2026:BHC-OS:11282-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

[COMMERCIAL DIVISION]

COMM. ARBITRATION APPEAL NO.1 OF 2026
IN
COMM. ARBITRATION PETITION NO.648 OF 2021

Oil and Natural Gas Corporation Ltd.,	]	
A company incorporated under the	]	
Companies Act, 1956	]	
Having its registered office at :	]	
Pandit Deen Dayal Upadhyay	]	
Urja Bhavan, 5, Nelson Mandela Marg,	]	
Vasant Kunj, New Delhi – 110 070	]	
And	]	
at Uran Plant, Uran – 400 702,	]	**..Appellant/**
Maharashtra	]	**Org. Petitioner**

Versus

Newton Engineering & Chemicals Ltd.,	]	
Being a Company incorporated under	]	
the Companies Act, 1956	]	
Having its registered office at:864/B-4	]	
G.I.D.C., Makarpura, Baroda	]	**.. Respondent/**
Gujarat – 490 010	]	**Org. Respondent**

Mr. Navroz Seervai, Senior Advocate, with Mr. Vishal Kanade, Mr. Anagh Pradhan, Ms. Aneesha Munshi, Mr. Anand Iyer, Ms. Palak Jain, Advocates, i/by Divya Shah Associates, for the Appellant-Original Petitioner.

Mr. Mayur Khandeparkar with Mr. Bernardo Reis and Mr. Pratik Dixit, i/by Dr. Prem Motiramani, Advocates for the Respondent.

CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.

Judgment is reserved on : 27th March 2026

Judgment is pronounced on : 30th April 2026

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PER, GAUTAM A. ANKHAD, J.

This appeal impugns the judgment dated 17th October 2025 passed by the learned Single Judge, whereby the appellant's petition under section 34 of the Arbitration and Conciliation Act, 1996 ("the Act") came to be dismissed and the Arbitral Award dated 26th August 2021, rendered unanimously by a three-member Tribunal, was upheld.

2. The respondent herein – M/s. Newton Engineering & Chemicals Limited was the original claimant before the Arbitral Tribunal, whereas the appellant – Oil & Natural Gas Corporation Limited ("ONGC") was the original respondent before the Tribunal.

3. The factual background in a nutshell is that the appellant awarded to the respondent a turnkey contract for modernization of the Effluent Treatment Plant (ETP) at its Uran Plant. The respondent submitted its bid on 7th July 2014, identifying M/s. UEM India Private Limited ("UEM") as its technical collaborator pursuant to a Technical Collaboration Agreement dated 6th May 2014. The respondent's bid was accepted and a Letter of Award dated 11th May 2015 was issued, followed by execution of a contract on 29th March 2016 between the appellant and the respondent ("Contract"). The Contract expressly recorded that it constituted the entire agreement between the parties and provided for milestone-based payments along with furnishing of a performance bank guarantee by the respondent. UEM was not a party to the Contract.

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4. Disputes arose between the parties during the execution of the project. The appellant alleged that the respondent had made negligible progress and had failed to meet critical milestones. By a show cause notice dated 9th May 2017, the appellant called upon the respondent to cure the defaults, complete the specified activities and demonstrate improvement in the execution of the project within thirty days, failing which the Contract would be terminated. The notice dated 9th May 2017 is reproduced as below:

"<u>WITHOUT PREJUDICE</u>

Oil and Natural Gas Corporation Ltd.
MR, Uran Plant, Uran – 400 702 (India).
MM Department – Dronagiri Bhavan,
Navi Mumbai – 400 702.
Tel.: 022-2723 4300 / 4302 4314
Fax : 022 – 27222811

<u>No.MR/URAN/MM/L5TK/ETP/14/2013-14/UA5KC13001</u>
<u>Date : 9th May 2017</u>

M/s. Newton Engineering and Chemicals Ltd.
Regional Office : 504, Meadows, Sahar Plaza Complex,
Chakala Metro Station, Andheri-Kurla Road,
Andheri (East), Mumbai – 400 059, Maharashtra.

<u>Kind Attention : Shri N. Gopinath, Managing Director</u>

Ref. :

1. *Contract No.MR/URAN/MM/LSTK/ETP/14/2013-14/UA5KC13001 dated 11.05.2015*
2. *MOMs dated 28.02.2017, 07.03.2017, 14.03.2017, 21.03.2017, 04.04.2017*
3. *Letter no.MR/URN/ES/ETP/82/9(A) 2016-17/1159 dated 29.12.2016*
4. *MOM dated 10.01.2017*
5. *Letter no.MR/URN/ES/ETP/82/9(A)/2016-17/1253 dated 12.01.2017*
6. *Letter no.MR/URN/ES/ETP/82/9(A)/2016-17/1357 dated 31.01.2017*
7. *Letter no.MR/URN/ES/ETP/82/9(A)/2016-17/1357 dated 13.02.2017*
8. *Letter no.MR/URN/ES/ETP/82/9(A)/2016-17/1545 dated 10.03.2017*
9. *Letter no.PM/NECL/M-250/2017/011 dated 11.03.2017*
10. *Letter no.MR/URN/ES/ETP/82/9(A)/2016-17/1561 dated 15.03.2017*
11. *Letter no.MR/URN/ES/ETP/82/9(A)/2016-17/1561 dated 15.03.2017*

Subject : Termination Notice under Clause 12.4 of the Contract No.MR/URAN/MM/ LSTK/ETP/14/2013-14/UA5KC13001 dated 11.05.2015.

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1. *WHEREAS, Oil and Natural Gas Corporation Ltd. (hereinafter ONGC) entered into Contract No.MR/URAN MM/LSTK/ETP/14/2013-14 UA5KC13001 dated 11.05.2015 with M/s. Newton Engineering and Chemicals Ltd. (hereinafter M/s.NECL) for Modernisation of ETP Plant at ONGC Uran Plant.*
2. *AND WHEREAS, 23 out of total completion period of 32 months have passed and the overall progress in the Project is abysmally low at 2.01% against scheduled progress of 68.96%.*
3. *AND WHEREAS, M/s. NECL has failed to resolve their dispute with their Technical Collaborator M/s. UEM India Pvt. Ltd. (hereinafter UEM) who are responsible for Basic Design & Engineering, Detail Engineering, Technical Collaboration Assistance / Services, Critical Equipment Supplies and Expert Supervision and which is considered as one of the reasons for the delay.*
4. *AND WHEREAS, Execution Philosophy, Methodology and constructability document, overall plot plan, equipment layout etc. is a primary pre-requisite for execution of project which has not been frozen till date by NECL despite several reminders from ONGC/EIL.*
5. *AND WHEREAS, Procurement activities, Soil testing and other construction activities are yet to be started.*
6. *AND WHEREAS, ONGC have, during various weekly review meetings, expressed serious concern over slow progress of the Project and advised NECL to work with meticulous planning, mobilise full resources and sort out commercial issues with UEM without any more delay. (please refer Letter no.MR/URN/ES/ETP/82/9(A)/2016-17/1159 dated 29.12.2016 and MOMs weekly meetings dated 28.02.2017, 07.03.2017, 14.03.2017, 21.03.2017, 04.04.2017).*
7. *AND WHEREAS, ONGC vide a number of letters addressed the issues to the MD of NECL on the matter but they failed to sort out matter with their Technical Collaborator i.e. UEM and Engineering remained an area of concern: Letter no.MR/URNES/ETP/82/9(A) 2016-17/1159 dated 29.12.2016 was issued to NECL indicating that progress of project is unsatisfactory.*
8. *AND WHEREAS, in order to expedite the project engineering work a review meeting was held at EIL, Delhi office to review the engineering documents of the project along with UEM based on the request of NECL on 10.01.2017. However, no documents were vetted by UEM.*
9. *AND WHEREAS, NECL was advised to submit catch up plan, construction methodology & order copies of 3 nos. of Work Orders placed to vendors vide letter no.MR/URN/ES/ETP/82/9(A)/ 2016-17/1253 dated 12.01.2017 and NECL submitted an incomplete catch up plan without indicating the activity-wise plan.*

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10. *AND WHEREAS, ONGC advised NECL, vide letter no.MR/URN/ES/ETP/82/9(A)/2016-17/1357 dated 31.01.2017 and dated 13.02.2017 to expedite the progress of the project.*
11. *AND WHEREAS, ONGC planned MRM on 23.02.2017 to discuss various issues at the level of Plant Manager but the meeting had to be called off as MD of NECL did not attend the meeting. This shows very casual approach of NECL for the project.*
12. *AND WHEREAS, NECL vide letter no.MR/URN/ES/ETP/82/9(A)/ 2016-17/1545 dated 10.03.2017 NECL were also advised for compliance of following:*
    a) *Documentary evidence to substantiate that issues with UEM, Delhi have been resolved and there will not be any hurdle in this project for the jobs to be performed by UEM.*
    b) *Catch up plan duly endorsed by UEM to arrest further delay in the project.*
13. *AND WHEREAS, in response to the above communication, NECL vide letter no.PM/NECL/M-250/2017/011 dated 11.03.2017 claimed to have resolve their dispute with UEM through MOM dated 10.03.2017 between NECL and UEM. However, there is no evidence of the said MOM being followed in letter and spirit.*
14. *AND WHEREAS, ONGC again vide letter no.MR/URN/ES/ETP/ 82/9(A)/2016-17/1561 dated 05.03.2017 advised NECL to take actions on the issue raised vide letters dated 28.02.2017 and 10.03.2017 but the same was not responded by NECL.*
15. *AND WHEREAS, in the 4th MRM of the project was held on 24.03.2017 and the same was attended by Directors and other personnel of NECL. During the meeting, following points were discussed and NECL was advised to comply the same latest by 31.03.2017. This MRM was also not attended by MD, NECL.*
    15.1 *Progress of the project is 2.01% against the schedule of 68.70% which is highly unsatisfactory. NECL is to improve the performance.*
    15.2 *Progress of Design & Engineering is 21.41% against the schedule of 100%. Planning package yet to be submitted by NECL for approval under Code-1.*
    15.3 *The schedule of submission of documents for Surge Pond-B, schedule of submission of PRs, schedule for revamping jobs shall be submitted by NECL latest by 31.03.2017.*
    15.4 *NECL yet to commence soil testing in Surge Pond-B.*
    15.5 *NECL to commission one de-watering pump by 31.03.2017*
    15.6 *NECL yet to submit site execution a philosophy, methodology and constructability document to execute the project.*
    15.7 *NECL to submit most practical catch up plan for Engineering, Procurement and Construction before 31.03.2017 along with dates for each activity, failing which ONGC shall take appropriate action for termination of the*

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contract under Clause 12.4 of the contract for unsatisfactory performance.

15.8 NECL to submit letter from M/s. UEM indicating that all technical and commercial issues as per agreement between them have been sorted out and there shall not be any delay hereafter for various activities of the project. The letter from UEM shall have to be submitted by NECL to ONGC by 31.03.2017.

Due to non-compliance of the above issues by the cut-off date of 31.03.2017, ONGC again issued letter on 31.03.2017 and 05.04.2017 to NECL to submit the compliance of points raised in 4th MRM. It may be noted that NECL has not complied these till date.

16. AND WHEREAS, despite best effort of ONGC to expedite the project, NECL has adopted the casual approach and thereby failed to address any of the concern ONGC have raised which is evident in failure of NECL to;

16.1 Make any noticeable progress in execution of the project.

16.2 Resolve the dispute with their technical collaborator M/s. UEM.

16.3 Start the construction activities, and

16.4 Place purchase order for the project materials and equipment.

17. AND WHEREAS, ONGC is compelled to issue this Notice of Termination of the referred contract on account of unsatisfactory performance of NECL as per provision of the Clause no.12.4 page 22 giving a period of 30 days from the date of issue of this Notice for NECL to improve their performance and complete the activities to the satisfaction of ONGC as below;

17.1 Commercial dispute with technical collaborator M/s. UEM, Delhi to be resolved.

17.2 Execution, Philosophy, Methodology and Constructability document, overall plot plan, equipment layouts etc. are to be frozen.

17.3 Catch up plan to be submitted.

17.4 Engineering Documents as listed at Annexure-1, duly reviewed by UEM to be submitted for approval by ONGC/EIL.

17.5 Procurement Balance 60 out of 80 MR/PR's as per Annexure-2 to be submitted.

17.6 Site Works : Activities enlisted in Annexure-3 to be completed.

18. AND WHEREAS, after expiry of 30 days' Notice Period, if NECL fails to complete the above mentioned activities and is unable to

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demonstrate improvement in execution of the project and their ability to complete the project, the Contract shall stand terminated thenceforth without any further notice and consequences as per clauses 12.5 and 31.0 of the Contract shall follow.

(R.B. Singh)
GM (MM)-I/c MM

Copy to : 1. M/s. Newton Engineering and Chemicals Ltd.
Registered Office : 864/B-4, GIDC, Markarpura,
Baroda – 390010. Gujarat, India.
Fax No.0265-2638564
2. GGM-PMU
3. GGM-HES
4. Office Copy.

(R.B. Singh)
GM (MM)-I/c MM"

5. The respondent by its reply dated 29th May 2017 denied these allegations and *inter alia* attributed the delays to the appellant's inaction. It asserted that the project was delayed due to lack of clarity and approvals in relation to sludge disposal, which according to the respondent was the foundational activity for execution of the project. It was contended that the design and engineering activities were interdependent on inputs such as soil testing and equipment specifications, which in turn were contingent upon sludge removal. The respondent further stated that it had mobilized resources and undertaken preliminary activities, but its progress was hindered due to delay in approvals and non-payment of dues by the appellant. The respondent asserted that the commercial issues with UEM had been resolved and did not justify the appellant's insistence on UEM's involvement in the Contract as demanded by the appellant. The letter dated 29th May 2017 is reproduced as below:

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"Newton Engineering and Chemicals Ltd.
Regd. Office : 864/B-4, GIDC, Markarpura,
Baroda – 390010, Gujarat, India.
Phone No.:+91 265 6672661, 6672663
Fax : +91 265 6672662
Email: newton@newtonengg.com
Website: www.newtonengg.com

PM/NECL/M-251/2017/016
Date : 29.05.2017

To,
The Project Coordinator,
Modernisation of ETP Uran,
Oil & Natural Gas Corporation Ltd.,
Mumbai Region, Uran Plant, Uran
Maharashtra, India.

Ref. : Contract No. MR/URAN/MM/LSTK/ETP/14/2013-14/ UA5KC 13001, dated 11.05.2015
Sub. : Compliance to letter no.MR/URN/ES/ETP/9(A)/2016-17/1907 dated 08.05.2017.

Dear Sir,

With reference to the above mentioned letter received from your good-self kindly find below the point wise clarification:

1. *Regarding Project Progress / Design & Engineering / Disposal of Sludge / Soil Testing / Placement of Orders*

   a. *Project Progress:*
   We again iterate that the clarity on the sludge issue was achieved only on 29th November 2016 only after which the work was restarted in all the areas. It is a well-known fact that restart of the work and reorganization of the resources takes its own course. Since there was no clarity on the sludge issue, the project's progress was hampered due to this and hence now comparing the scheduled progress with the current progress is not at all justified.

   b. *Design & Engineering:*
   We again iterate that Design & Engineering is not an independent activity and is based on inputs received from the various sources. How can civil designs be started without having soil report in hand. It was ONGC/EIL who insisted that the soil report should be available from the area. Inside the pond which could have been done only after the removal of the sludge from the pond. No foundation drawings can be started until the availability of the soil report and equipment loading data which will be available only after the placement of the orders. Many drawings are interrelated and can be started only after the approval of former drawing like GAD of tanks can be prepared only after the approval of Tank Data Sheet. Hence your contention M/s. NECL has placed a misleading fact is not correct.

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c. *<u>Disposal of Sludge</u>:*

It is a well established fact that we had mobilised the site in August 2015 and started making the efforts for sludge removal in the same month itself. Since the approval of removal for the sludge was not given and the area of the construction being on the sludge pond the project progress was hampered. It is an established fact that ONGC had been deposing the sludge without even categorizing it which is primary requirement for the disposal of the Hazardous waste. We having work experience in various other Oil and Gas Companies like IOCL, HPCL always knew that this sludge is fit for recycling and hence we had taken it as a revenue item during the bidding of the project. This can be seen from the cost difference between the L1 and L2 which is almost 23 crores. No procedure for sludge disposal is given in the bid document and in the contract document. ONGC has always been referring to a pre-bid reply which is also vague and not clear. Also M/s. ONGC had been forcing us to adopt a method for sludge disposal which was against the hazardous waste policy which we have been conveying from the start. Also now when M/s. ONGC has taken out the tender for the reprocessing of the sludge through the Bid Invitation No.UA6517002 and hence it is established that the procedure for sludge disposal proposed by us was correct and all the delay caused due to delay in the resolution of the sludge issue is not at all attributable to M/s. NECL.

d. *<u>Soil Testing</u>:*

From the letter it is agreed by you that we had carried the soil testing near the surge pond and not in the area where the sludge is kept. It was M/s. ONGC / M/s. EILs recommendation to do the designing only after doing the soil sampling from below the pond. It was only then we have re-initiated for the soil testing from the bottom of the surge pond from where the sludge has been removed. The documentary evidence for the same is available and hence your contention that M/s. NECL has placed a misleading fact is not correct.

e. *<u>Placement of Orders</u>:*

We again iterate that initially due to non-clarity on the sludge issue and later due to ONGC not making payments for the want of stamp and signature of the technical collaborator, we had delayed the placement of the orders. As on date, we have not received nay payment against the placement of the orders and on the other hand we have made payments to the vendors which is again putting us in negative cash flows impacting the project work.

2. *<u>Resolution of Dispute with M/s. UEM</u>:*

We again iterate that due to delay in the clarity over the sludge issue, we could not start the project work and due to this we ended up only in extra overheads and cash crunch. We had made a single payment of Rs.22,50,000/- after the Due to this,

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we could not honour the commercial commitments made to M/s. UEM completely, still we kept on paying them whatever we could and hence there was a commercial dispute between both the agencies. M/s. UEM wished to get their payment for technical collaboration completely without considering the situation. In spite of delay in the project and billing merely anything to ONGC, we have paid more than 80 lakh to M/s. UEM till date and the proof of the same can be given to M/s. ONGC. All the commercial issues have been resolved and we have started submitting documents signed by M/s. UEM to M/s. ONGC for approval. We are still firm on our statement that there is no liability given to the technical collaborator in the contract and M/s. NECL is held responsible for everything as per the contract. The entire responsibility of execution of the job, achieving the process parameters is responsibility of M/s. NECL and we have never denied or step back from our responsibility. However, in spite of this when it comes to execution, M/s. ONGC has always not reviewed the documents submitted by us, not made payments against the order placed by us for the want of signature of M/s. UEM which gave them full strength to dictate their terms and exploit us as they wish.

3. *<u>Submission of MR/PR and Review of MR/PR</u>:*
   The MR/PR documents are vendor generated and it is vendor who takes the responsibility of the performance of the equipment. Hence, M/s. UEM will not sign the documents in MR/PR except for Data Sheets which are reviewed from process point of view. For TTPRO section since M/s. UEM will be supplying all the equipments and will be responsible for the warrantee and guarantee for the TTPRO section and hence for all the equipments coming in TTPRO section, the PS documents will be signed by M/s. UEM.

4. *<u>Mobilisation of Soil Testing Agency</u>:*
   Kindly refer the mail dated 15th April 2017 where we had asked for the approval of Bore Hole location and confirmed that the agency is ready and can mobilise the site by 19th April 2017. We received the approval on 24th April 2017 by which the agency had deployed his rig to some other places after which we had searched for new agency and hence it took time. The documents for the gate pass approval for manpower of the new agency has already been submitted to the office of your good self.

5. *<u>Diesel Pump</u>:*
   The diesel engine pump has been shifted to site on 15th May 2017. We have also ordered an additional diesel pump which will be delivered at site by 10th May 2017.

6. *<u>Submission of Specific Letter from M/s. UEM</u>:*
   The commercial disputes have been resolved and M/s. UEM is working on this project. M/s. ONGC has also cross-verified this by sending an email to M/s. UEM that the documents

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submitted by M/s. NECL were really signed by them or not over which they have replied in positive. We feel that forcing us to get a particular letter from M/s. UEM is not justified.

7. *Submission of Planning Package:*
   We again iterate that the MOM of the meeting may also be pleased to refer to this meeting which was held for discussion of comments on PFD, P&ID and DCI & MCI. Also planning package is not engineering document and hence the technical collaborator has no role to play in it. As confirmed earlier, there are only comments on the DCI and MCI in the planning package. Since there are several departments in EIL and we are also not very clear with the comments, we requested you to kindly arrange a joint meeting across the table with M/s. EIL which was denied from your end. The reply given by your good self on this issue is not in line with the actual facts and hence we do not agree with the same. We confirm you that the issues between us and UEM are resolved and we have expedited all our resources for the completion of the project at the earliest. We request your kind cooperation in taking this project forward.

   Regards
   Amit Datarkar
   Project Manager"

6. Notwithstanding the reply, the appellant terminated the Contract on 15th June 2017 with effect from 7th June 2017. The letter dated 15th June 2017 is reproduced as below:

"Oil & Natural Gas Corporation Ltd.,
MR, Uran Plant, Uran – 400702 (India).
MM Department-Dronagiri Bhavan,
Navi Mumbai – 400702
Tel.: 022-2723 4300 / 4302 4314
Fax: 022-27222811

No.MRJURAN/MM/LSTKJETP/14/2013-14/UASK
Date : 15th June 2017

M/s. Newton Engineering and Chemical Ltd.,
Regional Office : 504, Meadows, Sahar Plaza Complex,
Chakala Metro Station, Andheri-Kurla Road,
Andheri (E), Mumbai – 400059, Maharashtra.

Kind Attention : Shri N. Gopinath, Managing Director

Ref. : 1. Contract No. MRJURAN/MM/LSTK/ETP/14/ 2013-14/UA5KC/13001 dated 11.05.2015.
2. Letter No.MR/URAN/MM/LSTK/ETP/14/ 2013-14/UA5KC13001 dated 9th May 2017.

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Sub. : Intimation of termination of the Contract No.MR/URAN/ MM/LSTK/ETP/14/2013-14/UA5KCd1a3t0e0d1 11.05.2015 under Clause 12.4.

1. *WHEREAS, Oil & Natural Gas Corporation Ltd. (hereinafter ONGC) entered into Contract No.MR/URAN/MMILSTK/ETP/14/2013-14/ U1A350KOC1 dated 11.05.2015 with M/s. Newton Engineering and Chemicals Ltd. (hereinafter M/s. NECL) for modernization of ETP Plant at ONGC Uran Plant.*

2. *AND WHEREAS, ONGC served Termination Notice to M/s. Newton Engineering and Chemical Ltd. vide letter reference no.2 above where M/s. Newton Engineering and Chemicals Ltd. was allowed 30 days' Notice Period to complete activities listed therein and demonstrate improvement in execution of the project and ability to complete the project.*

3. *AND WHEREAS, notwithstanding this termination, M/s. Newton Engineering and Chemicals Ltd. failed to complete the activities listed in the letter reference no.2 above and failed to demonstrate improvement in execution of the project and their ability to complete the project. Therefore, the said Contract No.MR/URAN/MM/LSTK/ ETP/14/2013-14/UA5KdC 13001 dated 11.05.2015 got terminated on 7th June 2017 in terms of the said Termination Notice dated 9th May 2017.*

4. *AND WHEREAS, notwithstanding this termination, M/s. Newton Engineering and Chemicals Ltd. and ONGC are bound by the provisions of the Contract No.MRJURANIMM/LSTK/ETP/14/2013-14/UASKC10031 dated 11.05.2015 that reasonably requires some action or forbearance after such termination as per clause 12.5 of the Contract.*

5. *AND WHEREAS, ONGC shall initiate necessary action as consequences of this termination as per clauses 12.5 and 31.0 of the Contract or any other clause elsewhere in the said Contract.*

(R.B. Singh)
GM (MM)-I/C MM

Copy to : M/s. Newton Engineering and Chemicals Ltd.
Registered Office : 864/B-4, GIDC, Makarpura,
Baroda – 390010, Gujarat, India
Fax No.0265-2638564

(R.B. Singh)
GM (MM)-I/C MM"

7. The respondent invoked arbitration and also filed Arbitration Petition (Lodging) no.289 of 2017 under section 9 of the Act seeking to restrain the appellant from invoking the

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bank guarantees. As the respondent did not obtain any order of injunction, the appellant encashed the bank guarantees. All these disputes were referred to arbitration. Before the Tribunal, the parties led voluminous documentary and oral evidence. On the basis of the pleadings, a wide range of issues, including questions relating to delay, the role of UEM, the scope of work for sludge disposal, the validity of termination and on several claims and counterclaims, were framed. The same are extracted and quoted:

> *i. Whether the Respondent has performed its contractual obligations under the subject Agreement/Contract dated 11th May, 2015?*
>
> *ii. Whether the Respondent and/or the Claimant committed breaches of the subject Agreement/Contract?*
>
> *iii. Whether the disposal of the sludge was within the Claimant's scope of work under the subject Contract?*
>
> *iv. Whether the Respondent's insistence that the Claimant dispose of the sludge only, and only at MWML, Taloja, was as per subject Contract?*
>
> *v. Whether the MWML Taloja was approved Agency for disposal of sludge / scrap?*
>
> *vi. Whether the Contract provides or holds UEM as primarily responsible for overall execution of work?*
>
> *vii. Whether Claimant's offer in the subject Contract was based on Consent dated 23.01.2013? If yes then whether Claimant is bound by MPCB Consent dated 21.10.2014?*
>
> *viii. Whether the Claimant was entitled to the scrap under the subject Contract?*
>
> *ix. Whether the termination of the subject Agreement/Contract dated 29th March, 2017 was correct and justified of was wrongful?*
>
> *x. Whether the encashment of Performance Bank Guarantee was wrongful and if so, the Claimant is entitled to the refund of Rs.9,42,99,150/-?*
>
> *xi. Whether the Claimant is entitled to Rs.60,00,000/- as Commission charges/ expenses towards extension of Bank Guarantee?*
>
> *xii. Whether the Claimant is entitled to Rs.20,00,000/- for loss due to mobilization and demobilization of site infrastructure?*

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xiii. Whether the Claimant is entitled to Rs.30,00,000/- for expenses incurred towards Insurance Policies?

xiv. Whether the Claimant is entitled to Rs.35,00,000/- for loss of tools, tackles and machineries?

xv. Whether the Claimant is entitled to the sum of Rs.11,36,86,818/-for Work Done but not paid?

xvi. Whether the Claimant is entitled to Rs.2,75,00,000/- as loss of revenue against sludge recycling?

xvii. Whether the Claimant is entitled to Rs.15,42,44,427/- as loss of profit?

xviii. Whether the Claimant is entitled to Rs.11,08,18,621/- for underutilization of overheads?

xix. Whether the Claimant is entitled to Rs.13,45,65,451/- for underutilization of labour force?

xx. Whether the Claimant is entitled to Rs.7,12,40,534/- for underutilization of machinery?

xxi. Whether the contract provides that property in the crude oil mixed in the sludge was the property of the Respondent?

xxii. Whether the Respondent was entitled to reprocess the sludge through the 3rd Party Contractor and extract the crude oil therefrom before sending it for disposal by way of incineration?

xxiii. Whether due to the Claimant's failure to execute the subject Contract in accordance with the terms thereof, the Respondent has suffered a loss and is titled to an award for an aggregate amount of Rs.133.8 Crores payable by the Claimant?

xxiv. Whether the Respondent is entitled to reimbursement of an amount aggregating to Rs.1,00,66,732/- incurred by the Respondent on maintenance of existing ETP, which was the scope of work of the Claimant under the subject Contract?

xxv. Whether the Respondent is entitled to the aggregate amount of Rs.1,22,60,09,000/- being the escalated cost of the ETP Modernization Project occurring due to the inordinate delay in execution of the subject Contract by the Claimant?

xxvi. Whether the Respondent is entitled to the aggregate amount of Rs.1,12,00,000/- on account of having incurred extra infructuous expenditure on manpower under the subject Contract?

xxvii. Whether the Respondent is entitled to the sum of Rs.5,00,00,000/- as compensation for the defamatory and false imputations made by the Claimant against the officers of the Respondent?

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xxviii. *Whether the Respondent is entitled to an amount of Rs.2.69 Crores for infructuous expenditure incurred by the Respondent on account of Project Managing Consultancy costs under the subject Contract?*

xxix. *Whether the Respondent is entitled to an aggregate amount of Rs.12,67,240/- incurred on wasteful expenditure on engineering RA Bills Nos. I and 2 paid to the Claimant under the subject Contract?*

xxx. *Whether the Respondent is entitled to the sum of Rs.28,00,000.00/- being the value of scrap appropriated by the Claimant under the subject contract without fulfilling all the of the Claimant's Obligations under the subject contract?*

xxxi. *Whether the Respondent is entitled to interest of @ 24% p.a. on the aggregate sum of Rs.133.8 Crores claimed in the present Counter Claim?*

xxxii. *Whether the Claimant is entitled to interest @ 24% p.a. on the amounts claimed by the Claimant?*

xxxiii. *What Award?*

xxxiv. *What Costs?*

8. Upon a detailed consideration of the material on record, the Tribunal unanimously held that the termination of the contract by ONGC was wrongful. The Tribunal found that the delay in execution was not attributable to the respondent and that the appellant's own conduct, particularly in relation to sludge disposal and approvals had materially contributed to the lack of progress. The Tribunal further held that the contract did not mandate UEM's approval or signature on all engineering documents and that the respondent could not be faulted on that basis. Consequently, the Tribunal partly allowed the respondent's claims and out of total claims for Rs.111.04 crores, it awarded Rs.27.43 crores under various heads, including refund of the performance bank guarantee, value of work done, loss of revenue from sludge disposal, and loss of profit. The Tribunal also awarded interest and costs to the respondent and rejected all counterclaims of the

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appellant. In a nutshell, the following claims were awarded:

(i) Under Issue no.10, Rs.9,42,99,150/- was awarded to the respondent towards refund of the performance bank guarantee, as the Tribunal held that the encashment thereof was unjustified in view of the wrongful termination;

(ii) Under Issue no.15, Rs.1,06,91,238/- was awarded to the respondent towards the value of work done and payments made by it to UEM and other third-party vendors;

(iii) Under Issue no.16, Rs.2 crores was awarded to the respondent towards loss of revenue as the Tribunal held that the appellant had unjustifiably insisted on incineration and considering that the respondent would have received from recycling of sludge;

(iv) Under Issue no.17, Rs.14,93,79,332/- was awarded to the respondent towards the loss of profits consequent upon wrongful termination of the Contract by the appellant;

(v) Interest and costs were also awarded to the respondent; and

(vi) All counterclaims of the appellant were rejected.

9. The appellant challenged the Award under section 34 of the Act before the learned Single Judge contending *inter alia* that the findings of the Tribunal were perverse, unsupported by evidence and had internal contradictions in the Award. The learned Single Judge, upon examining the Award within the

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limited scope of interference under section 34, rejected the challenge and held that the view taken by the Tribunal was a plausible one based on the material on record. Aggrieved thereby, the appellant has preferred the present appeal under section 37 of the Act.

Submissions of the appellant:

10. Mr. Navroz Seervai, learned senior counsel appearing for the appellant submitted that the Tribunal has rendered contradictory findings regarding the role of UEM. He contended that while the Tribunal has acknowledged that the respondent lacked the requisite technical expertise and UEM was its Technical Collaborator, it has simultaneously held that the Contract did not mandate UEM's approval/ signature on all drawings for continuation of the work. It was urged that, but for UEM, the respondent would not have been awarded the tender in the first place. He invited our attention to paragraphs 107, 111, 124 and 163 of the Award and submitted that the Tribunal recorded that it was incumbent upon the respondent to satisfy the appellant regarding UEM's involvement and to demonstrate that the plans were duly approved by UEM. However, in subsequent portions of the Award, particularly paragraphs 163, 181 and 192, the Tribunal has held that the Contract did not require any involvement of UEM and the appellant could not insist on UEM signing all the drawings. These mutually inconsistent findings render the Award perverse. The learned senior counsel further submitted that the issue of non-involvement of UEM was repeatedly raised by the appellant in its

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correspondence, including the communications forming part of the termination notice. It was submitted that the learned Single Judge not only failed to consider these fundamental inconsistencies at paragraph 71 of the impugned judgment but travelled beyond the Award, rendering the impugned judgment patently illegal under section 37 of the Act.

11. Mr. Seervai next contended that the Tribunal wrongly held that the submission of basic engineering drawings by the respondent constituted less than 5% of the Contract value and that removal of the sludge was the major work. It was urged that the submission of UEM-approved drawings constituted a fundamental precondition for execution of the project. The commercial weightage assigned to the drawings cannot be determinative of its importance for the project. The Tribunal as well as the learned Single Judge failed to appreciate that without duly approved engineering drawings, no further work on the ETP could have proceeded. Mr. Seervai submitted that the respondent's admission of its inability to furnish UEM-approved drawings amounted to the breach of a fundamental contractual obligation, justifying the termination of the Contract. It was contended that despite the Tribunal recording findings acknowledging the necessity of UEM's involvement, it failed to appreciate the legal consequences thereof.

12. As regards Rs.1,06,91,238/- granted towards work done and payments made to UEM and third-party vendors, Mr. Seervai submitted that the Award is not supported by

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evidence and suffers from material discrepancies in the vendors’ statements. He contended that the bank statements relied upon by the respondent do not satisfy the requirements of the Bankers' Books Evidence Act, 1891 and the same could not have been relied upon by the Tribunal. The learned senior counsel also challenged the award of loss of profit amounting to Rs.14,93,79,332/-, contending that the same is premised on an erroneous finding of wrongful termination. He submitted that both the Tribunal and the learned Single Judge have wrongly concluded that disposal of sludge was a primary or foundational activity for execution of the project. According to him, such a conclusion is not borne out from the contractual framework. It was submitted that the quantification of loss of profit at 15% is arbitrary, without proof of actual loss and based solely on the *ipse dixit* of the respondent. Equally, the award of Rs.2 crores towards loss of revenue from sludge disposal was assailed as being wholly unsupported by record, without evidence and is vitiated by patent illegality.

13. In support of these submissions, Mr. Seervai relied on following judgments to contend that where an Award is vitiated by internal contradictions or is unsupported by evidence, the Court in exercise of jurisdiction under section 37 of the Act is empowered to set aside the Award or in the alternative, remand the matter to the learned Single Judge for reconsideration:

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(i) "Morgan Securities & Credits Pvt. Ltd. v. Samtel Display Systems Ltd."[1]

(ii) "Mcdermott International Inc. v. Burn Standard Ltd. & Ors."[2]

(iii) "National Agricultural Co-operative Marketing Federation of India Limited (Nafed) v. Roj Enterprises (P) Limited & Ors."[3]

Submissions of the respondent:

14. On the other hand, Mr. Mayur Khandeparkar, the learned counsel appearing on behalf of the respondent supported the findings recorded in the Award as well as the judgment of the learned Single Judge. Mr. Khandeparkar invited our attention to various portions of the Award and submitted that the Tribunal has correctly held that the termination of the Contract by the appellant was wrongful and that the consequences thereof necessarily follow. He contended that the issue relating to disposal of sludge was fundamental to the progress of the project and has been determined by the Tribunal as a question of fact on the basis of the materials on record. The appellant delayed the decision-making process in relation to sludge disposal, which constituted a preliminary and essential activity and further insisted on incineration of sludge, despite material indicating that the sludge was capable of being recycled. The Tribunal has rightly concluded that the appellant failed to grant timely approvals and that the delay was attributable to the appellant. It was submitted that the learned Single Judge has

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1 2023 SCC OnLine Del 8018
2 (2006) 11 SCC 181
3 2025 SCC OnLine Bom 541

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correctly held that a plausible view is taken by the Tribunal and that this Court ought not to re-appreciate the evidence which has been extensively considered by the Tribunal.

15. Mr. Khandeparkar further submitted that the monetary claims awarded are duly supported by reasons and evidence, including invoices, work orders and bank statements, all of which have been considered by the Tribunal. He submitted that it is well settled that in cases of wrongful termination, loss of profit can be awarded on a reasonable basis and the quantification adopted by the Tribunal at 15% cannot be said to be arbitrary or contrary to law. The direction for refund of the performance bank guarantee is a direct consequence of the finding that the termination itself was wrongful. It was contended that neither any ground of patent illegality or perversity is made out before this Court, nor is there any exceptional circumstance warranting interference or remand of the matter to the learned Single Judge. In support of his submissions, the learned counsel relied upon the following judgments:

(i) "OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited & Anr."[4]

(ii) "Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO)"[5]

(iii) "M/s. A.T. Brij Paul Singh & Ors. v. State of Gujarat"[6]

[4] 2024 SCC OnLine SC 2600

[5] 2025 SCC OnLine SC 2857

[6] (1984) 4 SCC 59

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(iv) "Mohd. Salamatullah & Ors. v. Government of Andhra Pradesh"[7]

(v) "Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani"[8]

Findings and reasons:

16. Having heard the learned counsel for the parties and upon perusal of the record, we find no merit in the present appeal. The appellant has failed to make out any case warranting interference within the limited scope of jurisdiction under section 37 of the Act against the unanimous findings of the Tribunal. The legal position in this regard after the Arbitration and Conciliation (Amendment) Act, 2015 stands well settled by the judgments of the Hon'ble Supreme Court in "*OPG Power Generation*, *Ramesh Kumar Jain*" and "*National Highways Authority of India v. Hindustan Construction Co. Ltd*"[9]. In "*OPG Power Generation*", the Hon'ble Supreme Court held as follows:

> *"80. We find ourselves in agreement with the view taken in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 27-43] , 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.*
>
> *81. Awards falling in Category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the 1996*

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7 (1977) 3 SCC 590

8 (2024) 7 SCC 218

9 (2024) 6 SCC 809

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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.

82. 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.

83. 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.

167. Before closing discussion on the issue, it would be necessary to address an alternative submission raised on behalf of the appellants. It was argued that the learned Single Judge [OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions India (P) Ltd., 2020 SCC OnLine Mad 27362] and the Division Bench [Enexio Power Cooling Solutions India (P) Ltd. v. Gita Power & Infrastructure (P) Ltd., 2021 SCC OnLine Mad 5035] of the High Court, admittedly, were exercising jurisdiction under Sections 34 and 37, respectively, of the 1996 Act. As, while exercising jurisdiction under Section 34, the Court does not sit in appeal over the award, it cannot substitute the reasoning in the award with its own. Likewise, the appellate court exercising power under Section 37 cannot have greater power than what a court possesses under Section 34. Consequently, it was argued, the appellate court (i.e. the Division Bench of the High Court) exceeded its jurisdiction while providing its own reasons to support the conclusion in the award. It was also urged that in the absence of proper reasons in the award, the only course available was to set aside the award with liberty to the parties to undertake fresh arbitration.

168. We have given due consideration to the above submission. In our view, a distinction would have to be drawn between an arbitral award where reasons are either lacking/unintelligible or perverse and an arbitral award

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where reasons are there but appear inadequate or insufficient [See paras 79 to 83 of this judgment.] . In a case where reasons appear insufficient or inadequate, if, on a careful reading of the entire award, coupled with documents recited/relied therein, the underlying reason, factual or legal, that forms the basis of the award, is discernible/intelligible, and the same exhibits no perversity, the Court need not set aside the award while exercising powers under Section 34 or Section 37 of the 1996 Act, rather it may explain the existence of that underlying reason while dealing with a challenge laid to the award. In doing so, the Court does not supplant the reasons of the Arbitral Tribunal but only explains it for a better and clearer understanding of the award."

17. It is now well settled that the narrow scope of jurisdiction under section 37 of the Act does not permit re-appreciation of evidence or substitution of the arbitrator's view merely because another view is possible. The evidence and interpretation of contractual terms squarely falls within the domain of the arbitrator. An arbitral award can be interfered with only where it is vitiated by patent illegality appearing on the face of the award or where the findings are so perverse that they go to the root of the matter and are incapable of being sustained on any reasonable interpretation. Tested on the above principles, the core finding of the Tribunal that the termination of the Contract by the appellant was wrongful is a finding of fact. This finding of wrongful termination by the appellant at Issue no.9 of the Award is founded upon a detailed evaluation of contemporaneous correspondence, contractual provisions and the conduct of the parties. The Tribunal has specifically examined the grounds cited in the termination notice, namely (i) delay in execution by the respondent and (ii) internal disputes of the respondent with UEM and the alleged non-

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involvement of UEM, and has rejected both on cogent and well-reasoned grounds.

18. On the aspect of delay, the Tribunal has, upon detailed consideration, held at paragraphs 198 to 226 of the Award that the delay was attributable to the appellant. The Tribunal assessed the performance in the context of delays caused by the appellant itself, including its indecision regarding sludge disposal and the appellant's insistence on incineration despite viable alternatives. Under the Contract, sludge was the property of the bidder and removal/disposal of the sludge was within respondent's scope of work. The Tribunal has also noted that the termination notice dated 15th June 2017 does not deal with any of the explanations furnished by the respondent in its letter of 29th May 2017. These findings of the Tribunal are supported by the record before it and are not amenable to reappreciation in our appellate jurisdiction.

19. The principal submission of the appellant is that the Award is vitiated by internal contradictions, particularly in relation to the role of UEM. In particular, our attention is drawn to paragraphs 124 and 163 of the Award which read as follows:

> *"124. It must be mentioned at this stage that the Contract does not contain any provision for signature of UEM on all documents and the Contract only makes the Claimant responsible for execution. However the Respondent insisted on involvement of UEM in the fields, where under the MOU, UEM had the primary role. It may be that the Respondent were not absolutely correct in insisting that UEM sign all documents but the fact remains that Claimant had to satisfy Respondent that UEM was involved and had approved what was submitted.*

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> *163. Now let us see who was responsible for Contract work not progressing. Facts are not in dispute and thus detailed facts need not be set out. Brief facts, which clearly indicate what happened, are sufficient. As set out above the Tender (Exhibit C-174) was issued on 6th December 2013. At that time MPCB Consent dated 23rd January 2013 was in force. Thereafter the Consent to Operate dated 21st October 2014 was issued. Even though Claimant had entered into Technical Collaboration Agreement with UEM and got the Contract because of this Agreement, at the Project Kick-off Meeting dated 1st June 2015 the Claimant introduced M/s. R. P. Engineers (RPE) as their Consultants. Most of the drawings submitted by Claimant were not approved by Respondent on the ground that UEM had not signed them. Claimant relies on fact that UEM is not a party to the Contract and the Contract does not provide for drawings to be signed by UEM. Claimant is right in this respect. The Contract does not provide that UEM should sign all drawings. UEM has no role in the Contract. The Contract only makes Claimant liable and responsible. But the fact that admittedly the Claimant only got the contract because of Technical Collaboration with UEM cannot be lost sight of……"*

20. We are unable to accept the appellant's contention that while the Tribunal acknowledged the importance of UEM's involvement in the technical aspects of the matter, in contradiction it held that the Contract did not mandate UEM-approved drawings as a precondition for continuation of work. We find that a holistic reading of the Award indicates that the Tribunal has not rendered inconsistent findings, but has instead drawn a distinction between (i) the contractual arrangement *inter se* between the respondent and UEM, and (ii) the contractual obligations *inter se* between the respondent and the appellant. At paragraphs 163 and 181 of the Award, the Tribunal has on appreciation of evidence concluded that while UEM was the technical collaborator, the Contract executed between the parties did not require UEM's approval as a condition precedent for performance. This

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finding is based on a detailed analysis and supported by cogent reasons. Paragraph 181 of the Award read as follows:

> *"181.It has been very seriously submitted that Claimant failed in its duty to furnish drawings. It was submitted that Claimant were to furnish 399 drawings before removal of sludge. It was submitted that Claimant supplied only 29 drawings approved/signed by UEM. On the other hand on behalf of Claimant it is submitted that all drawings required to be submitted were submitted but that Respondent refused to consider them as most of them were not signed by UEM. As set out in paragraph 140 above nothing much turns on the fact of UEM signing or not signing. This was only Basic Drawings which admittedly constituted, at the highest, 5% of the Contract. The major work had to start after removal of sludge. We find that Claimant is right. Evidence shows that they had submitted all required drawings. Respondent was not accepting or reviewing them as they were not signed by UEM. UEM is not a party to the contract. There is no provision in the Contract which requires Claimant to get signature of UEM on all drawings. Under the Contract only Claimant is responsible for performance. If UEM had refused to perform Respondent could not have forced UEM to perform. While we understand Respondent wanting UEM to be involved Respondent themselves are to blame for not having a proper Contract. It must not be forgotten that the Contract has been drafted by Respondent and Claimant had no say in any of its provisions. At this stage it must be mentioned that the aspect of failure of Claimant to submit drawings has been dealt with in greater detail under issue No.9."*

21. The above conclusion is based on the express terms of the Contract, which places the entire responsibility of performance upon the respondent. There is a difference between the expectations of the appellant and the obligations of the respondent under the Contract. The reasons in the Award do not exhibit any perversity. It is evident from Recitals "B" and "C" of the Contract dated 29th March 2016 between the appellant and the respondent which record the various documents that formed an integral part of the Contract between the parties. It is expressly stated that the

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said Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations and agreements made prior to the date of the said Contract. Mr. Khandeparkar has rightly submitted that UEM is not a party to the Contract between the appellant and the respondent. Further as per Clause B.1.2.4(C), though UEM was identified as a technical collaborator, the respondent was primarily responsible for execution and completion of the project. The evidence on record, including the admission of the appellant's witness Mr. Sushil Kumar Gupta in cross-examination, supports the Tribunal's finding that neither the agreement dated 19th June 2014 nor the Contract required all documents to be reviewed, signed or approved by UEM. The Tribunal has concluded at paragraphs 198 to 200 and 219 to 226 that the Contract did not mandate any role for UEM in the manner contended by the appellant. The Tribunal has held that there is no denial that the appellant was aware that prior to termination, the disputes between the respondent and UEM had been resolved. The observations in the Award that are relied upon by the appellant do not disclose any contradiction. The learned Single Judge has considered the Appellant's submission at paragraph 71 of the impugned judgment. We do not find any contradiction in the Award or the findings of the learned Single Judge. In any case, we also find that the Tribunal's interpretation is a plausible view arising from the contractual scheme and does not warrant interference.

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22. The appellant's contention that the Tribunal erred in correlating the milestone payment for drawings at 5% with their contractual significance is also without merit. As per the Final Revised Planning Package dated 7th January 2016, the work breakdown structures in weightages was Engineering – 5%; Material Procurement – 55%; and Construction – 40%. The Tribunal has examined the contractual framework in detail which apportions the weightage across engineering, procurement, and construction with the payments. While the appellant contends that the approval by UEM was critical irrespective of its monetary weightage, the Tribunal has taken a plausible view that the contractual scheme did not support the appellant's position that submission of UEM-approved drawings was an absolute precondition to further execution. This interpretation is reasonable and does not warrant interference. It is settled law that where two interpretations of a contract are possible, the arbitrator's view must prevail so long as it is a reasonable one.

23. Mr. Seervai then contended that the Tribunal attached undue significance to the issue of removal of sludge, particularly when the show cause notice preceding termination dated 9th May 2017 was confined to delays by the respondent in submitting drawings. According to him, the appellant had not raised the issue of sludge removal in the show cause notice and the entire dispute pertained to non-performance by the respondent. We are unable to accept this submission. The respondent in its reply dated 29th May 2017 to the show cause notice specifically identified the removal of

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sludge as a key hindrance to the performance of the contract and attributed the delays in the project to the appellant. Inexplicably, the appellant does not deal with this issue at all in the termination notice dated 15th June 2017. The issue was thereafter pursued as a main issue by the respondent in its Statement of Claim before the Tribunal, as recorded in paragraphs 10 to 39 of the Award. The Tribunal has noted that sludge removal was treated by the respondent as a primary activity. The execution of civil, mechanical, piping, electrical and instrumentation works, for which drawings were required was contingent upon the handing over of an unhindered site. In that context, the removal of sludge assumed foundational importance. The Tribunal has taken into account the extensive correspondence between the parties on this issue and has considered it along with contractual clauses in detail while dealing with Issue no. 2, read with Issue nos. 3 and 22 of the Award. The appellant has failed to demonstrate the factual findings in this regard are perverse or which go to the root of the matter so as to set aside the Award. In the exercise of our limited jurisdiction under Section 37 of the Act, no interference with the Tribunal's factual conclusions is warranted.

24. The appellant has assailed the award of Rs.1,06,91,238/- under Issue no.15 towards payments made to UEM and third-party vendors on the ground of insufficiency of evidence. However, we find that the Tribunal has considered documentary material including invoices, work orders and bank statements which were on record and

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awarded only some of the vendors-related claims that were proved by the respondent through its witness. The sufficiency and adequacy of evidence falls squarely within the domain of the Tribunal. The finding in the Award on this Issue cannot be termed as based on "no evidence". The technical objection regarding the non-compliance with the Bankers' Books Evidence Act as argued by Mr. Seervai is misconceived, as the Tribunal is not bound by strict rules of evidence. The payments made by the respondent to third-party vendors are supported with corresponding entries in its bank statements. This has not been disputed by the appellant. Hence, the Award does not warrant any interference on this ground.

25. Similarly, the appellant's objection under Issue no.16 for the award of Rs.2 crores towards loss of revenue from sludge disposal is also untenable. The Tribunal has returned a factual finding that the disposal and treatment of sludge formed an integral part of the project and that the appellant's insistence on a particular mode of disposal contributed to the delays and losses to the respondent. The loss has been quantified on a quantity of 5000 MT and at a rate of Rs.4,000/- per MT. This factual determination is based on documents, surrounding circumstances and does not call for any interference.

26. The appellant's challenge to the award of loss of profit of Rs.14,93,79,332/- under Issue no.17 is equally without merit. Once the Tribunal found that there was wrongful termination of the Contract, the grant of loss of profit is a

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recognized head of damages. The Tribunal has adopted a percentage-based approach, supported by settled legal principles, to place the respondent in the position it would have occupied had the Contract been performed. The quantification by its very nature is an exercise of estimation, cannot be faulted unless it is shown to be arbitrary or without reasons, which is not the case here. Based on the judgments of the Hon'ble Supreme Court in *"M/s. A.T. Brij Paul Singh & Ors."* and *"Mohd. Salamatullah"*, the Tribunal has adopted a percentage basis (15%) on the premise that the innocent party should be put in the same position as if the contract had been performed. The Tribunal has considered certain deductions before awarding this claim and this quantification exercise cannot be said to be arbitrary or without foundation. The appellant has not demonstrated that the methodology adopted is so unreasonable as to shock the conscience of the section 34 Court or of this Court to warrant interference on the ground of patent illegality. Equally, once the termination has been held to be wrongful, as a direct consequence, the respondent is entitled to the refund of amounts encashed by invoking the performance bank guarantees. The reasons in the Award are intelligible, adequate and no infirmity has been demonstrated in this regard.

27. In the present case, we find that at paragraphs 65 to 79 of the impugned judgment, the learned Single Judge has applied the correct test, namely, whether the view taken by the Tribunal is a plausible one. The appellant has failed to demonstrate any patent illegality apparent on the face of the

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Award. At paragraph 65 of *"McDermott International Inc."* on which Mr. Seervai relies upon, the Hon'ble Supreme Court identifies key grounds on which the challenge to the award can be considered, one of them being whether it suffers from internal inconsistencies. The Hon'ble Supreme Court was considering a challenge to the award, where claims were made on account of delays, variations and additional work delineated the scope of judicial interference with arbitral awards under the Act. The Court clarified that mere errors in appreciation of evidence, or even erroneous conclusions on facts or law, do not by themselves furnish a ground for setting aside an award unless such findings are perverse, based on no evidence, or in conflict with the fundamental policy of Indian law. Since, we find no internal inconsistency or contradiction in the Award, the judgment in "*McDermott International Inc."* is of no assistance to the appellant.

28. We also find that the judgment of a learned Single Judge of the Delhi High Court in *"Morgan Securities"* is of no assistance to the appellant. The facts in *"Morgan Securities"* were entirely different as the Court held that there was a contradiction in the findings of the arbitrator while dealing with claim nos.2 and 3. In that judgment, the Court noted that while adjudicating claim no.2, the arbitrator had expressly rejected the claimant's valuation of the pledged shares at Rs.21/- per share as on 26th April 2007 and Rs.17/- per share at the time of filing the statement of claim. However, in contradiction to this finding, the arbitrator proceeded to adopt a value of Rs.17/- per share for the purpose of deciding

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claim no.3, without indicating the relevant date for such valuation. It was in this context that the Delhi High Court held that the award suffered from a contradiction and since it travelled beyond the claimant's pleaded case, set it aside insofar as claim no.3 was concerned. No such inconsistency or patent infirmity exists in the present case. Hence this judgment is also of no assistance to the appellant.

29. The appellant's reliance on "*National Agricultural Co-operative Marketing Federation of India Ltd. (NAFED)*" is equally misconceived. In "*NAFED*", a co-ordinate Bench of this Court held that the District Judge failed to specifically consider various grounds raised in the Section 34 petition and the written notes of arguments challenging the award. The Court set aside the order passed by the District Judge under Section 34 of the Act and directed that the same be considered afresh in accordance with law. The relevant portion reads as follows:

> *"10. It can thus be seen that the conclusion recorded by the learned Arbitrator that the Tie Up Agreements were in the nature of joint enterprise was the subject-matter of contest before the learned Judge in the application filed under section 34 of the Act of 1996. In paragraph 18, the learned Judge has observed that he had gone through the written note of arguments submitted by NAFED below Exhibit-31. Perusal of the impugned judgment thereafter indicates that this challenge as raised by NAFED as to the nature of the Tie Up Agreements has not been dealt with at all. Except for observing that the findings rendered by the learned Arbitrator were by appreciating the evidence on record and applying certain legal provisions, the learned Judge has disposed of that challenge. The parties being at issue on this aspect, it was necessary for the learned Judge to have considered the rival contentions and expressed his opinion so as to reflect its judicial consideration, albeit within the scope permissible under section 34 of the Act of 1996. The same has however not been done."*

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30. No such infirmity arises here as the learned Single Judge has duly considered the submissions advanced by the appellant and thereafter rightly rejected the challenge in its entirety on the ground that the Tribunal has taken a plausible view. We also find that no exceptional case for remand, as contemplated in paragraph 29 of the judgment of the Hon'ble Supreme Court in *Bombay Slum Redevelopment Corporation*, has been made out by the appellant. The submissions of the appellant, in substance, invites this Court to undertake a re-appreciation of evidence and to substitute its own interpretation of the Contract. Such an exercise is impermissible within the limited jurisdiction under section 37 of the Act. For all the above reasons, **Commercial Arbitration Appeal no.1 of 2026 is dismissed.** There shall be no order as to costs.

[GAUTAM A. ANKHAD, J.] **[CHIEF JUSTICE]**

BHARAT DASHARATH PANDIT

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