HIGH COURT OF GUJARAT

Bench: Chief Justice Mrs. Justice Sunita Agarwal and Justice Aniruddha P. Mayee

Date of Decision: 9th May 2024

FIRST APPEAL NO. 1849 of 2024

M/S. SUMAC INTERNATIONAL LIMITED ...APPELLANT

VERSUS

SHREE NARMADA KHAND UDYOG SAHAKARI MANDALI LIMITED ...RESPONDENT

Legislation:

Section 37 of the Arbitration and Conciliation Act, 1996

Section 34 of the Arbitration and Conciliation Act, 1996

Section 55 of the Indian Contract Act, 1872

Subject: Appeal challenging the arbitral award dated 17.12.2020, and the order of the Additional District Judge dismissing the application under Section 34 of the Arbitration and Conciliation Act, 1996.

Headnotes:

Arbitration Law – Arbitral Award – Section 37 of the Arbitration and Conciliation Act, 1996 – Appellant challenged arbitral award and Section 34 dismissal – Arbitral award partially allowed claims of claimant based on supplementary agreement – Appellant argued supplementary agreement required state approval, was not granted, and breaches were based on it – Arbitrator's findings on readiness and willingness, delays, and defaults by both parties upheld – Court found no patent illegality or perversity – Appeal dismissed. [Paras 1-33]

Contract Law – Time of Essence – Section 55 of the Indian Contract Act – Arbitral award addressed whether time was essence of contract – Despite contractual stipulation, extended delivery period indicated time not essence – Supplementary agreement signed with mutual consent – Claimant's failure to act per supplementary agreement noted – No basis to invalidate arbitrator's findings. [Paras 17-19]

Judicial Review – Limited Scope under Section 37 – Jurisdiction under Section 37 does not extend beyond Section 34 limitations – Court emphasized minimal judicial interference – Arbitrator's construction of contract and evidence upheld unless patently illegal or perverse – Appeal did not meet threshold for interference. [Paras 26-32]

Decision: Held: Appeal dismissed – No interference with arbitral award or Section 34 order warranted – Findings of arbitral tribunal supported by evidence and contractual terms – No patent error or illegality established. [Para 33]

Referred Cases:

- UHL Power Company Limited vs. State of Himachal Pradesh (2022) 4 SCC 116
- MMTC Ltd. vs. Vedanta Ltd. (2019) 4 SCC 163
- McDermott International Inc. vs. Burn Standard Co. Ltd. (2006) 11 SCC 181
- Project Director, National Highways No. 45E and 220 National Highways Authority of India vs. M. Hakeem and Another (2021) 9 SCC 1
- Dyna Technologies (P) Ltd. vs. Crompton Greaves Ltd. (2019) 20 SCC 1
- South East Asia Marine Engg. & Constructions Ltd. (SEAMAC Limited) vs. Oil India Ltd.

Representing Advocates:

For Appellant: Ms. Pushpila Bisht with Mr. Nishit P. Gandhi

JUDGEMENT

The instant Appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996') seeking to challenge the Arbitral Award dated 17.12.2020, after the dismissal of the application under Section 34 of the Act, 1996 by the Additional District Judge, at Rajpipala, District : Narmada vide order dated 01.03.2024.

2. The main ground of challenge urged by the learned counsel for the appellant was that the entire award revolves around the terms of the supplementary agreement and the terms and conditions of the main agreement, which have been conveniently ignored by the learned Arbitrator. As per the condition No. '11' of the supplementary agreement, the supplementary agreement dated 15.10.1992 was subject to the approval of the State Government, which was never granted. All the breaches mentioned in the award at the ends of the appellant, are with reference to the supplementary agreement and there is no finding with regard to breach of Clause '17.6' of the original agreement. Reference has been made to Clause '17.6' of the original agreement to submit that once the contractor/claimant has abandoned the contract and has failed to comply with the conditions of the agreement, he was not entitled for any claim. The contention was that it was the claimant who had abandoned the project and failed to execute it, as agreed. In the said circumstance, the appellant was constrained to enter into a fresh contract with another entity namely National Heavy Engineering Co-operative Ltd. On 22.4.1995. The learned Arbitrator has erred in ignoring this aspect of the matter and allowing the claims of the claimant partly. The findings returned by the learned Arbitrator being an ignorance of the relevant clauses of the contract between the parties, are perverse in law as well as on facts. The counter claims made by the appellant for various grounds towards loss of profit, loss of goodwill etc. as also interest and cost have been illegally rejected and the findings on the said issues are also perverse. The submission, thus, is that the sole learned Arbitrator has committed patent illegality in passing the award, inasmuch as, the claimant was not entitled for any damage under the relevant

terms and conditions of the contract. The award being against the public policy is liable to be set aside. The further submission is that the Court exercising jurisdiction under Section 34 of the Act, 1996 has also ignored the above stated aspects of the matter, in dismissing the application under Section 34 of the Act, 1996 on the premise that the impugned award passed by the sole learned Arbitrator does not suffer from patent illegality and there was no conflict with the public policy.

3. Noticing the above submissions, we may go through the learned Arbitrator's award and the opinion drawn by the concerned Court under Section 34 of the Act, 1996, keeping in mind the limited scope of interference by the Court under Sections 34 and 37 of the Act, 1996.

4. Certain relevant facts of the instant case are also to be noted at the outset. The appellant, a co-operative Society registered under the Gujarat Co-operative Societies' Act, 1961 had invited tenders on 16.10.1990 from the interested parties for supply of Sugar Plant. The claimant made an offer for supply of the machinaries and commissioning of the plant. The said offer was accepted and the agreement was executed on 29.12.1990 for the contract price of Rs. 16,60,00,000/-. The contractor/claimant was to supply, commission and make ready for commercial use of the plant within 18 months from the date of execution of the agreement, i.e. 28.06.1992. As noted by the learned Arbitrator, the time was an essence by of the contract. There are claims and counter claims by the parties about the delays and defaults on the part of each other, which has resulted in the fact that the contract could not be completed within the time stipulated in the agreement. The claimant contended that from the beginning, there were delays and defaults by the appellant in providing site; in releasing advances; in clearing and finalising drawings and designs; in making payment as per the terms and conditions of the contract. It was also alleged that the appellant did not have sufficient fund for the project and due to financial crunch, it was not in a position to accept supply of machineries by the claimant. It was also asserted by the claimant that it had placed order for supply of the machineries even though no payment was made by the respondent and the machineries were also received by the claimant and when the appellant was asked to take delivery of machineries, it had failed to do so due to non-availability of fund. The claimant made all the efforts and attempts for settlement of dispute, but due

to unreasonable attitude of the appellant, it could not be materialised. With a view to pressurize the claimant, the appellant had invoked the bank guarantee furnished by the claimant on 13.12.1991, whereafter, the dispute was taken to the Civil Court and ultimately resulted into execution of the supplementary agreement on 15.10.1992, whereunder delivery period was extended. It was also the contention of the claimant before the learned Arbitrator that various clauses of the supplementary agreement such as, if the appellant would not be able to obtain loan from various financial institutions, the amount paid to the claimant by the appellant would be recovered by invoking the bank guarantees, was illegal, unquestionable and unenforceable, as it was foisted on the agreement without any mutual will or free consent on the part of the claimant.

5. Be that as it may, the appellant again invoked the bank guarantees by notice dated 31.3.1993 for the reason that the claimant refused to sign the second supplementary agreement. The stand of the claimant before the learned Arbitrator was that the appellant was taking undue advantage of its dominion position and wanted to wriggle out its liability under the contract. The claimant had also assailed the supplementary agreement dated 15.10.1992 as illegal and void and as per the claimant, it was the appellant who abandoned the project due to non-availability of fund and failure to fulfill its obligations under the contract.

6. To the contrary, the appellant had levelled allegations against the claimant contractor saying that it had failed to fulfill its obligations and abandoned the contract. Under the original contract dated 29.12.1990, the claimant was to design, procure, manufacture, supply, erect, commission sugar plant and machineries and was to make it ready for commercial production by 28.06.1992. The appellant made the payments as stipulated under the contract, but the claimant failed to fulfill its obligations, because of which it was constrained to invoke the bank guarantees on 30.12.1991. Only on the assurance given by the claimant that he will fulfill its obligations, the supplementary agreement was executed amicably between the parties on 15.10.1992. It is the case of the appellant that the claimant was ready and willing to sign the supplementary agreement and even thereafter it had failed to perform its liabilities under the agreement and abandoned the project. It

was vehemently denied by the appellant and is sought to be contended by the learned counsel for the appellant herein that the contention of the claimant that the site was not constructed by the appellant was absolutely wrong. The advances which the appellant was required to pay in three phases, was actually paid and the claimant had failed to establish that it had utilised the amount and purchased the material in accordance with the provisions of the contract. As regards drawings and designs, the case of the appellant before the learned Arbitrator was that they were faulty, incomplete and unclear, and further could be finalised on account of noncooperation of the claimant.

7. In light of the above rival contentions of the parties before the learned Arbitrator, on the evidence led by them, the Arbitrator framed the issues as to whether the claimant was ready and willing to perform its part of the contract, as to whether the project cannot be completed on account of delays and defaults on the part of the appellant ?; as to whether the claimant proves that the supplementary agreement dated 15.10.1992 was executed under duress, coercion or under undue influence ?; as to whether it was the appellant who had abandoned the contract ?. The learned Arbitrator has also framed issues pertaining to the claim to the rival claims of the parties about the availability of site and the payment of advances progressively by the appellant. In total 32 issues pertaining to the rival claims of the parties, were framed by the learned Arbitrator.

8. On the issue of arbitrability of dispute raised by the appellant, the allegations of the claimant pertaining to the supplementary agreement entered into under duress, coercion and undue influence, the learned Arbitrator had decided the issue in negative noticing that though the question raised by the claimant pertains to the supplementary agreement concerning the duress, coercion and undue influence etc.. can be considered and/or agitated on merits, however, it cannot be contended that there is no arbitral dispute between the parties.

9. Having decided on preliminary issue of its jurisdiction, the learned Arbitrator had proceeded to examine the preliminary issued raised by the claimant about the maintainability of the counter claim lodged by the appellant on the premise that entering into the counter claim would be going beyond the scope

of reference, inasmuch as the claims raised by the appellant were not part of the reference. The learned Arbitrator decided the said issue in negative.

10. Proceeding further, noticing the terms and conditions of the supplies agreement dated 29.12.1990 and the supplementary agreement dated 15.10.1992, the learned Arbitrator has also noticed the long preamble of the supplies agreement, wherein the events leading to execution of the supplementary agreement dated 15.10.1992 were narrated. Clause 1 of the supplementary agreement, as noticed by the learned Arbitrator in the award, stated that the supplementary agreement superseded any clause contained in the original agreement, which was contrary to or inconsistent with clause in supplementary agreement and the concerned clause of the original agreement, shall be deemed to have been corrected accordingly. Further clause 2 of the supplementary agreement stated that both the parties had agreed that the supplementary agreement shall be treated as part of the original agreement for supply/purchase of plant, machineries and equipment and sugar factory. Further, noticing the relevant clauses of the supplementary agreement, aligning the rights and liabilities of the parties, it was noticed that the agreement was duly signed by both the parties and their witnesses.

11. Proceeding further on the issue pertaining to the readiness and willingness in performing contractual obligations and delays and defaults, the learned Arbitrator has considered the clauses of supplies agreement dated 29.12.1990 to note the reciprocal obligations of the parties under the said agreement. It has further proceeded to examine the question as to whether the site was made available to the claimant considering the evidence led by the parties and has concluded that :-

“Thus, on overall consideration, in my opinion, at the time of execution of Agreement, the Respondent was not in possession of the entire land, which is more than 100 acres. But when only 5 acres of land was to be utilised for plant and machinery, it cannot be contended by the Claimant that the Respondent failed to provide or make available "site" where sugar mill was to be established. Probably, for that reason, no complaint was made or grievance was raised by the Claimant against the

Respondent to that effect at any point of time before initiation of present proceedings."

12. With regard to the advance payments made by the appellant to the claimant, it was further recorded that :-

"As far as Advance Payment is concerned, the facts on record reveal that there was part delay on the part of both the sides. On the one hand, there was delay by the Respondent in such payment in second and third installments, but on the other hand, there was delay on the part of the Claimant also in furnishing Bank Guarantees as against such payment. With regard to delay in fulfilling of other contractual obligations, I have dealt with the said aspect later on while dealing with obligations of the parties to the contract."

13. For the drawings and designs, the conclusion of the learned Arbitrator, based on the appreciation of the evidence before it, was as under :-

"It appears that certain drawings were incomplete or defective. But it is also clear from the record that for a sufficient long time, no action was taken either by the Respondent or by National Federation. Drawings received by the Respondent were forwarded for approval by Narmada to National Sugar Federation. But National Sugar Federation did not clear them immediately either by approving them or by suggesting changes, alterations or modifications for quite some time. For such delay, the Claimant cannot be held responsible. Thus, though delay in clearance of drawings and designs was on the part of both the sides, much more delay was on the part of the Respondent."

14. About the financial condition of the appellant, it was further recorded that :-
"The case of the Respondent, however, is that there was no short of funds as alleged by the Claimant. The Respondent had approached IFCI as well as State Government and both of them had assured to provide necessary finance. Record shows that sufficient fund was made available to the Respondent.

From the documentary evidence on record, it appears that there were some problems in getting requisite finance by the Respondent from IFCI as well as

from the State Government but it was not a case of nonavailability of finance. The Respondent had also stated that availability of finance by IFCI depended on appropriate plans and layouts by the Claimant which were delayed by the Claimant."

15. About the financial condition of the claimant, it was held :-

"The Claimant had strongly objected to the assertions of the Respondent. It was submitted that financial position of the Claimant was sound and there was no financial crunch on its part.

It was also contended that as regards Jewar Project, the Respondent approached U.P. Sugar Federation behind the back of the Claimant with a view to cover up its own deficiencies and short of fund to complete the Project.

It was further stated that the Claimant had successfully completed several projects, including Sneh Road Project, Ajnala and Faridkot Project, etc.

Considering the records and materials before the Tribunal, it appears that at some point of time, the Claimant had to face financial difficulties, which later on, came to be cleared and no more remained as an obstacle."

16. Noticing the above aspects, the learned Arbitrator has proceeded to examine the breaches of the contractual provisions which can be said to have been committed by the parties to the agreement, i.e. breaches committed by the complainant as well as the breaches committed by the appellant and has further considered the arguments of the appellant that no certificate or proof was provided by the claimant that it had utilised its advance payments for procurement of material / equipment for sugar plant and machinery and hence, the contractual obligation had not been fulfilled by the claimant. It was finally concluded that on over all consideration of the facts and materials on record, though initially both the parties, i.e. the claimant as well as the appellant, were ready and willing to perform their part of the contract, however, the project could not be completed on account of the delays and defaults on the part of both the parties.

17. Having held that, the learned Arbitrator had proceeded to examine question as to whether the time was essence of the contract as agitated by the

appellant and noticing the statutory provisions under Section 55 of the Indian Contract Act, 1872 and the decisions of the Apex Court that the question whether or not time is the essence of the contract, is essentially a question of intention of the parties to be gathered from the terms of the contract. Even if, there is a stipulation to that effect in the contract, it was held that in view of the clauses of the supplies agreement itself, time cannot be considered and/or treated as the essence of the contract. It was held that notwithstanding the fact that the contract itself contains the provisions (in clause 5.1) that the time is essence of the contract, in view of the fact that the supplies agreement itself provides for extension of time in certain eventualities as also the levy of liquidated damages and penalty, time cannot be considered as the essence of the contract. It was further noticed that since the appellant did not have sufficient fund for making payment to the claimant, it had agreed in the meeting held on 7/808-1991 for extending the delivery time due to delay in releasing the payment. There was the communication dated 26.06.1991 by the appellant informing the claimant regarding "'Revision in Factory Building" as many issues, as advised by the National Federation, were cleared by the claimant vide letter dated 14.10.1991. The appellant intimated the claimant under the guidelines of IFCI that it was trying to reduce the scope of supply from the tendered items and its specifications, for which the agreement had entered into. These findings returned by the learned Arbitrator could not be challenged by the learned counsel for the appellant herein by placing any contrary cogent material from the record.

18. On the main issue of abandonment of contract, as per the rival claims of the parties before the learned Arbitrator, the learned Arbitrator has proceeded to examine the question about the availability of site at the time of signing of the agreement, progressive payment and effect thereof; non-approval of schedule of inspection and payment under agreement and its effect; supplementary agreement and its legality, validity and enforceability; as also the issue of invocation and encashment of the bank guarantees. On the question of abandonment of the contract and the execution of the supplementary agreement which has reached at the conclusion, that it cannot be said that the appellant had failed to provide site for construction of sugar mill to the claimant. The progressive advance payments were made in accordance with the clause '15' of the supplies agreement. It cannot be said that there was approval of the schedule and non-payment of the due amount,

which amounted to lack of readiness and willingness on the part of the appellant.

19. On the issue related to supplementary agreement dated 5.10.1992, its legality, validity and enforceability, it was held as under :-

"Thus, on overall consideration, I hold that the Supplementary Agreement had been executed by the parties on 15-10-1992 with open eyes and free consent of both the parties. It was legal, valid and lawful and would be binding to both the sides, i.e. the Claimant and the Respondent. Supplementary Agreement was not vitiated by coercion, duress, undue influence, misrepresentation, fraud, mistake, etc. and not vitiated by absence of free consent and could not have been avoided by the Claimant. It was accepted by both the parties and had been acted upon also and continued to remain operative and enforceable.

Since the Claimant failed to act in accordance with the provisions of the Supplementary Agreement and failed to complete the Project, it has no right to make grievance against the said Agreement."

20. Further, it may be noticed that the contention of the appellant on the question of validity of the supplementary agreement before the learned Arbitrator was that no objection was raised by the claimant at the relevant point of time. The supplementary agreement was prepared and was duly signed by both the sides and as per the provisions of the supplementary agreement, time for completion of project was extended in favour of the claimant. The bank guarantees which had been invoked by the appellant in 1991 were encashed considering the extension of time to complete the project and to furnish fresh bank guarantees. However, the claimant did not furnish fresh bank guarantee even after agreeing to that extent.

20.1 As regards the question of approval of the supplementary agreement by the State Government, it was the stand of the appellant that from the documents on record, particular document at R-23 to R-27, it can be concluded that the supplementary agreement was approved by the State Government impliedly. if not expressly.

21. We may note that in light of the above stand of the appellant before the learned Arbitrator, the contention of the learned counsel for the appellant herein that the supplementary agreement having not been approved by the State Government as per the condition No.11 thereof, could not have been relied on by the learned Arbitrator under the award, is found to be misconceived.

22. Proceeding further, we may record that action of modification of the bank guarantees by the appellant has been found to be justified by the learned Arbitrator and no interference has been made thereon. Thus, essentially on the issues about the readiness and willingness, the effect and validity of the supplementary agreement etc., the learned Arbitrator has held that the claimant and respondent both were responsible for noncompletion of the project, inasmuch as, though they were ready and willing to perform their part of the contract, but the project could not be completed on account of the delays and defaults on the part of both the parties, i.e. the claimants as well as the appellant. The findings on these issues, noted hereinbefore, could not be successfully assailed by the learned counsel for the appellant to the extent of perversity or patent illegality in the award.

23. Resultantly, we do not find any patent error in the conclusion drawn by the learned Arbitrator on the individual claims raised by the claimant as well as the appellant by way of counter claims. The claims of the claimant towards Milling Plant (Rs. 50 lakhs); Mobilisation Advance (Rs. 20 lakhs); the Drawing and Design Charges (Rs. 30 lakhs) have been granted by the learned Arbitrator on a critical appreciation of the claims made by the claimants vis-a-vis the stand of the appellant that the claimant was not entitled to any of the aforesaid claims, as it had abandoned the contract without performing its obligations under the contract.

24. As noted hereinbefore, as no error, much less patent error, could be pointed out in the findings returned by the learned Arbitrator that the delays and defaults were on the part of both the sides, we do not find any reason to attach any error to the claims of the claimant awarded by the learned Arbitrator. As regards the counter claim, for the reason that the learned Arbitrator had turned down the contention of the appellant about the

abandonment of the contract on the part of the claimant, the claims towards loss and goodwill, damages on account of loss of profits, loss on interest on bank guarantees, liquidated damages under supplies agreement and the damage on account of abandonment and termination of contract by claimant, have rightly been turned down .

25. On the claim of interest of diesel generating set to the tune of Rs. 91,576/- it was noticed by the learned Arbitrator that as per the claim of the appellant, advance payment against purchase of Diesel Generating Set was made by the claimant on 14.8.1991, but the same was dispatched and delivered to the appellant only on 20.01.1992. It was held that there was delay on the part of the claimant for purchasing and delivery of the Diesel Generating Set to the appellant and hence the appellant is entitled to the aforesaid amount towards interest.

26. Having exhaustively gone through the award passed by the learned Arbitrator, the reasonings given therein on appreciation of the evidences led by the parties, we do not find any good ground to interfere in the award noticing the scope of interference under Section 37 of the Arbitration Act, 1996.

27. We may note the decision of the Apex Court in **UHL Power Company Limited vs. State of Himachal Pradesh [(2022) 4 SCC 116]**, wherein the Apex Court has held that the jurisdiction conferred on the Courts under Section 34 of the Arbitration Act is fairly narrower, when it comes to the scope of exercise of powers under Section 37 of the Arbitration Act. Noticing its earlier decision in **MMTC Ltd. vs. Vedanta Ltd. [(2019) 4 SCC 163]**, it was noticed that the reasons for vesting such a limited jurisdiction on the Courts in exercise of powers under Section 34 of the Act, 1996, have been explained therein in para '11' as under :-

"11. As far as Section 34 is concerned, the position is well- settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2) (b) (ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral

award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."

28. By referring to various decisions of the Apex Court, it was noticed from para Nos. '18' to '21'in **UHL Power Company Limited (supra)** that it has been held time and again by the Apex Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the Arbitrator proceeds to accept one interpretation as against the others. The construction of the terms of contract is primarily is for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It was further noted that when the Court is applying " 'public policy test' to the arbitration award, it does not act as a court of appeal and consequentially, errors on facts cannot be corrected". A possible view by the learned Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quality and quantity of evidence to be relied upon when he delivers his arbitral award. Thus, the award based on little evidence or on evidence which does not measure up in quantity to a trained legal, would not be held to be involved on this score.

29. The requirement is that the Arbitral Tribunal must decide in accordance with the terms of the contract, but if the test is that arbitral tribunal must decide in accordance with the terms of the contract, but if term of the contract is construed in reasonable manner within the award ought not to be set aside on the ground of unreasonableness only. It was further noticed in paragraph Nos. 20 and 21 as under :-

"20. In Dyna Technologies (P) Ltd. (supra), the view taken above has been reiterated in the following words:

"25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of

contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

21. An identical line of reasoning has been adopted in South East Asia Marine Engg. & Constructions Ltd.[SEAMAC Limited] V. Oil India Ltd. and it has been held as follows:

"12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1 : 2019 SCC OnLine SC 1656] laid down the scope of such interference. This Court observed as follows : (SCC pp. 11-12, para 24)

24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies (2019) 20 SCC 1 : 2019 observed as under :

"25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award

merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act." [emphasis supplied]"

30. In **MMTC Ltd. (supra),** the Apex Court on the scope of interference with an order made under Section 34, as per the section 37, has held that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. The relevant para 14 in **MMTC Ltd. (supra)** be noted :-
"As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

In **Project Director, National Highways No. 45E and 220 National Highways Authority of India vs. M. Hakeem and Another [(2021) 9 SCC 1]**, the Apex Court while considering the question of scope of the powers of the Courts under Section 34 of the Act, 1996 to set aside the award of the Arbitrator including the power to modify such award, considered its earlier decision in **MMTC (supra)** to record that it is settled that the Section 34 proceedings does not contain any challenge on the merits of the award. It was held that Section 34 of the Arbitration Act, 1996 vary from being in the nature of appellate provisions. It provides only for setting aside the awards only on very limited grounds, as contained in Sub-sections (2) and (3) of Section 34. The recourse to the Court against arbitral award may be made only by application for setting aside such award in accordance with Sub-sections (2) and (3). It was observed that Section 34 of the Act, 1996 is modelled on the UNCITRAL Model Law on International Commercial Arbitration, 1985, under which no power to modify the award is given to the Court hearing a challenge to an award. Statutory scheme under Section 34 of the Act, 1996 is in keeping with the UNCITRAL Model Law and legislative

policy of minimal judicial interference in arbitral awards. Referring to the decision of the Apex Court in **McDermott International Inc. vs.**

Burn Standard Co. Ltd. [(2006) 11 SCC 181] , it was noticed that 1996 Act makes provisions for supervisory role of the Courts in the review of the arbitral award only to ensure fairness. Interference of the Courts is envisaged in few circumstances only, like in case of fraud or bias of the Arbitrator, violation of principles of natural justice etc.. The Courts cannot correct the terms of the Arbitrator. It can only quash the awards leaving the parties to begin with the arbitration again, if it so desires. The scheme of the provisions, namely Sections 34 and 37 of the Act, 1996, thus, aims at keeping supervising role of the Courts at minimum level and this can be justified, as the parties to the agreement make a conscious decision to exclude the Court's jurisdiction by opting for arbitration as they prefer expeditious and finality over by it. It was, thus, held that there can be no doubt that given the law laid down by the Apex Court, Section 34 of the 1996 Act cannot be held to include within it a power to modify the award.

32. Considering the law laid down by the Apex Court in the matter of scope of interference under Sections 34 and 37 of the Act, 1996, as noted hereinbefore, it is not possible for us to draw alternative view to interfere in the award passed by the learned Arbitrator on the arguments made by the learned counsel for the appellant. There is hardly any ground for us to interfere with the arbitral award in the given facts and circumstances of the instant case.

33. In the aforesaid view, the challenge to the arbitral award as also to the orders passed by the Court under Section 34 of the Act, 1996 is found devoid of merits. The appeal stands, accordingly, dismissed.