>
> Article 4.03 of the 1998 contract stipulates a fixed sum of Rs.38,67,600.00, which is expressly stated to cover "**for the facilities provided by the seller for supply of the gas from Thai to Delivery point located at the Buyer's premises."**
>
> Article 5.01 of the 1991 contract provides that "the seller agrees to sell and, deliver the gas at the aforesaid point of delivery to. the Buyer as per requirement of the Buyer subject to the maximum of 1.00 (one point zero zero) million standard cubic meters per day .....".

The fixed charges under Article 4.03 are linked to the capital investment, operation, and maintenance of the pipelines, and other infrastructure necessary to supply the maximum contractual quantity of gas. These costs are computed with reference to the maximum supply envisaged under Art. 5.02.

The tribunal observed that, in circumstances where the respondent cannot supply gas as per the claimant's requirement due to Government directives falling under the force majeure clause (Article 10), the monthly transportation/service charges must be correspondingly reduced, proportionate to the quantity of gas actually supplied.

The maximum transportation/service charges of Rs.3 8,67,600.00 p.m. are applicable only when the respondent is able to supply the gas as per the claimant's requirements under Art.5.01.

When the respondent's supply is curtailed on account of Government directives falling under *force majeure* clause (Article 10), charging the full fixed sum would be commercially unreasonable and absurd.

As an illustrative, if the respondent supplies only 1% of the contracted quantity, it would be unfair and commercially unsound to require payment of the full transportation charges of Rs.38,67,600.00. Such a literal interpretation would contradict common business sense and produce an inequitable result, which the doctrine of business efficacy seeks to avoid.

The tribunal further observed that there is a direct link between the fixed sum of Rs.38,67,600.00 and the facilities provided by the sellers contemplated under Art. 11 of the contract. Consequently, wherever the contracted supply is reduced, whether due to force majeure or other events covered under the contract, the fixed sum must be reduced proportionately.

Accordingly, on a holistic construction of Articles 4.03, 5.01, 5.02, and 10 of the contract, the tribunal concluded that:

The fixed transportation/service charges of Rs.38,67,600.00 shall be proportionately reduced whenever the supply of gas by the respondent is less that the contracted quantity due to reasons covered under the *force majeure* clause (Art. 10). Such interpretation is commercially reasonable, aligns with business sense, and reflects what a third party with knowledge of the facts and circumstances would reasonably conclude.

57. Upon careful examination of the arbitral award, it is evident that the reasoning adopted by the tribunal represents a misapplication of the business efficacy principle in a manner that no reasonable person could have adopted. It is undisputed that in the present matter, Clause 4.03 of the contract was amended in 1998, replacing the earlier variable monthly service charge with a fixed transportation cost of Rs. 38,67,600/-.

58. The arbitral tribunal itself recognised that Article 4.03 stipulates a fixed charge for the facilities provided by the seller, including infrastructure, pipelines, delivery systems, personnel, and maintenance. If the contract was deliberately amended to fix the charge, no reasonable person could interpret the parties' intention as making this fixed charge variable or contingent upon the quantum of gas supplied.

59. By imputing a proportional reduction of the fixed charge, the tribunal assumed that the fixed charge must vary in accordance with supply to achieve commercial sense. However, if the parties had intended such proportionality, they could have, (i) retained the original variable charge structure, or (ii) expressly linked the fixed charge to the actual delivered quantity. The absence of such express linkage demonstrates that the tribunal's proportionality reasoning effectively rewrites the contract, rather than interpreting it.

60. Further, the tribunal's illustrative example, that if only 1% of gas is supplied, the respondent cannot collect the full transportation charges, is not a legitimate application of commercial common sense.

The business efficacy principle is not intended to allow courts or tribunals to insert terms merely because they appear reasonable. For a term to be implied, it must, (i) be necessary to make the contract workable, and (ii) "go without saying" i.e., be so obvious that the parties must have intended it, though left unexpressed.

61. Clearly, the proportionate reduction of charges does not satisfy this test. There is nothing in the contract to indicate that such proportionality was obvious, necessary or intended by the parties. On the contrary, the adoption of a fixed monthly charge is a standard commercial practice in infrastructure intensive contracts, where capital and maintenance costs are not contingent upon variable supply.

62. Applying these principles, it is apparent that no reasonable businessperson, reading the contract as a whole and applying the business-efficacy principle in its proper limits, would have interpreted the contract to convert a fixed facility/transportation charge into a pro-rata, variable charge linked to actual supply.

63. The principle of business efficacy is intended solely to give effect to the parties' expressed bargain when the language is genuinely ambiguous or commercially unworkable. It cannot be invoked to insert a term not agreed upon, especially where the contract deliberately adopts a fixed-charge structure. A reasonable person in the parties' position would understand Article 4.03 as fixing the charge for keeping the facilities ready for use, regardless of the actual quantum of supply.

64. Thus, we are in agreement with the submissions of the learned senior counsel for the respondent that the business efficacy principle cannot be applied in a manner that results in complete variance from the parties' original intention. Accordingly, the conclusions reached by both the learned Single Judge and the arbitral tribunal cannot be sustained.

65. The arbitral tribunal also sought to justify the pro-rata reduction on the alternative ground of partial failure of consideration, reasoning that if relief were not granted, there would be unjust enrichment, which had to be neutralised via restitution, provided apportionment was feasible.

66. The principle of partial failure of consideration applies only where the consideration for which money was paid has wholly or partly failed in substance, meaning that the very basis of the payment has not materialised. In the present case, the fixed monthly charge of Rs. 38,67,600.00 is expressly for the operation and maintenance of facilities and is not contingent upon the gas supplied. The consideration, therefore, lies in keeping the facilities ready for use, not in the quantity delivered.

67. It is also pertinent to note that the possibility of reduced supply was expressly contemplated with the contractual clauses, as acknowledged in the tribunal's findings on Issues Nos. 2 and 3. Despite this, while deciding Issue No. 4, the tribunal directed the respondent to

refund the fixed transportation charges proportionate to the alleged reduction in supply, invoking partial failure of consideration.

68. Thus, on this issue, we agree with the submissions of the learned senior counsel for the respondent that once the tribunal held that reduced supply was anticipated within the contractual framework, there can be no question of failure of consideration.

69. Additionally, the tribunal itself concluded that, in view of the *force majeure* event, there was no breach, and the reduced supply could not affect the obligation to pay fixed transportation charges. Yet, in the later part of the Award, the tribunal directed precisely such a pro-rata reduction, which is internally inconsistent and legally unsustainable.

70. In consequence, the view adopted by the arbitral tribunal is an impossible one, and no reasonable person could have reached such a conclusion on a proper construction of the contract.

71. For the foregoing reasons, we set aside the findings of both the learned Single Judge and the arbitral tribunal insofar as they directed a proportionate reduction of the fixed transportation charges. Such a reduction cannot be justified in view of the express terms of the contract, the proper limits of the business efficacy principle, and the absence of any partial failure of consideration.

Conclusion

72. In conclusion, after a comprehensive evaluation of the issues raised, we disagree with the findings of both the learned Single Judge and the Arbitral Tribunal. In particular, we are of the view that, while applying the business efficacy principle, the Arbitral Tribunal exceeded its mandate by effectively re-writing the terms of the contract. It is a well settled principle in contract law that a tribunal is not authorized to alter the terms of a contract based on its subjective perception of business efficacy unless such alterations are clearly warranted by the express or implied intentions of the parties.

73. We are further of the opinion that, upon a careful reading of the contract in its entirety, no reasonable person, upon reading of any contractual term could have concluded the fixed transportation charges into a variable, pro-rata charge. Further, no contractual term was so inherently obvious that it must be implied that the parties intended the fixed transportation charge to be read as pro-rata charge. The notion of business efficacy cannot be invoked to introduce terms that were not agreed upon by the parties, nor can it be used to imply provisions that fundamentally alter the agreed contractual structure without a clear and unambiguous basis for such an inference.

74. Additionally, the Arbitral Tribunal, in its reasoning, has contradicted itself in a manner that cannot be reconciled. Initially, the Tribunal held that the *force majeure* event, which justified a reduced in gas supply, did not affect the obligation to pay the fixed transportation

charges. However, in a subsequent part of the Award, the Tribunal directed that the same fixed transportation charges be reduced or refunded in proportion to the actual gas supplied. This is inherently contradictory as the fixed charges, once deemed payable despite the reduced supply, cannot simultaneously be subject to reduction or refund based on the supply variation. This inconsistency renders the Award flawed and untenable, as no reasonable person would have arrived at such conflicting conclusions.

75. On the issue of limitation, we find ourselves in agreement with the findings of the learned Single Judge, which relied on the authoritative judgment in ***Reliance industries limited v. Gail (india) limited(supra).*** The learned Single Judge's reliance on this judgment was well placed, and we find that there was a lack of sufficient reasoning in the Arbitral Tribunal's decision regarding the objection raised on limitation. The Tribunal failed to provide any cogent rationale as to why the objection pertaining to limitation was dismissed, and this omission is material and legally significant. Consequently, the Tribunal's findings on this point are liable to be set aside and the findings of the learned single judge are upheld.

76. Finally, in regard to the Tribunal's failure to address a crucial contractual clause, namely Article 12.03, which directly impacts the issues of limitation, arbitrability, and waiver, we concur with the findings of the learned Single Judge. The provisions of Article 12.03 are central to the dispute and bear directly on the core issues of the case. The Tribunal's failure to consider this vital clause constitutes a clear

instance of neglecting material evidence, which significantly undermines the credibility and fairness of the arbitral process and amount to patent illegality. The omission of such an important contractual stipulation constitutes a serious flaw and must be regarded as an error that calls for judicial intervention.

77. In light of the above discussed findings, it is clear that the arbitral award is vitiated by perversity and patent illegality. The award is therefore set aside. Furthermore, the cross-objections raised by the respondent are hereby allowed.

78. Accordingly, we dismiss the present appeal, along with any pending applications, if any. The order of the learned Single Judge is partly upheld to the extent that it concurs with the conclusions reached in this judgment.

79. There shall be no order(s) as to cost.

OM PRAKASH SHUKLA, J

C.HARI SHANKAR, J

MARCH 09, 2026/pa