2026:CGHC:15708-DB

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
23.02.2026	07.04.2026	--	07.04.2026

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBA No. 27 of 2018

1 - South Eastern Coalfields Limited, A Company Duly Incorporated Under The Indian Companies Act, 1956, Having Its Office At Seepath Road Bilaspur, District Bilaspur (C.G.)

2 - The Chairman Cum Managing Director , SECL, Seepath Road Bilaspur, District : Bilaspur, Chhattisgarh.

3 - The General Manager, SECL, Chirmiri Area, G. M. Complex Post Office West Chirmiri, District Korea, Chhattisgarh.

... Appellants

versus

1 - M/s M. K. Chaterjee, A Partnership Firm Duly Registered Under The Indian Partnership Act, 1932 Having Its Office At Rajendrapath Post Office Ramgarh Cantt, District Hazaribagh (Bihar) Having Its Camp Office At Chirmiri, District Korea Chhattisgarh.

... Respondent

For Appellants	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Vinod Deshmukh, Advocate.
For Respondent	:	Mr. Sharmila Singhai, Sr. Advocate with Mr. Kanchan Kalwani, Advocate.

D.B. : Hon'ble Smt. Justice Rajani Dubey &
Hon'ble Shri Justice Radhakishan Agrawal

(CAV Order)

Per Rajani Dubey, J

1. The Appellants – S.E.C.L. authority filed this arbitration appeal under Section 37 of the Arbitration and Conciliation Act, 1966 (for short 'the Arbitration Act') read with Section 13 of the Commercial Courts, Commercial Court Act, 2015 (for short 'the Commercial Act') against order dated 06.02.2018 passed by the learned Commercial Court (District Level), Naya Raipur (C.G.) in M.J.C. No.09/2017, whereby the application preferred by the appellants herein under Section 34 against the arbitral award dated 05.02.2017 passed by the learned Sole Arbitrator, was dismissed holding it to be not against the public policy of India.

2. Brief facts of the case are that the Appellants and the respondent-company entered into a contract on 09.11.1990 for construction of 250 units of miners' quarters (D/S), including development work at Khurasia Colliery in the

Chirmiri Area of SECL (Chhattisgarh), vide Agreement No. CE(C)/BSP/AGT/2/153.

3. Prior to execution of the agreement, the Chief Engineer of the appellants (SECL) issued a provisional letter of acceptance dated 28.02.1990. Subsequently, the Additional Chief Engineer issued a work order dated 31.03.1990, requiring the contractor to deposit an additional sum of Rs. 66,227/- (Rs. Sixty Six Thousand Two Hundred Twenty-Seven only) towards 1% security deposit, making a total initial security deposit of Rs. 1,66,227/-. It was further stipulated that 5% of the gross value of running account bills would be deducted towards security deposit, aggregating to Rs. 8,31,137/- (Rs. Eight Lakh Thirty One Thousand One Hundred Thirty-Seven only).

4. The stipulated period for completion of the work was 18 months, to be reckoned from the 10th day of issuance of the letter of intent or from the actual date of handing over of the site, whichever was later. The arrangement of cement was primarily the responsibility of the contractor; however, the appellants could supply cement subject to availability, with the cost to be recovered as per the rates specified in the schedule. Electricity was to be supplied at a single point, and the cost of consumption was to be recovered at the rates prescribed by SECL from time to time.

5. The respondent sought extension of time on multiple occasions. Initially, by letter dated 11.06.1992, the appellants granted extension up to 28.06.1992. Thereafter, the respondent applied for further extension up to 31.12.1992 vide letter dated 30.08.1992. Subsequently, the respondent further sought for extension of time upto 30.09.1993 and 30.09.1994, which was further granted by the appellants.

6. During the subsistence of the contract, the disputes arose between the parties in relation to the said contract. The respondent invoked the arbitration clause as stipulated in the Contract; however, the appellants failed to appoint an Arbitrator. Consequently, the respondent filed an application under Section 11(6) of the Act, 1996 before this Court, pursuant to which a Sole Arbitrator was appointed. Thereafter, the learned Sole Arbitrator after having considered the material facts, documentary as well as oral evidence of the parties, passed the arbitral award on 05.02.2017 holding that the respondent is entitled for retention amount and also for refund of security deposit & bank guarantee. The order dated 05.02.2017 passed by the Sole Arbitrator was subjected to challenge before the Commercial Court, Naya Raipur (C.G.) being M.J.C. No.09/2017 and the learned Commercial Court, vide

impugned order dated 16.02.2018 dismissed the application of the appellants on the ground that the order passed by the learned Sole Arbitrator is not against the public policy of India. Hence, this arbitration appeal.

7. Mr. H.B. Agrawal, learned Sr. counsel for the appellants referring to the decision of Hon'ble Apex Court in the matter of ***Steel Authority of India Ltd. Vs. J.C. Budharaja, Government and Mining Contractor (1998 (8) SCC 122),*** wherein the Hon'ble Apex Court held that reference of dispute to arbitration must be sought within 03 years from the date when the cause of action arose, submits that the respondent's claim is barred by limitation as the same has been referred after 03 years from the date of cause of action arose. Learned Sr. counsel further submits that the learned Commercial Court did not consider clause 5.0 of the agreement, which provides for retention of amount by the applicants till the defects are made good by the contractor and under this provision the amounts have been retained which are justified from various communications made by the appellants herein with regard to the delay in execution of the work as also the defects in the work executed including the communication dated 16.10.1991, 19.09.1991, 13.06.1991 and 01.02.1991 etc, thus, the learned Arbitrator went beyond the four corners of the agreement as well as

the documents brought on record and therefore, the award is against the public policy of India. Learned Sr. counsel also submits that the learned Commercial Court did not consider clause 17, which specifically provides that unless the entire work under the contract is completed and certified by the Engineer In-charge subject to the conditions mentioned therein. The first condition being if any defects in the work is detected after issue of completion certificate or the same is rectified to the satisfaction of the Engineer In-charge within a period of six months and it is proved by the contractor to the complete satisfaction of the Engineer-in-Charge that the site is completely watertight and only after such defects are cured the security deposit could be refunded. However, in the instant case, no such completion certificate has been produced by the respondent herein so as to entitle him for refund of security deposit. Learned counsel also submits that admittedly the entire work has not been completed by the contractor and therefore, the learned Sole Arbitrator has travelled beyond the scope of contract rendering the award with regard to the instant claim as against the public policy of India.

8. Learned Sr. counsel also contended that the Arbitrator himself has categorically come to a finding that from the contentions mentioned under the contract it was the

claimant's responsibility for procurement of cement and steel and also come to a conclusion that the special terms and conditions does not provide for any clause for payment of escalation for price increase of cement, further, although has come to a conclusion that escalation in respect of steel is to be allowed only to the extent of statutory increase and without there been any documents in support thereof has come to a perverse finding that the claimant is entitled for escalation. Learned Sr. counsel further submits that a specific clause which bars payments of any loss of profit has been inserted under the contract, the learned sole arbitrator ignoring the same has passed the award which renders the same against the public policy of India and also the contract, therefore, the same deserves to be set aside. Learned Sr. counsel also submits that it is well settled that for claiming loss of profit, the claimant has to specifically assert the loss occasioned to them with proof of the same and also has to prove the breach of contract by other party but in the present case, the Contractor could not complete the entire work stipulated under the contract in time and therefore, he was himself liable for breach of the contract and no claim whatsoever for loss of profit should have been entertained by the Arbitrator. On various occasions the appellants had directed the respondent contractor to

accelerate the progress of work and also categorically stated that the entire side had been handed over to them since 18.03.1990. However, all these communications made by the Government servants which forms part of the arbitral proceedings has been completely ignored by the learned Sole Arbitrator and therefore, the award of the Arbitrator is liable to be set-aside on this short score alone. It has been further contended that the learned Trial Court miserably failed to appreciate the relevant provisions incorporated under the contract in its right perspective and thus have come to an erroneous finding that the award passed by the learned Arbitrator is in accordance with law. So, the impugned order and the award are liable to be set aside.

9. Alternate submission of learned Sr. counsel is that payment of interest @ 9 % from 08.03.1996 to 04.02.2017 on Rs.14,54,692/- as directed in clause (v) of para 118 of the arbitral award may be modified to the extent of 6% from 08.03.1996 to 04.02.2017 on Rs.14,54,692/-, in the interest of justice.

In support of his submission, learned Sr. counsel placed reliance on the decisions of Hon'ble Apex Court in the matter of ***J.G. Engineers Private Limited Vs. Union of India and Another*** reported in ***(2011) 5 SCC 758***, ***Associate Builders Vs. Delhi Development Authority***

reported in ***(2015) 3 SCC 49*** and ***Sri Chittaranjan Maity Vs. Union of India*** reported in ***(2017) 9 SCC 611*****.**

10. Ms. Sharmila Singhai, learned Sr. counsel appearing for respondent submits that genesis of this dispute traces back to the year 1996, and the appellant despite having acknowledged their liability, failed to discharge their contractual obligation. Learned Sr. counsel submits that a notice dated 27.07.1996 was issued by the respondent which gave rise to proceedings under Section 11(6) of the Arbitration Act, and this High Court referred the matter to arbitration and the arbitral proceedings too were delayed solely because of the appellants' repeated adjournments and non co-operation & finally the learned Sole Arbitrator passed a reasoned award dated 05.02.2017 in favour of the respondent directing payment of the legitimate amount due along with applicable interest but the appellants without any ground filed the application under Section 34 of the Arbitration and Conciliation Act on 03.07.2017 long after the statutory period of limitation had expired, which was registered as MJC No.09/2017 & the learned Commercial Court vide order dated 06.02.2018 affirming the arbitral award, and again after long delay, the present appeal was filed on 09.09.2018 well beyond the statutory period which shows the deliberate intention to frustrate the respondent's

right to enjoy the fruits of the award. Learned Sr. counsel also submits that the partner of the respondent firm namely B.N. Chatterjee has since expired during the pendency of arbitral proceedings, and the old aged surviving partner continues to suffer from serious ailment and age related health issues. The respondent has been subjected to mental agony and financial distress for nearly three decades while the appellants have been unlawfully enjoying the award amount. Learned Sr. counsel further contended that the appellant No.1 being the Government of India undertaking and therefore a 'State' under Article 12 of the Constitution of India is expected to act as a model litigant but the appellants have chosen to prolong litigation unnecessarily contrary to settle principles of fair conduct expected of public authority. It has been also contended that under the settled proposition of law, a money decree cannot be stayed. The consequential relief of the impugned award is the affirmation of the award, which is already prevailing partially in favour of the respondent. However, the benefits of the award have been withheld voluntarily by preferring the present appeal without paying the awarded amount to the claimant, who is a senior citizen. The learned sole Arbitrator considering terms of contract and after appreciating oral and documentary evidence passed the

award dated 05.02.2017 and the learned Commercial Court also by the impugned order dated 06.02.2018 rightly dismissed the application of appellants but without any valid ground the appellants filed this appeal. The appellants have failed to demonstrate any good ground under Section 34 of the Arbitration and Conciliation Act. So, the appeal being without any merit is liable to be dismissed.

In support of her submission, learned Sr. counsel placed reliance on the decisions of Hon'ble Apex Court in the matter of ***Swan Gold Mining Limited Vs. Hindustan Copper Limited*** reported in ***(2015) 5 SCC 739***, ***Ravindra Kumar Gupta and Company Vs. Union of India*** reported in ***(2010) 1 SCC 409***, ***Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation Limited*** reported in ***(2022) 1 SCC 131***, ***Associate Builders Vs. Delhi Development Authority*** reported in ***(2015) 3 SCC 49***, ***Ispat Engineering & Foundry Works Vs. Steel Authority of India Limited*** reported in ***(2001) 6 SCC 347*** and ***Union of India and Another Vs. L.K. Ahuja and Co.*** reported in ***(1988) 3 SCC 76.***

11. We have heard learned counsel for the parties and perused the material available on record.

12. It is clear from the record of the learned Trial Court that appellant/SECL authorities and respondent company had

entered into an contract for construction of 250 units of miner's quarters (D/S) including development work at Khurasia colliery, in Chirmiri area of SECL (Chhattisgarh) on 09.11.1990 vide agreement No.CE(C)/BSP/AGT/2/153. It is not disputed that vide letter dated 28.02.1990, the Chief Engineer of the appellants' company issued provisional letter of acceptance and on 31.03.1990 the work order was issued by the Additional Chief Engineer stating that the contract is required to deposit a further sum of Rs.66,227/- being 1% as security deposit aggregating Rs.1,66,227/- and 5% of the gross amount would be recovered from the running account bills to form total security deposit of Rs.8,31,137/-. It is also not disputed that dispute arose between the parties with regard to subject contract. The respondent/contractor invoked the arbitration clause but the appellants did not appoint an arbitrator and respondent/company filed an application under Section 11(6) of the Arbitration Act before this Court and order had been passed by this Court appointing the Sole Arbitration to adjudicate the dispute and the learned Sole Arbitrator passed the arbitral award dated 05.02.2017, against which the appellant/SECL company filed an application under Section 34 of the Arbitration Act before the learned Commercial Court and the learned Commercial Court, vide

order dated 06.02.2018 dismissed the application filed by the Appellant/SECL Company.

13. The learned Commercial Court, in para 3, framed point for consideration, which reads thus :-

> "Whether the Arbitral Award in conflict with the public policy of India ?"

14. At the outset, it is well settled that the scope of interference under Section 34 and Section 37 of the Arbitration Act is extremely limited. The Court does not sit in appeal over the findings of the learned Arbitrator and cannot re-appreciate evidence or substitute its own interpretation merely because another view is possible. Interference is permissible only when the award is vitiated by patent illegality, perversity, or is in conflict with the fundamental policy of Indian law or the most basic notions of justice or morality.

15. In the present case, it is clear from the record that the learned Sole Arbitrator has minutely examined the entire material available on record, including oral and documentary evidence, and has rendered a reasoned award. The learned Commercial Court rightly finds that the cause of action arose on 30.06.1994 i.e. extended period of contract and respondent invoked arbitration clause on 27.07.1996 within three years from the date when cause of action arose. The learned Commercial Court also

considered all the arguments advanced by both the parties and finds that the learned Arbitrator did not ignore the vital/substantial evidence led by the parties. The learned Sole Arbitrator minutely appreciated the oral and documentary evidence & decided the every claim as per the evidence and entitlement of the respondent company. The learned Arbitrator, in para 116 of the arbitral award dated 05.02.2017, out of 16 claims, has allowed 6 claims. There is nothing on record to demonstrate that the learned Arbitrator has ignored vital evidence, taken into account irrelevant material, or rendered findings which are so arbitrary or irrational that no reasonable person would arrive at such conclusions. On the contrary, the award reflects a plausible and reasoned view based on the material before the Arbitrator.

16. It is also clear from the application of the appellants/SECL authorities filed before the learned Commercial Court under Section 34 and this appeal under Section 37 of the Arbitration Act that no any valid ground raised by the appellants which provides under Sections 34 and 37 of the Arbitration Act.

17. The Hon’ble Apex Court in ***Associate Builders (supra)*** held that when any of the heads/sub-heads of test of "public policy" is applied to an arbitral award, court does not act as

court of appeal. Interference is permissible only when findings of arbitrator are arbitrary, capricious or perverse, or when conscience of court is shocked, or when illegality is not trivial but goes to root of the matter, not when merely another view is possible. Furthermore, arbitrator being ultimate master of quantity and quality of evidence while drawing arbitral award, award based on little evidence or on evidence which does not measure up in quality to a trained legal mind cannot be held invalid. Once it is found that arbitrator's approach is neither arbitrary nor capricious, no interference is called for on facts.

18. In ***Swan (supra)***, Hon'ble Apex Court held in para 11 to 19 as under :-

> *"11. Section 34 of the Arbitration and Conciliation Act, 1996 corresponds to Section 30 of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The arbitrator's decision is generally considered binding between the parties and therefore, the power of the court to set aside the award would be exercised only in cases where the court finds that the arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act. It is a well-settled proposition that the court shall not ordinarily*

substitute its interpretation for that of the arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the arbitrator or by the court would be erroneous or illegal.

12. It is equally well settled that the arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.

13. We have gone through the facts of the case and perused the documents on the basis of which the arbitrator gave the award on 24-7-2009.

14. The respondent issued a notice inviting tender (NIT) for the operation of its mine. Clauses 4.9.1 to 4.9.5 of NIT are extracted hereinbelow:

> *"4.9.1. The rates quoted by the successful bidder shall be deemed to be (inclusive) of the sales taxes, other taxes and service tax that the successful bidder will have to pay in India and abroad for the performance of this contract. HCL will perform such duty regarding the deduction of such taxes at source as per applicable laws.*
>
> *4.9.2. The successful bidder shall also be responsible to bear and pay any taxes, cess, fees and/or duties levied including but*

not limited to interest, penalty and/or fine Imposed by any authorities including revenue authorities in India and/or abroad at any time even beyond the expiry of the contract period with respect of the work to be performed by the successful bidder in accordance with the contract.

4.9.3. The successful bidder shall also be responsible for filing income tax return and/or complying with necessary procedure and/or formalities as required or may be required under the fiscal laws of India and/or abroad in respect of the work to be performed by the successful bidder in accordance with the contract.

4.9.4. Corporate tax and/or income tax, if any applicable/levied in India and/or abroad on the successful bidder and/or its personnel and/or on the sub-contractors engaged by the successful bidder and/or the personnel of such sub-contractors in respect of this contract will be the responsibility of the successful bidder. All the necessary return and other formalities will be the responsibility of successful bidder.

4.9.5. All the other statutory levies including but not limited to custom duties/excise duties, sales taxes, works contract and other levies of whatsoever nature payable in accordance with the law of India, levied/leviable on the successful bidder

and/or its sub -contractors in respect of performance of this contract shall be the responsibility of the successful bidder or any of its sub-contractors."

15. The appellant in response to NIT submitted its technical and financial bids. Subsequent to the submission of the technical bid and the price bid, the parties entered into negotiation and thereafter a letter of intent on the terms and conditions of NIT and the other terms agreed during subsequent negotiations was issued. In the said letter of intent dated 3-3-2007, it was specifically mentioned that the execution of work shall be on the terms of notice inviting tender (NIT) and other agreed discussions/negotiations subsequently held between the parties. Finally the work order was issued on 14-4-2007 in continuation with the letter of intent dated 3-3-2007. The relevant portion of the work order is extracted hereinbelow:

"WORK ORDER

Sub: Reopening and operating of Surda Mine and Mosabani Concentrator Plant at Indian Copper Complex, Ghatsila

Dear Sir,

With reference to the above subject, Hindustan Copper Limited is please to issue work order in continuation with LoI dated 3-3-2007 to re-commission, operate and maintain Surda Mine and Mosabani Concentrator Plant to supply and deliver copper concentrate at rates Rs 1,53,470.00 per tonne of metal in concentrate (excluding royalty) to Maubhandar work of Indian Copper Complex, produced from the operations

of these units.

This work shall be governed by the terms and conditions of the expressions of interest of dated 21-9-2006, Notice Inviting Tender No. HC/HO/GM (MBS)/SURDA dated 11-12-2006 and the other agreed during subsequent discussions/negotiations, and the final offer."

(emphasis supplied)"

16. In the course of hearing, Mr P.P. Rao, learned Senior Counsel appearing for the respondent produced before us a xerox copy of the work order dated 14-4-2007. Clause 4.9.1 quoted hereinabove specifically mentions therein that the rate quoted by the appellant was inclusive of sales tax, service tax and other taxes. The representative of the appellant signed the work order on each page (20 pages) and acknowledged and admitted the terms and conditions for the said work.

17. From the facts mentioned hereinabove, it is evident that the appellant has accepted the liability of payment of excise duty, sales tax, service tax and other taxes and hence it cannot be held that Clause 4.9.1 of the work order is inconsistent with the terms and conditions of the contract documents. The learned arbitrator has gone in detail of the dispute raised by the appellant and rightly came to the conclusion that the responsibility on the appellant is to abide by the terms and conditions of the work order. We have also gone through the order passed by the High Court. The Court rightly came to the conclusion that there is no patent illegality in the award passed by the arbitrator which needs

interference under Section 34 of the Act.

18. Mr Sharan, learned Senior Counsel appearing for the appellant, also challenged the arbitral award on the ground that the same is in conflict with the public policy of India. We do not find any substance in the said submission. This Court, in ONGC Ltd., observed that the term "public policy of India" is required to be interpreted in the context of jurisdiction of the court where the validity of award is challenged before it becomes final and executable. The Court held that an award can be set aside if it is contrary to the fundamental policy of Indian law or the interest of India, or if there is patent illegality. In our view, the sald decision will not in any way come into rescue of the appellant. As noticed above, the parties have entered into concluded contract, agreeing terms and conditions of the said contract, which was finally acted upon. In such a case, the parties to the said contract cannot back out and challenge the award on the ground that the same is against the public policy. Even assuming the ground available to the appellant, the award cannot be set aside because it is not contrary to the fundamental policy of Indian law or against the interest of India or on the ground of patent illegality.

19. The words "public policy" or "opposed to public policy", find reference in Section 23 of the Contract Act and also Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996. As stated

above, the interpretation of the contract is matter of the arbitrator, who is a Judge chosen by the parties to determine and decide the dispute. The Court is precluded from reappreciating the evidence and to arrive at different conclusion by holding that the arbitral award is against the public policy."

19. In ***Delhi Airport (supra),*** the Hon'ble Apex Court held in para 22 to 28 as under :-

*"**Contours of the Court's power to review arbitral awards.***

22. The 1996 Act was enacted to consolidate and amend the law felating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and also to define the law relating to conciliation and for matters connected therewith, by taking into account the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on International Commercial Arbitration and the UNCITRAL Conciliation Rules. One of the principal objectives of the 1996 Act is to minimise the supervisory role of Courts in the arbitral process. With respect to Part I of the 1996 Act, Section 5 imposes a bar on Intervention by a judicial authority except where provided for, notwithstanding anything contained in any other law for the time being in force. An application for setting aside an arbitral award can only be made in accordance with provisions of Section 34 of

the 1996 Act.

23. Relevant provisions of Section 34 [as they were prior to the Arbitration and Conciliation (Amendment) Act, 2015] read as under:

"34. Application for setting aside arbitral award.- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-(a) the party making the application furnishes proof that-

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(1) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(//) the arbitral award is in conflict with the public policy of India.

Explanation.-Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81."

24. An amendment was made to Section 34 of the 1996 Act by the Arbitration and Concillation (Amendment) Act, 2015 (hereinafter "the 2015 Amendment Act"). A perusal of the Statement of Objects and Reasons of the 2015 Amendment Act would disclose that the amendment to the 1996 Act became necessary in view of the interpretation of the provisions of the 1996 Act by Courts in certain cases which had resulted in delav of disposal of arbitration proceedings and increase in interference by Courts in

arbitration matters, which had the tendency to defeat the object of the 1996 Act. Initially, the matter was referred to the Law Commission of India to review the shortcomings in the 1996 Act in detail. The Law Commission of India submitted its 176th Report, recommending various amendments to the 1996 Act. However, the Justice Saraf Committee on Arbitration constituted by the Government, was of the view that the proposed amendments gave room for substantial intervention by the court and were also contentious. Thereafter, on reference, the Law Commission undertook a comprehensive study of the amendments proposed by the Government, keeping in mind the views of the Justice Saraf Committee and other stakeholders. The 246th Report of the Law Commission was submitted on 5-8-2014. Acting on the recommendations made by the Law Commission in its 246th Report, amendments by way of the 2015 Amendment Act were made to several provisions of the 1996 Act, including Section 34.

25. The amended Section 34 reads as under:

"34. Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the

Court only if-

(a) the party making the application furnishes proof that-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part

from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1. For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.-For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality

appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence."

26. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law. (See Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd[4], Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.[5] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran[6].)

27. For a better understanding of the role ascribed to Courts in reviewing arbitral awards while considering applications filed under Section 34 of the 1996 Act, it would be relevant to refer to a judgment of this Court in Ssangyong Engg. & Construction Co. Ltd. v. NHAI wherein R.F. Nariman, J. has in clear

terms delineated the limited area for judicial interference, taking into account the amendments brought about by the 2015 Amendment Act. The relevant passages of the judgment in Ssangyong are noted as under: (SCC pp. 169-71, paras 34-41)

"34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of Associate Builders i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that Western Geco expansion has been done away with. In short, Western Geco, as explained in paras 28 and 29 of Associate Builders, would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in

para 30 of Associate Builders.

35. It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of Associate Builders, as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders, or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders. Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco, as understood in Associate Builders, and paras 28 and 29 in particular, is now done away with.

37. Insofar as domestic awards made in India are concerned, an additional

ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders, namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders, however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to

a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders, namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding

based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence in asmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."

28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well -established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs. intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial

> *interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions."*

20. In light of the principles laid down by the Hon'ble Supreme Court in ***Associate Builders (supra), Swan (supra), and Delhi Airport (supra)***, it is clear that the Court cannot interfere with an arbitral award merely on the ground that another interpretation is possible or that the evidence could have been appreciated differently. The Arbitrator is the final authority on facts as well as interpretation of contract, unless the view taken is wholly unreasonable or beyond the scope of the contract. We find that the learned Commercial Court rightly recorded its finding that reasons mentioned by the learned Sole Arbitrator were genuine and approach of the learned Arbitrator is neither arbitrary nor capricious. The award is well reasoned and is in great detail on the basis of material facts and the finding rendered by it are those which fall within the terms and conditions of the contract and the learned Commercial Court rightly dismissed the application filed by the appellants under Section 34 of the Act. The findings of the learned Sole Arbitrator do not suffer from any

patent illegality. The award is neither arbitrary nor perverse, and the appellants have failed to establish any ground falling within the limited ambit of Sections 34 or 37 of the Act.

21. The case laws relied upon by the learned Sr. counsel for the appellants in ***Steel Authority (supra), J.G. Engineers (supra)***, ***Associate Builders (supra)*** and ***Sri Chittaranjan (supra)*** would be of no help being distinguishable on the ground of facts.

22. In the result, looking to the limited scope of Section 37 of the Arbitration Act, this appeal being without any merit liable to be and is hereby dismissed. No order as to costs.

23. Pending applications, if any, stand disposed of.

Sd/-

(Rajani Dubey)

Judge

Sd/-

(Radhakishan Agrawal)

Judge