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

Reserved on: 10.07.2026
Pronounced on: 01.09.2026

CNR No. DLHC010703412024

\+ FAO (OS) (COMM) 234/2024

OTSUKA CHEMICAL (INDIA) PVT. LTD ....Appellant

Through: Mr.Jayant Mehta, Sr. Adv. with Mr.Amit Dhingra, Mr.Rohit Mahajan, Mr.Siddharth Agrawal, Ms.Kesang Tenzin Doma and Mr.Om Shelat, Advs.

versus

TRANS ENGINEERS INDIA PVT. LTD. .....Respondent

Through: Mr.Arvind Nigam, Sr. Adv. with Ms.Binsy Susan, Ms.Palak Kaushal and Ms.Ananya Dewan, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed challenging the Judgment and Order dated 22.07.2024 (hereinafter referred to as the 'Impugned Order') passed by the learned Single Judge of this Court in O.M.P. (COMM) 310/2022, titled ***Trans Engineers India Private Limited v. Otsuka Chemicals (India) Private Limited***, whereby the learned Single Judge

was pleased to allow the application under the Section 34 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act') filed by the respondent herein, and set aside the Arbitral Award dated 07.03.2022 (in short, 'Impugned Award') passed by the learned Sole Arbitrator.

BRIEF FACTS

2. Briefly stated, it is the case of the appellant that it established a fully automatic plant at Kotputli, Rajasthan to manufacture the chemical compound "GCLE" with an annual capacity of 1000 MT, operational from May 2008. To expand the manufacturing capacity of the said facility from 1000 MT to 1500 MT tonnes per annum, the appellant initiated the 'Lion Project' comprising of a consultancy stage followed by a construction stage.

3. The appellant claims that the respondent was engaged for providing its services for the consultancy stage of the Lion Project *vide* a Purchase Order dated 27.05.2016 for Rs. 3,00,00,000/- (Rupees Three Crores). These services included preparation of detailed engineering of Piping and Instrumentation Diagrams (in short, 'P&IDs') up to the "Good for Construction" (GFC) stage, that is, the stage where the final and revised drawings were ready to be used by contractors. In pursuance of the same, the respondent shared P&IDs on 26.07.2016 and revised versions thereof on 20.08.2016.

4. On 30.08.2016, the respondent submitted its Offer for providing its services for the construction stage of the Lion Project. Below mentioned are the relevant stipulations of the said Offer:

*"**ANNEXURE -A: PRICE SCHEDULE***
xxx
ANNEXURE -I: EQUIPMENTS
xxx
*MANUFACTURING, SUPPLY AND INSTALLATION OF EQUIPMENTS FOR ALL PROCESSES **AS PER YOUR P&D DATED 20.08.2016 EXCEPT ITEMS DIRECTLY PROCURED BY OTSUKA AS PER MAIL DATED 25.08.2016***
xxx
ANNEXURE -II: PIPING SYSTEM
xxx
*MANUFACTURING, SUPPLY AND INSTALLATION OF PIPING SYSTEM (PROCESS & UTILITY) **AS PER YOUR P&ID DATED 20.08.2016 FOR ALL PROCESS***
xxx
ANNEXURE -III: ELECTRICAL
xxx
*MANUFACTURING, SUPPLY AND INSTALLATION OF ELECTRICAL ITEMS FOR ALL PROCESSES **AS PER YOUR P&ID DATED 20.08.2016 EXCEPT ITEMS DIRECTLY PROCURED BY OTSUKA AS PER MAIL DATED 25.08.2016***
xxx
ANNEXURE- IV: INSTRUMENTATION
xxx
*MANUFACTURING, SUPPLY AND INSTALLATION OF INSTRUMENTATION ITEMS FOR ALL PROCESSES **AS PER YOUR P&ID DATED 20.08.2016 EXCEPT ITEMS DIRECTLY PROCURED BY OTSUKA AS PER MAIL DATED 25.08.2016.**"*

5. Thereafter, a meeting was held between the parties on 15.09.2016, and a signed Minutes of Meeting ('MOM') was prepared, wherein it was stated as under:

> *"1. The turnkey has been awarded to Trans Engineers India Pvt ltd in lumpsum for 710*

> *Million INR based on* ***P&IDs finalised by 25th July 2016,*** *for ongoing Lion Project as per the scope of work defined based on which offer was submitted by Trans Engineers. No extra amount will be charged by Trans for smaller modifications.* ***However, for any major modifications incorporated in P&IDs after 26th July 2016, Trans will charge extra amount on mutually agreed rates."***

6. On the same date, the appellant issued a Letter of Intent ('LOI') in favour of the respondent in *"Ref: Your offer No. TEIPL/OCIL/Q-080 dated 30.08.2016"* to carry out the construction stage of the Lion Project for an amount of Rs. 71,00,00,00/- (Rupees Seventy One Crores Only).

7. On 16.09.2016, Purchase Orders bearing no.LPJ-54/16-17 and LPJ-WO-12/16-17 were issued by the appellant to the respondent for "*manufacture and supply*"; and for *"erection and commissioning"* of the Equipments, Piping System, Instrumentation Material and Electrical Material, respectively. Both Purchase Orders were issued as per the *"offer No. TEIPL/OCIL/Q-080 dated 30.08.2016 and P&ID dated 26.07.2016"*.

8. The parties then executed an Agreement dated 20.01.2017 (in short, 'the Agreement') for supply, erection and commissioning of Equipment, Piping system, Instrumentation and Electrical material. The relevant clauses of the Agreement are reproduced hereunder:

> *"1. …*
> *(d) Work: Work Supply, Erection and Commissioning of Equipments, Piping System, Instrumentation Material, Electrical Material, the description of which has been provided in Schedule I.*
>
> *xxx*

*4 **Interpretation***

The Agreement conveys the final agreement between the Owner and the Contractor on the terms and conditions and is a complete and exclusive statement of the terms of their agreement and supersedes any purchase order, letter of intent executed earlier between the Parties. In the event of conflicts between this Agreement and the specifications, drawings and documents furnished to the Contractor for supply and installation of equipment, the latter shall govern. If any of the provisions of the Contractor's proposal or other correspondence is in conflict with the terms and conditions of the Agreement, the latter shall govern.

xxx

7. Owner's Comments and Suggestions.

The Contractor shall not be relieved of his obligations under the Agreement, including but not limited to, his warranty obligations stated herein, by incorporating the Owner's design and fabrication comments into the goods ordered under the contract, unless the Contractor has expressed his reservations, in writing, to such comments of the Owner. The specifications set out in this Agreement and the accompanying drawings are intended to describe and provide for a finished piece of work. Work executed shall be complete in all respects/details even though every item involved is not particularly mentioned. The Contractor is required to provide all labour, materials and equipments necessary for the completion of entire Work. The Contractor shall execute the Work in every respect in accordance with the Agreement and in accordance with the directions and to the satisfaction of the Owner's representatives.

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11. Owner's Instructions

The Owner may, in his absolute discretion, from time to time, issue further drawings/sketches and/or written instructions, *details, directions and explanations, in regard to:*

11.1 Any additional drawings and explanations to exhibit or illustrate details

11.2 The variation or modification of the design, quality or quantity of work or the additions or omission or substitution of any work.

11.3 Any discrepancy in the drawing, or between the Bill of Quantities and/or Specifications as set out in Schedule I hereof.

11.4 Removal from the site of any material brought thereon by the Contractor and the substitution of any other material thereof

11.5 Removal and/or re-execution of any work executed by the Contractor, which in the opinion of the Owner is not in conformity with the specifications.

11.6 Dismissal from the work of any persons employed thereupon with justifiable reasons.

11.7 Opening up of any covered work for inspection.

11.8 Amending and making good of any defects.

12. Compliance with Owner's instructions

12.1 The Contractor shall comply with and duly execute any work covered in such Owner's instructions, which are given in writing:

12.2 If compliance with the Owner's instructions involves change in scope of work, variations and modifications beyond the contractual terms, the Owner will pay to the Contractor the price of the said extra work at a mutually agreed price

12.3 The Contractor shall be entitled to an extension in delivery/completion period due to the work outside the scope of Works including the variations and modifications and the additional cost involved.

12.4 If the Contractor after receipt of written notice from the Owner requiring compliance, with such further drawings and/or Owner's instructions and after consideration, analysis *and inspection of the same fails to comply to start with the same within seven days, the Owner may employ and pay other agencies to execute any such work whatsoever, as may be necessary, and all costs incurred in connections therewith will be recoverable from the Contractor by the Owner. The Contractor, however, will not be held responsible for the quality or warranty of such work executed under the Owner's agency.*

13. Rights of Owner

13.1 The Owner has the right to give Owner's instructions as seated in Clause 11 above for the Contractor to comply with as outlined in Clause 12 above.

13.2 Owner has a right to interpret, explain and illustrate drawings, specifications and correcting of any errors or omissions or issue any additional drawings and explanation. The Owner's instructions will be final and binding on the Contractor.

13.3 Owner has a right to direct/modify the manner in which all work under the Agreement is to be conducted, in so far as it may be necessary to secure the safe and proper progress and the specified quality of the work to the satisfaction and approval of the Owner.

13.4 Owner has a right to direct the Contractor to accelerate particular work and if necessary cease work at other places of this Contract. The Contractor shall comply with such directions. The Contractor shall not be held responsible for delay in completion caused due to such directions of the Owner.

13.5 The Owner will provide at site, free of cost a reasonable space for the Contractor's Site office and store, water and electrical power at a convenient point near to work place. However, it will be the Contractor's responsibility to extend the same.

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16. Contract Time

The Completion Schedule/ Milestones are set out in Schedule 2 hereof. The same are subject to reasonable extension which shall be granted by the Owner as agreed herein with or without imposing liquidated damages as stipulated in Clause 18 below. The Contractor shall work with utmost diligence with intention to complete the Works on or before the 'Date of Completion' set out there in. If in the opinion of the Owner the work be delayed during the progress of work for reasons not attributable to the Contractor, the time of completion will be extended by a reasonable period upon application from the Contractor. The 'Guarantee/Defects Liability Period' shall be 12 calendar months from the date of virtual or substantial completion as certified by the Owner or 18 months from the date of supply of the equipment, whichever is earlier.

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21. Resolution of Disputes and Arbitration

In the event of any dispute or difference at any time arising between the parties relating to the Agreement, meaning or effect of any para or any content of the rights and liabilities of the parties or other matters specified therein or with reference to anything arising out of or incidental to the Agreement or otherwise in relation to the terms, whether during the continuance of the Agreement or thereafter, such disputes or differences shall be endeavoured to be solved by mutual negotiations. If however such negotiations are infructuous, the disputes shall be resolved by arbitration of a sole Arbitrator appointed mutually by the parties. This shall be deemed to be a submission to arbitration under The Indian Arbitration and Conciliation Act, 1996 and any modification or re-enactment thereof, and the award made in pursuance thereof shall be binding on the parties. The venue of arbitration shall be mutually agreed. Any reference lo arbitration shall not relieve either party from the due performance of its obligations under the Agreement. However, if

> *the nature of disputed matter under arbitration so necessitates, either party may suspend further performance till the arbitration award is available. The period of non-performance under these circumstances shall be added to the contracted period of completion, without payment of compensation for such delay."*

9. The respondent claimed that the P&IDs dated 26.07.2016 were based on the Process Flow Diagrams ('PFDs'), which indicate the general flow of plant process and equipment, and display the relationship between major equipment of a plant facility, without minor details such as piping details and designations. The respondent claimed that the P&IDs are more detailed and include both major and minor details of the chemical process. The respondent claimed that the appellant provided the PFDs, which were translated into P&IDs, however, later the appellant substantially modified the PFDs on certain occasions, which materially altered the P&IDs, resulting in substantial increase in the scope of work. The respondent claimed that the final drawings reflecting such revision/modifications were presented to and approved by the appellant only on 07.07.2017.

10. The respondent claimed that despite such variations/modifications having been made, it carried out all such variations and/or modifications and was able to successfully hand over the site to the appellant on 25.07.2017, before the Schedule Completion Date of 31.07.2017. The appellant issued Completion Certificate to the respondent for successful completion of work within time, and on 15.02.2018, released the payment of Rs. 71 crores to the respondent.

11. The respondent later claimed that due to change in the scope of work, the price of Rs. 71 crores agreed in the Agreement was liable to be increased. Accordingly, the respondent issued 26 (twenty-six) Proforma Invoices dated 22.02.2018-27.02.2018 for a total amount of Rs. 28,37,09,384/- **(**Rupees Twenty-Eight Crores Thirty-Seven Lakh Nine Thousand Three Hundred and Eighty-Four Only) to the appellant.

12. The respondent further claimed that on 29.03.2018, a meeting was held between the parties at Gurgaon, when the appellant, without disputing the additional work having been done at the site by the respondent, offered to pay a sum of Rs. 3,00,00,000/- (Rupees Three Crores Only) towards full and final settlement of all outstanding dues of the respondent.

13. The respondent claimed that on further persistence, the appellant, *vide* email dated 05.07.2018, informed the respondent that it was in the process of ascertaining the additional work carried out in the Project and the said process shall be completed in next 10 days, whereafter the parties can have a meeting to discuss the terms further.

14. The respondent, claiming that as the appellant did not come back as promised, on 03.08.2018, the respondent invoked arbitration in terms of Clause 21 of the Agreement.

15. As the disputes between the parties could not be settled, the same was referred to the learned Sole Arbitrator. The respondent filed its Statement of Claim, claiming the following reliefs:

> *"**I**. directing the Respondent to pay to the Claimant Company a sum of Rs. 28,37,09,384/- (Rupees Twenty Eight Crores*

Thirty Seven Lakhs Nine Thousand Three Hundred and Eighty Four) towards the outstanding invoices raised by the Claimant Company, along with interest at 18% per annum from the due date till realization;
II. *directing the Respondent to pay to the Claimant Company a sum of Rs. 5,76,30,239/- (Rupees Five Crores Seventy Six Thirty Thousand Two Hundred and Thirty Nine) towards the applicable statutory dues and taxes on the total outstanding amount;*
III*. directing the Respondent to pay to the Claimant Company a sum of Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lakhs) on account of legal costs incurred qua the present proceeding;*
IV*. directing the Respondent to pay pendente lite and future interest @ 18% per annum to the Claimant Company."*

16. The appellant, in response, filed its Statement of Defence, contending that the contract was based on the Agreement dated 20.01.2017 and that no additional work had been established. It further filed counter-claims praying for Rs. 3,55,00,000/- (Rupees Three Crores Fifty Five Lakhs Only) as liquidated damages for delayed completion of work; Rs. 43,81,278/- (Rupees Forty-Three Lakhs Eighty-One Thousand Two Hundred and Seventy-Eight Only) for pending and remedial work; Rs. 21,67,000/- (Rupees Twenty One Lakhs Sixty Seven Thousand Only) for price differences; and simple interest at 18% per annum and costs.

THE IMPUGNED AWARD

17. The learned Sole Arbitrator, *vide* the Impugned Arbitral Award, dismissed the claims of the respondent as also the counter-claims of the appellant and passed a 'NIL' Award.

18. Regarding the respondent's claims, the learned Sole Arbitrator held that the contract between the parties was a turnkey project not limited to the P&IDs dated 26.07.2016, and that the Offer dated 30.08.2016 and the P&IDs dated 20.08.2016 had not been given a "go-by" by the parties. It was held that the respondent had failed to prove that the alleged additional work carried out by it was 'major' or substantial work entitling "extra" payment in accordance with the Conditions of Clauses 12.1 and 12.2 read with Schedule 5 of the Agreement. Reliance was also placed on witness testimonies to hold that a majority of the alleged "extra" items were duly reflected in the P&IDs of 26.07.2016 or in the offer dated 30.08.2016 and the P&IDs dated 20.08.2016. Accordingly, it was held that the respondent was not able to establish its claims for payment for additional work and statutory dues thereon.

19. The appellant's counter-claims were also rejected. The liquidated damages claim failed as the delay was due to continuous P&ID revisions known to the appellant, who had paid the entire contract value without making any deductions. The appellant also failed to prove any loss caused by the alleged delay. The claim for remedial works was also rejected as no notice had been served on the respondent in terms of Clause 12.4 of the Agreement asking it to rectify defective work. The claim for price difference was rejected as no deduction had been made by the appellant in accordance with Schedule 5 of the Agreement for the alleged price differences. Therefore, a "NIL" Award was passed and the parties were directed to bear their own costs.

20. We quote the relevant findings of the learned Sole Arbitrator, as regards the claim of the respondent for additional work, which is the only subject matter of this appeal, as under:

> *"56. After considering the submissions made by Ld. Counsel for the parties and examining the evidence on record I find that the plea of the Claimant that the Project was to be executed on the basis of the P&ID's of 26.07.2016 only and the offer made by the Claimant on 30.08.2016 and the P&ID's of 20.08.2016 attached to the said offer had no relevance cannot be accepted. It is clearly shown on record that the P&ID's of 26.07.2016 were base drawings only on the basis of which the work was to start and these were subject to revisions from time to time as per the requirements of the Project. Actually there were several revisions to the P&ID's of 26.07.2016 and upon every revision the earlier P&ID became redundant. The P&ID's were being revised up to the end of 2017. It is seen that the offer dt.30.08.2016 was never rejected by the Respondent nor the P&ID's of 20.08.2016 were discarded. The contention of the Claimant that by reducing the price mentioned in the offer of 30.08.2016 the Respondent had made a Counter offer and as such the offer of 30.08.2016 and the P&ID's dt.20.08.2016 became irrelevant cannot be accepted. It is clear that P&ID's of 20.08.2016 were final and the offer dt.30.08.2016 was the foundation of Agreement dt.20.01.2017. The reduction in the price of the Contract was on account of the negotiations between the parties based on the P&ID's of 26.07.2016 and the Purchase Orders of 16.09.2016 in which Offer dt.30.08.2016 was mentioned. The Claimant was demanding a total price of Rs.89.79 Crores which after negotiations was reduced to Rs.71 Crores. It was agreed to by the Claimant also. Ld. Counsel for the Respondent has shown that the actual reduction in the price was not to the tune of Rs.18 Crores but it*

was actually about Rs.7 Crores only in as much as in the amount of Rs.89 Crores demanded by the Claimant all taxes were included. However, while reducing the total price to Rs.71 Crores the Respondent took upon itself the burden of the taxes payable on the total amount of the price and as such the reduction after negotiations was of Rs.7 Crores only. It is therefore clear that the parties had not given a 'go-by' to the offer of the Claimant dt.30.08.2016 and the P&ID's of 20.08.2016.

57. Ld. Counsel for the Respondent has relied upon a Book titled "Piping and Instrumentation" written by Moe Toghral in which it was clearly explained that the P&ID's are a basic document which can be reviewed as and when required and these keep on developing and changing during the execution of the work. It is done to ensure that a Project is completed and made operational to the satisfaction of the parties. Therefore, the contention of the Claimant that the P&ID's of 26.07.2016 were final and the only P&ID's on the basis of which the price of the Project was fixed and if any work was executed beyond these P&ID's the same was liable to be paid separately by the Respondent cannot be accepted.

58. In the Cross-Examination of CW-1 as well as RW-1 it has come out that various equipments for which the Invoices were raised by the Claimant to Claim the amount under Claim-A were either reflected in the P&ID's of 26.07.2016 or in the Offer dt.30.08.2016 which was based on the P&ID's of 20.08.2016. Even the Purchase Orders dt.16.09.2016 define the scope of work based on the Offer dt.30.08.2016 and the P&ID's of 26.07.2016 and as such it cannot be said that the Offer dt.30.08.2016 and the P&ID's of 20.08.2016 were not part of the Contract between the parties. In the Purchase Order dt.15.11.2017 *even the PO's of 16.09.2016 were referred to. The Respondent has proved on record a Chart Exh.Rw-1/186 which shows that the Equipments shown by the Claimant as "extra" were either reflected in the P&ID's of 26.07.2016 or the Offer dt.30.08.2016 based on the P&ID's of 20.08.2016. This Chart clearly shows that the Claimant was executing the work in the Project not only on the basis of the P&ID's of 26.07.2016 but the P&ID's of 20.08.2016 also which were part of the Offer dt.30.08.2016. Testimony of RW-1 proves on record that almost 90% of the Equipments claimed as "extra" by the Claimant were reflected in the P&ID's of 26.07.2016 or the Offer dt.30.08.2016 and the P&ID's of 20.08.2016. In his Cross-Examination even CW-1 admitted that various items shown as "extra" and included in Proforma Invoice No.9 were there in the P&ID's of 26.07.2016 also. I am therefore of the considered view that the P&ID's of 26.07.2016 were only basic P&ID's which were open to revisions from time to time and the Offer dt.30.08.2016 and the P&ID's of 20.08.2016 were also part of Contract. In Answer to Question No.78 CW-1 admitted that the Purchase Orders issued by the Respondent were based on the P&ID's of 26.07.2016 and the Offer dt.30.08.2016 which had updated P&ID's of 20.08.2016. The LoI issued by the Respondent on 15.09.2016 which was followed by Purchase Orders of 16.09.2016 had a Schedule which was made part of Agreement dt.20.01.2017. Clause 7 of this Agreement shows that the Agreement dt.20.01.2017 was the concluded Contract between the parties and was based on P&ID's prepared earlier and revised from time to time. The work had started on 16.09.2016 prior to the execution of Agreement dt.20.01.2017. This Agreement had formalized the understanding between the parties and had mentioned GFC Drawings for execution of work which indicates that the GFC Drawings were the final understanding of the work between the parties. This*

Agreement contained full details of the work to be executed by the Claimant and was for the fixed price of Rs.71 Crores. Had any additional work been included in this Agreement or the revision in P&ID's had resulted in Major additional work the Claimant would have insisted for revision of the Price in this Agreement which was settled in August 2016 only.

59. This Claim, which is based on Proforma Invoices issued by the Claimant on the ground that on the instructions of the Respondent the Claimant had executed additional work for the Project which was major in nature, cannot be sustained further on the ground that the Claimant has not pleaded or proved on record that the alleged additional work was major or substantial work entitling the Claimant to "extra" payment as the conditions of Clause 12.1 and 12.2 read with Schedule 5 of the Agreement dt.20.01.2017 were not complied with. The Claimant has not shown written instructions from Respondent or any Authorized Representative of the Respondent for execution of the alleged additional major work. Before executing the so called major additional work no price was settled between the parties. It is also not understandable as to why the Claimant did not raise any Invoice for the alleged additional work during the execution of the work or soon after the conclusion of such work. Strangely the alleged additional work was not reflected in any of the RA Bills presented by the Claimant to the Respondent for payments. Had the alleged work been additional or major in nature it would have been the anxiety of the Claimant to comply with Clause 12.1 and 12.2 read with Clause 5 of Schedule 5 of the Contract and also demand the price thereof from the Respondent without any delay by raising a Bill or demand in RA Bills. The Claimant started demanding the amount under this Claim in 2018 only. Same is the position regarding *piping work shown in Invoices No.21 to 28. Length of piping was not shown in P&ID's. The reason is that Project was clear to the Claimant and it could easily assess the expected length of pipes. Proforma Invoices No. 29 and 30 are regarding electrical items. These were also not shown in P&ID's but were essential for the Project. It is found that BSR and utility also were not shown in the P&ID's. These were prepared on 05.10.2016 and such were not reflected in P&ID's which had been prepared earlier.*

60. Not only that the Claimant had not acted upon requirements of Clauses 12.1 and 12.2 of the Contract in regard to the alleged additional work, it has also miserably failed to prove on record the nature of the alleged additional work and the fact that it was major in nature. The Claimant has also not proved on record as to what was the Market Price of the said additional work nor it has proved by producing its Books of Accounts or the Bills obtained from the Suppliers in regard to the additional equipments or payment to the labour for alleged additional work. Rather most of the Equipment reflected in the Proforma Invoices issued by the Claimant was reflected either in the P&ID's of 26.07.2016 or P&ID's of 20.08.2016 which shows that the Bills being raised by the Claimant in respect of the "extra" items and additional work are not genuine and as such cannot be relied upon. Whatever was added or additionally executed was included in the price settled between the parties as it was a Turnkey Project for a fixed price. The measurement Sheets were denied by the Respondent. The Claimant has not properly proved the same on record. It is true that in answer to Qns.123 RW1 admitted that additional work was there but he did not say that it was major in nature or the Respondent had agreed to pay extra for the same. With the revisions in P&ID's some extra work might have been executed by the Claimant but it is *not proved that it was major in nature. The Claimant did not follow the agreed procedure for claiming extra amount for execution of major additional work.*

61. The contention of the Ld. Counsel for the Claimant that 26 Invoices on which Claim-A raised by the Claimant is based are in regard to the P&ID's of 26.07.2016, revised P&ID's and the instructions issued by the Respondent from time to time cannot be sustained. As mentioned in the foregoing paras the Claimant has not proved on record that the alleged additional work was executed after complying with the conditions of Clause 12.1 and Clause 12.2 of the Agreement dt.20.01.2017. No written instructions from the Respondent or its Authorised Representatives regarding any additional work are proved on record. Moreover, the nature of the additional work nor the cost thereof as incurred by the Claimant have been proved. The statement of CW1 that the price in these Invoices was less than the price changed from Respondent in earlier Contract is of no help to it as earlier Contract or prices have not been proved. It is also shown on record that the Claimant had engaged a Sub-Contractor for developing the P&ID's who not only delayed the Preparation thereof but also did not prepare proper or accurate P&ID's which had to be revised repeatedly. The Emails dt.24.06.2017 and 26.06.2017 between the Claimant and its Sub-Contractor clearly show that work of Sub-Contractor was not satisfactory. The Respondent cannot be blamed for the situation. Even the Equipment List was being modified from time to time which shows that the P&ID's of 26.07.2016 were neither perfect nor meeting the Project requirements. It is also shown on record that the Schedule-l dt.11.09.2016 was part of the Agreement dt.20.01.2017.

62. The Claimant had started demanding cost *of additional work in 2018 only. Why not earlier? The plea of the Claimant that the Respondent had not denied the execution of the additional work till the Claimant's Notice Invoking Arbitration does not prove the Claimant's case that it had executed major additional work in the Project nor the Claimant has proved the value thereof nor it has explained as to why Clause 12.2 was not complied with nor the Claimant has explained as to why it did not Claim the Price for the alleged additional work in its RA Bills. Therefore, it does not stand proved on record that the Claimant had executed additional work which was major in nature and as such it is entitled to Claim the amount of the Proforma Bills on which its Claim-A is based. Mere revision of P&ID's does not establish that additional work was major or substantial as the Contract had permitted revision thereof from time to time so as to complete the work satisfactorily. Email dt.02.04.2018 from Respondent is not an admission that additional work was major or that the Respondent was liable to pay for it.*

63. It is also noteworthy that in terms of the Contract dt.20.01.2017 between the parties the Project was to be executed on the basis of "Good for Construction" Drawings. The additional work, if any, was to be executed on the written instructions of the Respondent in terms of Clauses 12.1 and 12.2 of the Agreement dt.20.01.2017 read with Schedule-V thereof. If the additional work executed by the Claimant was minor in nature it was covered by the price fixed for the work as it was a Turnkey Project. If the additional work was major or substantial and beyond the GFC Drawings, it must have got reflected in "as built" Drawings. A comparison of GFC Drawings and "as built" Drawings could have easily shown the nature of additional or "extra" work executed by the Claimant. The burden of proving additional work as well as *the fact that it was major was upon the Claimant only but the Claimant has not placed on record "as built" Drawings to show additional work or the nature thereof. The fact that in the Agreement dt.20.01.2017 also the price as quoted in the Purchase Orders was recorded shows that up to 20.01.2017 there was no major additional work entitling the Claimant to "extra" amount. The Agreement dt.20.01.2017 was a complete and self-contained Agreement between the parties and the work executed by the Claimant under P&ID's of 26.07.2016, 20.08.2016, Offer dt.30.08.2016 was fully covered by the price settled between the parties. Non-production of "as built" Drawings by the Claimant calls for an adverse inference against the Claimant and it can be said that had these Drawings been placed on record the hollowness of the Claimant's Case would have been fully exposed. Moreover, even if some equipment used in the Project was additional or different the Claimant could not ask for its price as it was a Turnkey Project and everything was to be done by the Claimant for the price already settled.*

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65. With the help of Compilations I, II and III, filed in the course of arguments, Ld. Counsel for the Claimant has tried to show that Proforma Invoices raised by the Claimant were for work and equipments beyond the Contract between the parties and additional equipments of different sizes and material were used in the Project which were beyond the list dt.07.06.2016. It is found that the equipments shown as "hold added" were already there in P&ID's. If MOC of certain items or their size was not there in the P&ID's it was for the Claimant to get clarifications from Respondent while preparing P&ID's. If the directions given subsequently involved higher cost the Claimant should have followed Clauses 12.1 and 12.2 of Contract for additional price. Qns. 63, 66, 78, 80 and 91 *put to CW1 and his answers thereto are important. Qns. 92 and 93 to 99 are also quite important in this regard. However, since this work was not beyond P&ID's/revised P&ID's/Agreement dt.20.01.2017 and was required in the Project for which a lump sum price had been settled the Claimant cannot ask for additional payments. Even the PO's of 16.09.2016 had mentioned the offer dt.30.08.2016 as well as P&ID's of 26.07.2016. It was a Turnkey Project for a lump sum price and no breakup of the price of different items was given. The Claimant has not proved on record that the offer of 30.08.2016 or the P&ID's of 20.08.2016 were not accepted by the Respondent or any Counter Offer was given by the Respondent which was not accepted by the Claimant for the execution of the work. It is also seen that Annexures-I, II, III and IV of the Agreement between the parties did not record the capacities or material of various equipments. Annexure-II which was regarding piping system was as per P&ID's of 20.08.2016 and did not give any break up of price for piping. Annexures-III and IV also referred to the P&ID's of 20.08.2016 and did not mention prices of various items to be used in the Project. Therefore, it is not shown on record that the work executed by the Claimant was beyond the scope of the aforesaid Annexures I to IV. The Claimant has not even placed on record the P&ID's of 20.08.2016 as it knew that the work was being executed on Turnkey basis as per the offer dt.30.08.2016, P&ID's of 20.08.2016 and the Agreement dt.20.01.2017. CW-1 in his Cross- Examination admitted that the offer dt.30.08.2016 did not mention P&ID's of 26.07.2016 and rather mentioned P&ID's of 20.08.2016. It is also found that the P&ID's of 26.07.2016 did not mention the capacity, material or the price of various equipments as it was clear to the Claimant that the entire Project was to be completed on Turnkey basis for a fixed price and whatever* *was required for completion of the Project had to be done by the Claimant only. Since the items mentioned in Proforma Invoices were essential for completion of the Project these cannot be called additional items. It is not the case of the Claimant that the Respondent had increased its production capacity or had added some other products in the scope of Project so as to increase the work of the Claimant for which additional work or additional equipment was required. If the Project entrusted to the Claimant continued to be for the same quantity of the chemical to be manufactured and nothing more was included in the production capacity the Claimant remained bound to the terms of the Contract and whatever was required to be installed, added or executed remained covered by the agreed price as it was a Turnkey Project. The Chart Ext. RW1/186 prepared by RW1 establishes that many items shown in Proforma Invoices were required in the Project and were as per P&ID's of 20.08.2016/ 30.08.2016 and the Agreement dt.20.01.2017. Cross- Examination of CW1 and answer to Question. 49 shows that equipments shown in P&ID's of 26.07.2016 were reflected in Invoice No.9 also. It takes the cat out of bag. Qns.64 to 73 are also quite revealing and show that the work shown in Invoices was not over and above the Contract between the parties. As such the Respondent is not liable to pay the amount as claimed in the Invoices included in Claim-A.*

66. The contention raised by Ld. Counsel for the Claimant that since in a meeting held on 29.03.2018 between the Representatives of both the parties, the Respondent had agreed to pay a sum of Rs.3 Crores to the Claimant, it should be taken as an admission on the part of the Respondent that major additional work was executed by the Claimant. I am unable to agree with this submission of Ld. Counsel for the Claimant for the reason that in the course

> *of negotiations for an amicable settlement of the disputes various offers and counter offers are made which cannot be treated as admissions. Many a times such offers are made only to bring an end to acrimony and litigation. An offer or counter offer made during such negotiations can be taken as an admission of a fact or liability only, if there is clear evidence to show that it was an admission of liability to pay. Mere offer to pay some amount does not amount to admission of liability.”*

CHALLENGE BEFORE THE LEARNED SINGLE JUDGE

21. Aggrieved of the Impugned Award passed by the learned Sole Arbitrator, the respondent challenged the same by way of an application under Section 34 of the A&C Act before the learned Single Judge.

THE IMPUGNED JUDGMENT

22. The learned Single Judge, by the Impugned Judgment, held that the learned Sole Arbitrator had erroneously re-written the contractual framework between the parties. It was held that the P&IDs dated 26.07.2016 formed the basis of the contract and any additional work/variation/modification therefrom was to entail additional payment. The learned Single Judge held that the P&IDs dated 20.08.2016 were of no relevance and were not even on record before the learned Sole Arbitrator. It was held that the claim of the respondent could not be nullified on account of belated demands for payment. It was further held that the appellant had failed to respond to the email dated 03.05.2018 whereby the respondent had claimed that it

had executed additional work. The learned Single Judge also drew an adverse inference against the appellant for its offer to pay Rs. 3 crores to the respondent for the additional work.

23. The learned Single Judge, on the basis of the above findings, held that the learned Arbitrator did not take note of the correct contractual framework and therefore, the Impugned Award is vitiated in its entirety, and accordingly set aside the Impugned Award. We quote the relevant excerpts from the Impugned Judgment as under:

> *"76. It is evident from the above that the impugned award concludes that:*
>
> *(i) The offer dated 30.08.2016 was the foundation of the agreement dated 20.01.2017.*
>
> *(ii) The parties had not given a "go-by" to the offer dated 30.08.2016 and the P&ID dated 20.08.2016.*
>
> *(iii) The claimant was executing the work in project not only on the basis of P&IDs dated 26.07.2016, but also on P&IDs dated 20.08.2016.*
>
> *77. The above conclusion of the arbitral tribunal is irreconcilable with the position emanating from a bare perusal of the Minutes of Meeting dated 15.09.2016; the POS dated 16.09.2016 and the Agreement dated 20.01.2017 (which itself was pursuant to the POS dated 16.09.2016). It is evident that the impugned award completely misdirects itself in posing the question whether "P&IDs" of 20.08.2016 had any "relevance" or whether they had been given a "go-by". The question that was required to be answered was whether performance of any additional work is required to be assessed based on the P&IDs of 26.07.2016 or the P&IDs of 20.08.2016. The relevancy of P&IDs dated 20.08.2016, or any subsequent version of the P&IDs for that matter, was not an issue inasmuch as it is the common case of the parties that the P&IDs*

were revised from time to time to incorporate the requirement of the respondent in respect of work to be executed.

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79. The award also notices that the revision to the P&IDs is occasioned on account of additional/change/requirement for equipment etc., that have to be incorporated in connection with the work. The obvious intention behind omitting to make a reference to the P&IDs dated 20.08.2016 in the Pos dated 16.09.2016 that came to be eventually issued, was to give effect to the understanding/agreement that the P&IDs of 26.07.2016 would serve as the base drawings and that any variation therefrom/additional work would entail extra payment. This was also categorically mentioned m the minutes of meeting dated 15.09.2016.

80. The impugned award completely fails to take into account the aforesaid fundamental framework and background of the agreement between the parties, and instead proceeds to virtually re-write the contractual framework by holding that the P&IDs dated 20.08.2016 were the "foundation of the agreement between the parties".

81. This Court is conscious of the limited scope of interference with an arbitral award under Section 34 of the A&C Act, and the settled position that while scrutinising an arbitral award on the touchstone of Section 34 of A&C Act, it is impermissible to embark upon re-appreciation of factual findings rendered by an arbitral tribunal. However, the law is equally well-settled that where the findings/conclusions rendered in the arbitral award are based on no evidence and/or are perverse on the face of it, the same renders the award vulnerable to challenge.

82. In the present case, the misreading/misunderstanding of the basic contractual framework vitiates the award at its root, and renders it vulnerable to challenge under Section 34(2)(b)(ii) and 34(2A) of the A&C Act.

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88. The misreading of the basic contractual framework of the contract between the parties also vitiates the subsequent examination/evaluation done in the impugned award so as to the additional work claimed to have been carried out by the petitioner Thus, for instance, the arbitral tribunal renders a finding in para 58 of the impugned award to the effect that the "equipment shown by the claimant as "extra" were either reflected P&IDs dated 26.07.2016 or the offer dated 30.08.2016 based on P&IDs dated 20.08.2016". Apart from the fact that the inclusion of some items in the P&IDs dated 20.08.2016, would not by itself disentitle the petitioner to raise a claim for additional work/s given that the petitioner's baseline obligation was in terms of the P&IDs of 26.07.2016, it is also inexplicable how this finding was reached without the P&IDs dated 20.08.2016 even being on record before the Arbitral Tribunal.

89. Similarly, a finding has been rendered in para 45 of the impugned award that the "Testimony of RW1 proves on record that almost 90% of the equipments claimed as extra by the claimant were reflected in P&!Ds of 26.07.2016 or the offer dated 30.08.2016 based on the P&IDs 20.08.2016".Once the Arbitral Tribunal reached the conclusion (erroneously) that the P&IDs of 20.08.2016 were relevant for the purpose of assessing extra/additional work, at the very least, the said P&IDs (dated 20.08.2016) should have been directed to be placed on record.

90. The impugned award loses sight of the fact that the P&IDs dated 20.08.2016, though a basis of the offer dated 30.08.2016, was consciously not made the basis for issuance of PO dated 16.09.2016 which was finally issued upon the petitioner/claimant. The parties consciously chose to make the P&ID drawings of 26.07.2016, as the basis of the purchase orders issued to petitioner/claimant.

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92. Thus, the award takes cognizance of the fact that there were continuous revisions in the P&IDs which the petitioner/claimant was bound to abide with. Necessarily, any increase of scope of work on account of these revisions, entailed entitlement for additional payment, which was required to be assessed based on the comparison with the P &ID drawings on 26.07.2016 viz-a-viz the final P&ID drawings.

93. It is also seen that the award itself acknowledges execution of "additional work". Para 62 of the impugned award notes that the petitioner/claimant had failed to prove that the alleged additional work performed by the petitioner was "major" in nature. Further, it is mentioned that the petitioner had failed to establish the price of the additional work and also finds that there was no justification for belatedly demanding additional amount for work additionally performed. Para 38 of the award records the contention of the petitioner/ claimant to the effect that the measurement of the work was signed by both the parties. Further, in an email dated 03.05.2018 sent by the petitioner/claimant to the respondent, the claimant had stated that additional work had been done as per the requirement of the project and with the approval of the respondent, but there was no reply to the said email. In fact, the execution of the additional work was not denied by the

> *respondent till the claimant invoked arbitration vide notice dated 07.09.2018.*
>
> *94. Attention has also been drawn during the course of arguments to various emails exchanged between the parties in March 2018, whereby the respondent sought detailed information to verify the claims sought to be raised by the petitioner. It also transpires that a "without prejudice offer" for payment of Rs.3,00,00,000/-, also came to be made by the respondent to the petitioner.*
>
> *95. In this background, it cannot be said, that the claim is vitiated on account of the fact that the payment towards alleged additional work was demanded belatedly by the petitioner. In any event, whether or not any additional work was performed and/or whether the amount claimed has been proved or not has to be assessed by taking note of the correct contractual framework, which the arbitral award omits to do. This vitiates the arbitral award in its entirety."*

24. Aggrieved of the Impugned Judgment, the appellant has filed the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

25. Mr. Jayant Mehta, the learned Senior Counsel, submits that the Impugned Judgment is liable to be set aside as, (i) the learned Single Judge exceeded the limited scope of interference under Section 34 of the A&C Act; (ii) the Arbitral Tribunal's interpretation of the contract was a plausible and correct view; (iii) the respondent had failed to prove its claim for additional work; (iv) the respondent's reliance on

the equipment list contained in the email dated 07.06.2016 was a new case; and, (v) Exhibit RW-1/186, an important evidence, remaining unchallenged in cross-examination.

26. He submits that the Impugned Judgment suffers from a patent jurisdictional error inasmuch as the learned Single Judge, while adjudicating an application under Section 34 of the A&C Act, exceeded its jurisdiction, re-read the contractual terms, the Purchase Orders, and the Minutes of Meeting and the other documents, to arrive at an independent conclusion on the terms of the Agreement different from the one taken by the learned Tribunal. The learned Single Judge re-assessed the factual findings on the sufficiency of the respondent's evidence and drew an inference that there was evidence before the Arbitral Tribunal to quantify additional work, a function that is only assigned to the learned Arbitral Tribunal. By placing reliance on ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited and Anr***., (2024) SCC OnLine SC 2600, he submits that the Court exercising jurisdiction under Section 34 of the A&C Act, does not sit in appeal over an Award and cannot substitute the reasoning in the Award with its own.

27. He submits that when two views are possible, the Court, in exercise of its power under Section 34 of the A&C Act, cannot interfere with the possible and plausible view taken by the learned Arbitrator. He relies upon ***Reliance Infrastructure Ltd. v. State of Goa***, (2024) 1 SCC 479, ***Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd***., (2019) 7 SCC 236 and ***Dyna Technologies Pvt. Ltd., v. Crompton Greaves Ltd***., 2019 SCC OnLine

SC 1656. The learned Senior Counsel further submits that on a harmonised reading of the contract, the scope of work was defined by the P&IDs dated 26.07.2016, the Offer dated 30.08.2016 incorporating the P&IDs of 20.08.2016, and the GFC drawings. This view of the learned Arbitrator was not only a plausible view but also the only view consistent with the record.

28. He submits that the Offer dated 30.08.2016 was expressly accepted by the Letter of Intent dated 15.09.2016, and stood incorporated by reference in the Purchase Orders dated 16.09.2016 under the head "Scope of Supply/Scope of Work", which was itself based on P&IDs dated 20.08.2016.

29. He further submits that the CW-1, the respondent's own Managing Director, admitted in his cross-examination in (Q.78) that the Purchase Orders were based on the P&IDs of 26.07.2016 and the Offer dated 30.08.2016, and that CW-1 also confirmed in answer to (Q.39) that the Offer dated 30.08.2016 was the very offer referred to in the Purchase Orders.

30. The learned Senior Counsel submits that the Agreement dated 20.01.2017 formalized the concluded contract at the lumpsum price of Rs. 71 Crores and made no provisions for additional payment arising from P&IDs revisions. He submits that the Arbitral Tribunal was correct in arriving to a conclusion that the price settled in August 2016 remained unchanged because the alleged revisions did not constitute any major additional work.

31. He submits that the P&IDs of 26.07.2016 are merely base drawings "open to revisions from time to time", and that it would be

technically and commercially absurd to treat them as freezing the scope of a turnkey lump-sum contract. To this submission, he adds that BSR and Utility were a part of the scope of work and that no P&IDs for BSR and Utility existed even in 26.07.2016, which, according to him, demolishes the respondent's argument of the same being the foundation.

32. The learned Senior Counsel submits that the rejection of the respondent's claim by the learned Arbitral Tribunal was on the basis of the failure of the respondent to prove the additional amount of work done by it. He submits that in absence of any Change Order as mandated by Clauses 12.1 and 12.2 read with Schedule 5 of the Agreement dated 20.01.2017, and non-production of the 'as-built' drawings, which alone could have demonstrated a departure from the GFC drawings, there was no basis of the claim of the respondent nor for its quantification. He submits that the learned Arbitrator, therefore, rightly drew an adverse inference against the respondent for the non-production of the above documents and held that the Agreement dated 20.01.2017 was a complete and self-contained contract fully covering the work executed under the P&IDs of 26.07.2016, 20.08.2016 and the Offer dated 30.08.2016.

33. He further submits that no contemporaneous invoices were raised by the respondent despite the alleged additional work allegedly being major in nature. The entire contract value of Rs. 71 crores stood paid by January 2018, and it was only thereafter, in March 2018, that the respondent raised 26 pro-forma invoices, which was found by the learned Sole Arbitrator to be inconsistent with a genuine claim. He

contends that the 26 pro-forma invoices raised for the amount of INR 28,37,09,384/- for the alleged additional work, were not raised at the rates of the subject contract, as no agreed rate was available for the same, and the respondent had derived the rates from a previous and separate contract with the appellant, which were also not produced on record before the learned Arbitrator. The same was therefore, rightly rejected by the learned Arbitrator.

34. The learned Senior Counsel further submits that the Arbitral Tribunal rightly rejected the respondent's allegation of additional pipeline work in the absence of some critical documents, namely isometric and as-built drawings. He submits that relying upon the authoritative technical treatise- Piping and Instrumentation Diagram Development by Moe Toghraei, the Arbitral Tribunal correctly held that the P&IDs are merely schematic representations and do not depict actual length of pipelines, routing, fittings and other details and that such particulars can only be established through isometric drawings.

35. The learned Senior Counsel submits that the respondent's pleaded case before the learned Tribunal in its Statement of Claim was confined to a comparison between the P&IDs of 26.07.2016 and the final P&IDs. He submits that the respondent, for the first time before the learned Single Judge, introduced an entirely new case of comparing an equipment list contained in an email dated 07.06.2016 with the final equipment list, a case that finds no mention in any contractual document, neither in the Purchase Orders of 16.09.2016 nor in the Minutes of Meetings, Statement of Claim, or even in CW-1's Affidavit of Evidence. He submits that the comparative annexure

relying on the 07.06.2016 was not tendered in evidence, marked, or subjected to cross-examination, and was raised for the first time only in Section 34 proceedings. He submits that a Section 34 Court, exercising a narrow supervisory jurisdiction, cannot permit a party to set up an entirely new factual foundation that was never canvassed before the Arbitral Tribunal, and the learned Single Judge fell in a jurisdictional error in relying upon this belatedly constructed case as a ground for interference with the Award.

36. He submits that Exhibit RW-1/186, a detailed item-wise tabulation produced by RW-1, cross-referencing each item of equipment claimed as "extra" against the P&IDs of 26.07.2016 and the equipment list in Annexure I to the Offer dated 30.08.2016, remained unchallenged and uncontroverted in cross-examination, with no question put to RW-1 thereon and no rival tabulation filed by the respondent. He submits that the said tabulation demonstrated that approximately 90% of the equipment claimed by the respondent as additional work, was already reflected in the contractual documents, namely the P&IDs dated 26.07.2016 or the Offer dated 30.08.2016 which incorporated the updated P&IDs dated 20.08.2016. The learned Arbitrator, therefore, rightly accepted the chart and recorded a finding in the Award that the respondent was executing the project not merely on the basis of the P&IDs dated 26.07.2016 but also on the basis of the P&IDs dated 20.08.2016 forming part of the Offer dated 30.08.2016. He submits that this finding was further corroborated by the admissions of CW-1, who, in cross-examination, acknowledged that several items included in Proforma Invoice No. 9,

including T-1251R, RT-1077A, P-1077A, P-1078 and RT-1077B, were already reflected in the P&IDs dated 26.07.2016. He submits that the learned Single Judge, by discarding the Arbitrator's finding, on the erroneous premise that the P&IDs dated 20.08.2016 were not on record, fundamentally misconstrued the evidentiary basis of Exhibit RW-1/186, which was prepared with reference to the equipment list contained in Annexure I to the Offer dated 30.08.2016 and did not require the physical production of the P&IDs dated 20.08.2016.

37. The learned Senior Counsel for the appellant contends that the learned Single Judge undertook a fresh appraisal of the evidence and substituted his own view for that of the Tribunal. Such an exercise is plainly outside the narrow confines of Section 34. The Arbitral Tribunal is the final judge of the quality, credibility and sufficiency of evidence, and a Court, under Section 34 of the A&C Act, cannot interfere with the Arbitral Award merely because another view may also be possible. To support his submission, he places reliance on judgments in ***Navodaya Mass Entertainment Ltd. v. J.M. Combines,*** (2015) 5 SCC 698, ***Rail Vikas Nigam Ltd. v. Simplex Infrastructure Ltd.,*** 2021 SCC Del 4556, ***Punjab State Civil Supplies Corporation Limited and Another v. Sanman Rice Mills and Others*** (2024) SCC OnLine SC 2632 and ***National Highways Authority of India v. Hindustan Construction Company Limited*** (2024) 6 SCC 809.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

38. *Per contra*, Mr. Arvind Nigam, the learned Senior Counsel appearing on behalf of the respondent, submits that the impugned

judgment by which the learned Single Judge has set aside the Arbitral Award rendered by the Sole Arbitrator, does not warrant interference. He submits that the learned Single Judge acted strictly within the scope of powers under Section 34 of the A&C Act and did not in any way transgress the jurisdictional limits.

39. He submits that the appellant has failed to demonstrate any ground warranting interference by this Court within the scope of Section 37 of the A&C Act, as the scope under Section 37 of the A&C Act is quite narrow. He submits that, while exercising power under Section 37 of the A&C Act, the Court is barred from undertaking an independent assessment of the merits of the Award, re-appreciating evidence, substituting own interpretation, or reopening questions of fact and law. He submits that in the present case, the appellant has failed to establish any such ground which requires intervention of this Court in the limited framework of Section 37 of the A&C Act. To buttress his contention, he places reliance on ***MMTC Ltd v. Vedanta Ltd***, 2019 4 SCC 163, ***Haryana Tourism Ltd. v. Kandhari Beverages Ltd.***, 2022 3 SCC 237, ***Konkan Railway Corporation Ltd. v. Chenab Bridge Project***, 2023 9 SCC 85 and ***UHL Power Co. Ltd v State of H.P.***, (2022) 4 SCC 116.

40. The learned Senior Counsel further submits that the learned Single Judge, in his observation, records the three conclusions on which the Award rested, namely, that the Offer dated 30.08.2016 was the foundation of the Agreement dated 20.01.2017; that the parties had not given a "go-by" to the said Offer and the P&IDs dated 20.08.2016; and that the respondent was executing the work not merely on the

P&IDs of 26.07.2016 but also on the P&IDs of 20.08.2016. He submits that the learned Single Judge, upon a close examination of the record, correctly found these conclusions to be perverse and irrational, being conclusions that no reasonable person could have arrived at. He submits that this is not a case of one possible view being displaced by another, but one where the view taken by the Arbitrator has been shown to be unsustainable, falling within the limited scope of jurisdiction of the learned Single Judge under Section 34 of the A&C Act. In support of his submission, he relies on ***Associate Builders v. DDA,*** (2015) 3 SCC 49; ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI,*** (2019) 15 SCC 131; and ***Patel Engg. Ltd. v. North Eastern Electric Power Corp. Ltd.,*** (2020) 7 SCC 167.

41. The learned Senior Counsel further draws the attention of this Court to the Minutes of Meeting dated 15.09.2016, which specifically record that the turnkey job was awarded on the basis of the P&IDs dated 26.07.2016, and which stipulates that the respondent would be entitled to charge extra for "major modifications" incorporated in the P&IDs subsequent thereto, reflecting the contemporaneous and shared understanding of the parties that the P&IDs of 26.07.2016 constituted the contractual baseline. He submits that the Letter of Intent and the Purchase Orders dated 16.09.2016 were issued on this very basis. He submits that the Purchase Orders make a specific and deliberate reference to the Offer dated 30.08.2016 read with the P&IDs of 26.07.2016, while consciously omitting any reference to the P&IDs of 20.08.2016, an omission that, he submits, cannot be treated as inadvertent, particularly since the amounts specified under the heads

of Equipment, Piping, Electrical and Instrumentation in the Purchase Orders are themselves at variance with the corresponding amounts in the Offer.

42. He further submits that Schedule 5 of the Agreement dated 20.01.2017, incorporates the very same payment table that forms part of the Purchase Orders and makes express reference to the P&IDs dated 26.07.2016, and that Clause 12.2 read with Schedule 5, obliges the appellant to pay at a mutually agreed price for additional work carried out pursuant to its written instructions, without drawing any distinction between "major" and "minor" work. He also relies upon the Revised Purchase Order dated 15.11.2017 issued upon the transition from Service Tax to GST, which also refers back to the original Purchase Orders predicated on the P&IDs of 26.07.2016, to submit that the contract remained, at all material times, anchored to those very P&IDs and not to any subsequent revision.

43. The learned Senior Counsel for the respondent contends that from the above, it is clear that the respondent had agreed to execute the contract for a lump sum consideration of INR 71,00,00,000/-, (Rupees Seventy One Crores) strictly limited to the scope of work defined under the P&IDs dated 26.07.2016, and confirmed to such equipments for which specifications had been provided by the appellant. He submits that the contrary interpretation to such clear contractual terms placed by the learned Sole Arbitrator, has been rightly set aside by the learned Single Judge.

44. He submits that while the Award itself acknowledged that P&IDs were liable to revision from time to time, it ignored that the

parties' consistent reference to the P&IDs of 26.07.2016 and not those of 20.08.2016, across every contractual document, was a deliberate choice fixing the baseline against which the additional work was to be measured. He submits that the Award failed to give effect to the clear understanding of the parties that any variation from that baseline would attract additional payment; the Arbitrator, rather redefined the baseline itself. He further submits that the Tribunal also ignored the fact that the last revised P&IDs were approved by the appellant only on 07.07.2017.

45. The learned Senior Counsel submits that the learned Single Judge rightly noticed a further inconsistency in the Award, where the Tribunal held that the respondent had failed to prove that the additional work was "major" in nature, while overlooking that Clause 12.2 read with Schedule 5 of the Agreement obliged the appellant to pay for additional work at a mutually agreed rate irrespective of any such characterisation, a distinction the Tribunal itself imported into the contract without foundation.

46. He submits that the learned Single Judge correctly held the Award to be vitiated by patent illegality under Section 34(2A) of the A&C Act, and to be contrary to the fundamental policy of Indian law under Section 34(2)(b)(ii) of the A&C Act as the Tribunal had failed to take into account the agreed contractual framework and had proceeded, in substance, to re-write the contract between the parties. He places reliance on ***Union of India, Ministry of Railways, Railway Board v. M/s Jindal Rail Infrastructure Limited***, 2022 SCC OnLine Del 1540; ***Ssangyong Engineering & Construction Co. Ltd.*** (supra);

Satyanarayana Construction Company v. Union of India and Ors., (2011) 15 SCC 101; ***Indian Oil Corp. Ltd. v. Shree Ganesh Petroleum,*** (2022) 4 SCC 463; and ***PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust,*** AIR 2021 SC 4661.

47. The learned Senior Counsel submits that the submissions of the appellant on the merits of the contractual arrangement and the parties' contemporaneous conduct, are beyond the scope of enquiry under Section 37 of the A&C Act.

48. On the contention of appellant that no variation order was ever issued, he submits that the same is factually incorrect, since the respondent performed additional work pursuant to written instructions issued by the appellant through emails communicating revised equipment lists and P&IDs, which squarely qualify as written instructions under Clauses 12.1 and 12.4 of the Agreement.

49. He further submits that the appellant's contention that the respondent failed to raise monthly running invoices in respect of the additional works, is misconceived. He submits that the requirement under Schedule 5 of the Agreement to raise monthly running bills was confined to payment of the lump sum contract price and did not extend to additional works. He further submits that, consistent with the established course of dealing between the parties, consolidated invoices for additional works were raised only upon completion of the project, a practice that had been followed in earlier contracts between the parties without objection, with such invoices having been duly honoured and paid by the appellant.

50. He submits that the appellant's contention that the additional works in fact formed part of the originally agreed scope, is contrary to its own conduct. He submits that in a jointly convened meeting held on 01.02.2018, the appellant itself called upon the respondent to quantify the additional works on the basis of the equipment list dated 07.06.2016. Pursuant thereto, the respondent, by email dated 09.02.2018, furnished the details of the additional works, to which the appellant did not respond. He submits that the respondent thereafter, by email dated 14.03.2018, forwarded 26 proforma invoices together with the corresponding measurement sheets, and that the appellant, by email dated 02.04.2018, merely informed the respondent that the claim for the additional works was under consideration by its Japan office, without disputing either the execution of the additional works or the respondent's entitlement to payment. He submits that the appellant's conduct thereafter contradicts its present stand even more starkly, since at a meeting held on 29.03.2018, the appellant offered a sum of Rs. 3 crores towards the cost of the additional works, thereby unequivocally acknowledging that such works had in fact been executed. The respondent had rejected this offer by its emails dated 03.05.2018 and 04.07.2018. He submits that the learned Single Judge therefore rightly concluded that until the respondent invoked arbitration, the appellant had never disputed the execution of the additional works and had sought only to negotiate the amount payable.

51. He further submits that the appellant's reliance on a technical treatise on Piping and Instrumentation for the proposition that the price could not have been fixed by reference to the P&IDs of

26.07.2016, runs contrary to the contractual arrangement recorded in the Minutes of Meeting and the Purchase Orders, both of which specifically delineate the P&IDs of 26.07.2016 as the basis of the turnkey job.

52. The learned Senior Counsel submits that the learned Single Judge found that the Arbitral Tribunal predicated its conclusions, including the very finding that the contractual arrangement between the parties rested on the P&IDs of 20.08.2016, on drawings that were never placed on the record by either party, and that this constitutes a patent illegality striking at the root of the validity of the Award. He submits that the appellant's attempt to overcome this defect by relying on Exhibit RW-1/186, and contending that the P&IDs of 20.08.2016 were thereby "effectively" on record, does not pass scrutiny, since a bare perusal of RW-1/186 shows it to be no more than a chart prepared by the appellant's own witness comparing certain equipment lists between June and November 2016, neither reflecting nor annexing the P&IDs of 20.08.2016, and being wholly irrelevant to the question of the contractual framework agreed between the parties.

53. He further submits that the appellant's attempt to shift the burden of producing the P&IDs of 20.08.2016 onto the respondent, is equally misconceived; the appellant having consistently maintained throughout the arbitral proceedings that these P&IDs bore no contractual relevance.

54. He submits that Arbitrator's finding that 90% of the equipment claimed as "extra" was reflected in the Offer dated 30.08.2016 or the P&IDs of 26.07.2016, could not possibly have been arrived at without

an actual examination of the P&IDs of 20.08.2016, an examination that never took place. He places reliance on ***PSA SICAL Terminals Pvt. Ltd.*** (supra); ***Associate Builders*** (supra); and ***BSNL v. Vihaan Networks Ltd.***, (2023) 5 HCC (Del) 634.

55. The learned Senior Counsel submits that the Arbitral Tribunal failed to properly appreciate the extensive documentary evidence placed on record by the respondent concerning both, the scope of the additional works executed and the cost incurred in relation thereto, thereby rendering findings of the Arbitral Tribunal as perverse and contrary to the evidence on record within the meaning of Section 34(2A) of the A&C Act.

56. In response to the appellant's contention of failure of the respondent to prove additional work, he submits that the Arbitral Tribunal failed to consider the respondent's email dated 14.03.2018, forwarding 26 proforma invoices together with detailed measurement sheets for the additional works performed by the respondent. He submits that the underlying equipment had been manufactured in-house by the respondent in accordance with the appellant's specifications, and that the appellant neither disputed the execution of the additional works nor the amounts claimed, until the invocation of arbitration proceedings.

57. He further submits that the Tribunal failed to consider the respondent's Statement of Claim and Written Submissions, which set out the factual background, the contractual understanding between the parties, and the basis for quantifying the additional works. He submits that the Written Submissions also explained the categorization of the

26 proforma invoices under the heads "Property Change Added", "Property Change Deleted", "Direct Added" and "Hold Added", so as to avoid any overlap with the equipment list dated 07.06.2016.

58. He also relies upon Annexure A-3 to the respondent's Written Submissions, stating that it contains a process-wise break-up of the additional equipment and the corresponding cost analysis based on a comparison between the base P&IDs dated 26.07.2016 and the final P&IDs dated 07.07.2017. He submits that the Annexure further clarifies that although the respondent could have claimed approximately INR 5 crores more on that basis, the invoices were instead raised on the appellant's insistence during the meeting held on 01.02.2018 by comparing the equipment list dated 07.06.2016 with the final P&IDs.

59. He submits that the Arbitral Tribunal failed to consider Annexure A-4 to the respondent's Written Submissions, which sets out the additional equipment on the basis of the comparison specifically requested by the appellant. He submits that the Arbitral Tribunal also failed to examine the detailed measurement sheets annexed as Annexure C-7 to the Statement of Claim, which were signed by both parties and remained undisputed until the invocation of arbitration. He points out that the appellant's own witness admitted, in cross-examination, to having received the said documents by email dated 14.03.2018.

60. He further submits that the Arbitral Tribunal disregarded the extensive cross-examination of the respondent's witness (CW-1), who explained that the P&IDs dated 26.07.2016 and the equipment list

dated 07.06.2016 did not specify the material, capacity or technical parameters of certain equipment, making it impossible to account for such equipment within the agreed lump sum price. He submits that CW-1 also explained the basis for the categorisation of the proforma invoices raised in respect of the additional works.

61. The learned Senior Counsel accordingly submits that the learned Single Judge correctly found that the Arbitral Tribunal arrived at perverse findings by disregarding vital evidence placed on record by the respondent, which independently constitutes patent illegality under Section 34(2A) of the A&C Act and vitiates the Award in its entirety. He places reliance on ***Associate Builders*** (supra); ***State of Chhattisgarh v. SAL Udyog*** (P) Ltd., (2022) 2 SCC 275; ***Patel Engineering Ltd. v. North Eastern Electric Power Corporation Limited,*** (2020) SCC OnLine SC 466; and ***BSNL*** (supra).

ANALYSIS/ REASONING

62. We have considered the submissions made by the learned Senior Counsels of the respective parties.

63. At the outset, we would like to highlight that we have recorded in detail in our judgment the submissions made by the parties, only to bring home our eventual conclusion that the parties, firstly before the learned Single Judge and now before us, were treating the learned Single Judge as also us as Courts of Appeal rather than confining themselves to the limited scope of jurisdiction that the learned Single Judge and us have been vested with under Sections 34 and 37 of the A&C Act. We would therefore, first take note of the limits of the

jurisdiction exercised by the learned Single Judge under Section 34 of the A&C Act.

64. The contours of such jurisdiction have been a subject matter of a dispute over a long period of time, however, there is never a doubt on the fact that the learned Arbitral Tribunal is the final authority on the construction to be placed on the contractual terms between the parties, as also on the findings of the facts. Unless the construction of contractual terms arrived at by the Arbitral Tribunal, is found to be perverse and as one which is totally not plausible or one which no reasonable person could have reached at, and even though the Court may feel that a contrary interpretation may be better reflective of the intent of the parties, the Arbitral Award cannot be interfered with in exercise of jurisdiction under Section 34 of the A&C Act.

65. Similarly, unless the finding of facts reached by the Arbitral Tribunal on evidence led by the parties is found to be perverse, it cannot be interfered with by a Court under Section 34 of the A&C Act, by re-appreciating the evidence.

66. Section 34 of the A&C Act, as far as relevant to the present appeal, is reproduced herein under:

> "*3**4. 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—*
> ******

2(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.
(2A) 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."

67. The challenge of the respondent to the Award of the learned Sole Arbitrator was claimed to fall under Section 34(2)(b)(ii) and Section 34(2A) of the A&C Act.

68. As far as Section 34(2)(b)(ii) of the A&C Act is concerned, Explanation 1 of the 34(2) of the A&C Act clarifies that the Award can be said to be in conflict with the public policy of India only if the making of the Award was induced or affected by fraud or corruption

or was in violation of Section 75 or Section 81 of the A&C Act, or it is in contravention with the fundamental policy of Indian law or in conflict with the most basic notions of morality or justice.The Explanation 2 of Section 34 (2) of the A&C Act further specifically clarifies that 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.

69. In ***OPG Power Generation Pvt. Ltd.*** (supra), the Supreme Court clarified that to challenge an Award on the ground of it contravening the fundamental policy of Indian Law, it must be shown that it contravenes all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in the country. As an illustration, it was held that cases of violation of the principles of natural justice, disregarding orders of superior Courts in India or the binding effect of the judgment of a superior Court, and violating law of India linked to public good or public interest, would be considered as contravention of the fundamental policy of Indian law. At the same time, Court emphasised that while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii) of the A&C Act, that is, it would not allow a review on the merits of the dispute.

70. As far as the basic notions of morality and justice is concerned, the Supreme Court clarified that to give it a broad dimension, would be to deviate from the legislative intent. "The most basic notions of justice", therefore, ought to be such elementary principles of justice

that their violation could be figured out by a prudent member of the public who may, or may not, be judicially trained, and would be such violation thereof which would shock the conscience of a legally trained mind and that of the Court.

71. Coming to Section 34(2A) of the A&C Act, the Supreme Court clarified that it refers to such illegality which goes to the root of the matter, but which does not amount to mere erroneous application of law or a challenge on re-appreciation of evidence. It was re-emphasized that it is only when an Award is categorized as perverse, that an error of fact can warrant setting aside of the Award. However, mere erroneous application of law or wrong appreciation of evidence by itself is not a ground to set aside an Award. Equally, while the Award against the terms of the contract would be patently illegal, however, the learned Arbitral Tribunal has jurisdiction to interpret a contract having regard to the terms and conditions of the contract, conduct of the parties, circumstances of the case, etc. If the conclusion of the learned Arbitral Tribunal is based on a possible view of the matter, the Court should not interfere with the same. It is only when the interpretation placed by the learned Arbitral Tribunal is not even a possible view, the Award would be considered perverse and as such amenable to interference.

72. We quote from the judgment as under:

> **"***52. The legal position which emerges from the aforesaid discussion is that after the '2015 amendments' in Section 34 (2) (b) (ii) and Section 48(2) (b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in*

terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word 'fundamental' before the phrase 'policy of Indian law' makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that (a) violation of the principles of natural justice; (b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and (c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law. However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2) (b) (ii).

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58. In the light of the discussion above, in our view, when we talk about justice being done, it is about rendering, in accord with law, what is right and equitable to one who has suffered a wrong. Justice is the virtue by which the society/court/tribunal gives a man his due, opposed to injury or wrong. Dispensation of justice in its quality may vary, dependent on person who dispenses it. A trained judicial mind may dispense justice in a manner different from what a person of ordinary prudence would do. This is so, because a trained judicial mind is likely to figure out even minor infractions of law/norms which may escape the attention of a person with *ordinary prudence. Therefore, the placement of words "most basic notions" before "of justice" in Explanation 1 has its significance. Notably, at the time when the 2015 Amendment was brought, the existing law with regard to grounds for setting aside an arbitral award, as interpreted by this Court, was that an arbitral award would be in conflict with public policy of India, if it is contrary to : (a) the fundamental policy of Indian law; (b) the interest of India; (c)justice or morality; and/or is (d) patently illegal. As we have already noticed, the object of inserting Explanations 1 and 2 in place of earlier explanation to Section 34(2) (b) (ii) was to limit the scope of interference with an arbitral award, therefore the amendment consciously qualified the term justice' with 'most basic notions' of it. In such circumstances, giving a broad dimension to this category would be deviating from the legislative intent. In our view, therefore, considering that the concept of justice is open-textured, and notions of justice could evolve with changing needs of the society, it would not be prudent to cull out "the most basic notions of justice". Suffice it to observe, they ought to be such elementary principles of justice that their violation could be figured out by a prudent member of the public who may, or may not, be judicially trained, which means, that their violation would shock the conscience of a legally trained mind. In other words, this ground would be available to set aside an arbitral award, if the award conflicts with such elementary/fundamental principles of justice that it shocks the conscience of the Court.*

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68. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the

1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorized as perverse, that on an error of fact an arbitral award may be set aside.Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of subsection (2-A) of Section 34 of the 1996 Act.

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72. An arbitral tribunal must decide in accordance with the terms of the contract. In a case where an arbitral tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an arbitral tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not interfere..But where, on a full reading of the contract, the view of the arbitral tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference."

73. As far as the powers of the Court under Section 37 of the A&C Act is concerned, where the challenge to the Award has been upheld by the Court in Section 34 of the A&C Act and the Arbitral Award is set aside on an application filed under Section 34 of the A&C Act, the Appellate Court is to consider whether the exercise of power by the Court under Section 34 of the A&C Act was proper and justified, that is, whether the Court remained within the contours of the limited

jurisdiction which is vested with Section 34 of the A&C Act and did not exceed such jurisdiction. Equally, where the Award has been upheld by the Court by dismissing the challenge under Section 34 of the A&C Act, the appellate Court in exercise of its jurisdiction under Section 37 of the A&C Act, exercises a co-extensive jurisdiction which is again limited to consider the challenge to the Arbitral Award within the limited contours of Section 34 of the A&C Act. To some extent, in such circumstances, the power of the Court is even more circumscribed and restricted as there is a concurrent finding of the Arbitrator and then of the Court. Either way, the appellate Court cannot undertake an independent assessment of the merits of the Award, but should only ascertain and ensure that the exercise of the power by the Court under Section 34 of the A&C Act has not exceeded the scope of the provision. In this regard, we may usefully refer to the judgment of the Supreme Court in ***Reliance Infrastructure Ltd.*** (supra).

74. Recently, in ***Jan De Nul Dredging India Private Limited v. Tuticorin Port Trust***, 2026 INSC 34, the Supreme Court while discussing the interplay between Sections 34 and 37 of the A&C Act, reiterated that the jurisdiction under Section 37 of the A&C Act is akin to that under Section 34 of the A&C Act and that the appellate Court cannot travel beyond the limited scope of interference exercisable under Section 34 of the Act. We quote from the judgment as under:

> *"36. The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the*

court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.

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

75. The above law is based on a public policy. Arbitration, as an alternate dispute redressal mechanism, entails the confidence of the parties to make the Arbitrator as the final adjudicator of the terms of the Agreement and the disputed questions of fact. The parties, knowing fully well that unlike in a Court of Law, where remedies of

appeal are provided, the challenge to an Arbitral Award is limited, agree to refer their disputes to arbitration. Once having done so and having agreed to the above procedure, they cannot be allowed to challenge the Award as an appeal there-against. By allowing them to do so, would undermine the very object and purpose of the parties agreeing to go for Arbitration rather than have their dispute settled through the normal procedures of the Court of Law.

76. Having considered the above contours of Section 34 and also Section 37 of the A&C Act, we now proceed to consider whether the learned Single Judge has in any manner exceeded his jurisdiction in setting aside the Arbitral Award.

77. As would be evident from the above summary of facts and the submissions of the learned senior counsels for the parties, the basic dispute between the parties was whether the Agreement in question was a turnkey agreement; whether it was based only on P&IDs dated 26.07.2016; whether any variation therefrom was payable by the appellant to the respondent; whether there was, in fact, any additional work performed by the respondent under the Agreement; and if so, whether the respondent had been able to prove such work and its quantification for its entitlement.

78. We have reproduced hereinabove in detail the findings of the learned Arbitrator on the above issue. In a summary, the learned Arbitrator has held that it cannot be accepted that the P&IDs dated 26.07.2016 were the only basis of the Agreement and that the P&IDs dated 20.08.2016 had no relevance at all. The learned Arbitrator further held that the respondent had failed to plead or prove that the

alleged additional work was major or substantial, entitling the respondent to claim additional payments in terms of the Clauses 12.1 and 12.2 read with Schedule 5 of the Agreement. The learned Arbitrator held that the respondent had failed to show any written instruction from the appellant for the execution of the alleged additional major work, nor any price was settled between the parties for the same. The learned Arbitrator, in fact, placed much reliance on the fact that the proforma invoices for the alleged additional work had been raised by the respondent post the completion of the work. The learned Single Judge, however, found fault in the above findings of the learned Arbitrator as, in his opinion, the Minutes of Meeting dated 15.09.2016 clearly showed that the Agreement was based on the P&IDs dated 26.07.2016, and in spite of the fact that the offer dated 30.08.2016 referred to P&IDs dated 20.08.2016, as the Minutes of Meeting dated 15.09.2016 still made reference only to P&IDs dated 26.07.2016, the same would form the base and any major modifications thereafter will entail a claim of extra charges by the respondent on mutually agreed rates.

79. Clearly, the learned Single Judge felt that the interpretation to the terms of the Agreement placed by the learned Arbitrator was incorrect. But the question before the learned Single Judge was limited to the aspect as to whether such interpretation was completely perverse; not possible; and patently illegal. In our view, the learned Single Judge did not confine his scrutiny of the Award to this limited aspect alone. The learned Single Judge, in fact, seems to have proceeded on what would have been a more appropriate interpretation

of contractual terms, which, in our respectful opinion, is to travel beyond the scope of scrutiny of an Award under Section 34 of the A&C Act.

80. As noted hereinabove, the learned Arbitrator in reaching his conclusion on the interpretation to be placed to the terms of the contract, placed reliance on the Offer of the respondent dated 30.08.2016; evidence of the witnesses of the parties; conduct of the parties during the execution of the work, wherein the respondent had not claimed for the extra work till the completion of the work; and the Purchase Orders dated 16.09.2016 and 15.11.2017, which defined the scope of the work. Though the learned Single Judge may have had a view that the above interpretation of the Agreement between the parties by the learned Arbitrator was not correct, this is not the test to be applied under Section 34 of the A&C Act. Interference with the Award is warranted only where such interpretation is perverse and not possible at all. This limited test was not applied by the learned Single Judge in its Impugned Judgment.

81. The learned Arbitral Tribunal had also, on appreciation of the evidence led before it, concluded that the respondent had neither pleaded nor proved on record that the alleged additional work was major or substantial work entitling it to extra payment in terms of Clauses 12.1 and 12.2 read with Schedule 5 of the Agreement. The learned Arbitrator had held that in terms of the Clauses 12.1 and 12.2 of the Agreement read with Schedule 5, not all additional work performed by the respondent was to be paid over and above lump sum price agreed between the parties; it was only where the "owner's

instructions involves change in the scope of the work, variations and modifications beyond the contractual terms" that the appellant was to pay to the respondent the price of such extra work "at a mutually agreed price". The Schedule 5 of the Agreement further stated that the cost of all changes or variations, as instructed by the owner, will be added or deducted from the contract price "by variation order". It further provided that such extra or reduced cost will be arrived "on the basis of mutually agreed procedures/rates, for which purpose, the contractor shall assist the owner by providing all documentary evidence". In the Minutes of Meeting dated 15.09.2016, it had also specifically been agreed that "no extra amount will be charged by Trans for smaller modifications. However, for any major modifications incorporated in P&IDs after 26.07.2016, Trans will charge extra amount on mutually agreed rates." The learned Arbitral Tribunal found that admittedly, there was no "variation order" as also there were no "mutually agreed rates". It was also admitted that the respondent had not raised the claim for additional work. In fact, there was no evidence led for the extra work, if any, performed by the respondent, and the only reliance placed by the respondent was on some charts which were produced with its written submissions. As far as the rates are concerned, the respondent based its claim on some earlier contract between the parties without placing the same on record. It was based on the above findings that the learned Arbitrator reached a conclusion that the respondent had failed to prove its claim for additional work.

82. The learned Single Judge, however, found fault with the above findings, by placing reliance on the email dated 03.05.2018 sent by the respondent to the appellant making a claim of the additional work being done on the project with the approval of the appellant to which there was no reply from the appellant, and concluded that the execution of the additional work had not been denied by the appellant till the respondent invoked arbitration *vide* notice dated 07.09.2018. The learned Single Judge also placed reliance on the "without prejudice" offer of the claimant to pay a sum of Rs.3 Crores to the respondent for the additional work. In our view, the above interference of the learned Single Judge with the impugned Award was also unwarranted.

83. We are of the opinion that the learned Single Judge has exceeded its jurisdiction under Section 34 of the A&C Act in setting aside the Arbitral Award by re-appreciating the evidence and acting as a Court of Appeal.

84. Merely because the appellant had not specifically disputed the performance of extra work by the respondent or had made a "without prejudice" offer to settle this dispute with the respondent, it cannot be said that the burden of proving its claim on the respondent stood discharged. In any case, this is a matter of appreciation of evidence, which, as we have observed hereinabove, is in the exclusive domain of the learned Arbitrator and with which the learned Single Judge could have interfered with only and only if it found such conclusion to be perverse and one which no reasonable person could have reached. In our view, the learned Single Judge has acted more as a Court of

Appeal rather than limiting itself to the jurisdiction under Section 34 of the A&C Act.

85. In our view, therefore, the learned Single Judge has exceeded its jurisdiction vested in it under Section 34 of the A&C Act in interfering with the Impugned Award. The Impugned Judgment therefore cannot be sustained and is accordingly set aside. The appeal is allowed in the above terms.

86. The parties shall bear their own costs.

NAVIN CHAWLA, J.

MADHU JAIN, J.

SEPTEMBER 1, 2026/Arya/pb