2025 INSC 574

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5383 OF 2024

CONSOLIDATED CONSTRUCTION CONSORTIUM LIMITED **APPELLANT(S)**

VERSUS

SOFTWARE TECHNOLOGY PARKS OF INDIA **RESPONDENT(S)**

J U D G M E N T

UJJAL BHUYAN, J.

This appeal by special leave is directed against the judgment and order dated 08.08.2019 passed by the High Court of Judicature at Madras in O.S.A. No. 157 of 2019.

2. Be it stated that by the judgment and order dated 08.08.2019 ('impugned judgment' hereinafter), Division Bench of the High Court of Judicature at Madras (briefly 'the High

Court' hereinafter) allowed the appeal of the respondent filed under Section 37 of the Arbitration and Conciliation Act, 1996 (briefly 'the 1996 Act' hereinafter) by setting aside the judgment and order dated 02.01.2019 passed by the learned Single Judge of the High Court in O.P. No. 433 of 2010 which was filed by the appellant under Section 34 of the 1996 Act setting aside the arbitral award dated 05.01.2010.

3. Relevant facts may be briefly noted.

4. Software Technology Parks of India i.e. the respondent following a tender process had awarded a contract to M/s Consolidated Construction Consortium Ltd. i.e. the appellant for construction of office building, incubation centre etc. of the respondent. As per the Letter of Intent dated 09.03.2006 issued by the respondent, the total cost of the project was Rs. 16,48,69,970.00. The scheduled date for completion of construction was 15.01.2007. Appellant could complete the construction only by 30.11.2007. There was thus a delay of about 10 months.

4.1. Appellant after handing over the project site to the respondent claimed a sum of Rs. 1,40,12,786.00 including retention money and interest thereon. However, because of the delay in completion, respondent levied and deducted liquidated damages to the tune of Rs. 82,43,499.00 by invoking clause 26 of the contract agreement entered into between the parties. Respondent also made other deductions. After such deductions, balance amount of Rs. 3,70,992.00 was paid to the appellant by the respondent.

4.2. Aggrieved appellant invoked the arbitration clause of the contract agreement and initiated arbitral proceedings challenging deduction of liquidated damages by the respondent and also lodged other claims. Respondent also lodged counter claims.

4.3. Learned arbitrator *vide* the award dated 10.05.2010 upheld the deduction of liquidated damages by the respondent. That apart, learned arbitrator dismissed the claims and counter claims of the parties. Learned arbitrator held that he did not find any of the claims or counter claims to have been

established and, therefore, declared the award as nil against all the claims and counter claims.

5. Appellant filed a petition before the High Court under Section 34 of the 1996 Act to set aside the award which was registered as Original Petition (O.P.) No. 433 of 2010. A learned Single Judge of the High Court *vide* the judgment and order dated 02.01.2019 held that there was extension of the work period. Appellant had completed the work during the extended period of time. Therefore, deduction of liquidated damages was not justified. Consequently, the arbitral award dated 10.05.2010 was set aside.

6. Aggrieved by the aforesaid judgment and order dated 02.01.2019, respondent preferred an appeal before the High Court under Section 37 of the 1996 Act which was registered as O.S.A. No. 157 of 2019. A Division Bench of the High Court *vide* the impugned judgment and order dated 08.08.2019 opined that learned Single Judge was not justified in setting aside the award. The award was set aside purely on assumptions and surmises. Grounds on which the award was

set aside were beyond the scope of Section 34 of the 1996 Act. Accordingly, the judgment and order of the learned Single Judge dated 02.01.2019 was set aside, thereby allowing the appeal of the respondent.

7. Aggrieved thereby appellant had filed the related special leave petition on which notice was issued on 05.02.2021. When the matter was heard on 23.04.2024, leave was granted.

8. Learned counsel for the appellant submits that Division Bench of the High Court was not at all justified in exercising power under Section 37 of the 1996 Act by reversing the decision of the learned Single Judge passed under Section 34 of the 1996 Act. He submits that scope of interference under Section 37 is extremely limited and, therefore, the Division Bench committed a manifest error in setting aside the order passed under Section 34 of the 1996 Act. In the process, the Division Bench committed a further error by restoring the award which had upheld deduction of liquidated damages by the respondent.

8.1. Learned Single Judge had rightly exercised power within the broad parameters of Section 34 of the 1996 Act while setting aside the award in question. It is the Division Bench which acted like an appellate court beyond the scope of Section 37 of the 1996 Act while setting aside the order passed under Section 34 of the 1996 Act and restoring the award.

8.2. Learned counsel submits that the respondent had extended the time for completion of the contractual work. Appellant had completed the construction within the extended period. Therefore, there was no delay in the contractual performance. Extension of time and levy of liquidated damages cannot go hand-in-hand. In the circumstances, respondent was not justified in deducting liquidated damages from the contractual dues of the appellant.

8.3. He submits that the instant contract between the appellant and the respondent was a contract relating to construction. In such a contract, time is never of the essence. Such a contract is governed by the principles laid down in Sections 55, 73 and 74 of the Indian Contract Act, 1872. In any

view of the matter, the employer would be entitled to liquidated damages to compensate for the delay provided the delay had caused loss or damage to the employer. No such deduction can be made if the delay does not cause any loss or damage.

8.4. Division Bench had ignored the letter dated 26.09.2008 issued by the respondent to the appellant extending the time to complete the contract upto 30.11.2007. This letter of extension was written pursuant to the application of the appellant dated 14.12.2007 seeking such extension. Thus, appellant had completed the work within the extended time granted by the respondent. Therefore, there was no delay in executing the contract. Further, no loss ensued to the respondent which would justify any deduction on account of liquidated damages.

8.5. That being the position, there was no justification for invoking clause 26 of the contract agreement by the respondent.

8.6. Learned counsel submits that learned Single Judge had rightly noted that appellant could not complete the contract work within the initial time frame because of reasons which

were beyond its control. When the respondent had extended the time frame, it was obvious that the delay could not be attributed to the appellant. Extension of time to complete the contract does not imply a delay in execution. No loss was suffered by the respondent.

8.7. Learned counsel submits that when the respondent recognized the difficulties faced by the appellant in executing the contract it extended the time limit for completion of the contract till 30.06.2007. When the appellant was still unable to complete the contract by 30.06.2007, respondent had allowed the appellant to carry on with the work and to complete the contract by 30.11.2007 which was accepted by the respondent, of course, reserving its right to levy liquidated damages. Learned counsel further submits that on the one hand respondent had allowed the appellant extended time to complete the construction work, but on the other hand levied liquidated damages on the appellant by invoking clause 26 of the contract agreement. However, no advance notice was issued

to the appellant indicating any intention on the part of the respondent to levy liquidated damages.

8.8. Lastly, learned counsel submits that in any view of the matter, the impugned order is wholly unsustainable in law as well as on facts and, is, thus liable to be appropriately interfered with.

9. On the other hand, learned counsel for the respondent submits that liquidated damages were rightly levied by the respondent. Such liquidated damages are in conformity with Section 55 of the Indian Contract Act, 1872 (briefly 'the Contract Act' hereinafter). Respondent was presented with such a situation by the appellant that it had no other option but to grant extension of time on account of appellant's admitted inability to complete the work within the stipulated time. In the review meeting held on 18.12.2006, just twenty eight days before the stipulated date for completion of the work i.e. 15.01.2007, appellant expressed its inability to complete the work within the stipulated date. Respondent was left with no

option other than to fix a revised date for completion of the work and grant extension of time.

9.1. Pursuant to the review meeting dated 18.12.2006, respondent *vide* letter dated 12.01.2007 had granted the first extension of time for completion of the contract work upto 28.02.2007. However, appellant failed to complete the work within this extended period of time. As a result, respondent was compelled to grant further extensions of time to the appellant upto 30.06.2007 in order to have the contract work completed. This was because of appellant's continued failure to meet even the revised timelines despite repeated requests and warnings from the respondent and its architect.

9.2. Learned counsel for the respondent submits that in the review meeting held on 18.12.2006, appellant was unequivocally forewarned that grant of extension of time for completion of the contract work would be without prejudice to the right of the respondent to recover liquidated damages. Each time extension was granted it was made clear to the appellant that such extension of time was without prejudice to the right

of the respondent to recover liquidated damages. Therefore, appellant had full prior notice of the respondent's intention to levy liquidated damages. In the circumstances, it is not open to the appellant to now contend that the respondent is not entitled to recover liquidated damages on the ground that time for performance of the contract was extended.

9.3. Learned counsel has refuted the contention of learned counsel for the appellant that time was not the essence of the contract. On the contrary, he asserts that time was very much of essence for performance of the contract. Because of admitted inability of the appellant to complete the contract work within time, respondent was compelled to grant multiple extensions of time but each time, appellant was forewarned that such extension of time was without prejudice to the right of the respondent to recover liquidated damages.

9.4. Learned counsel has also denied the contention of learned counsel for the appellant that respondent could not furnish or show any loss or damage suffered by it because of the delay in execution of the contract. He submits that the

arbitral tribunal had minutely examined this aspect of the matter and after considering the evidence on record rejected such contention of the appellant. Arbitral tribunal held that liquidated damages were validly deducted; the quantum was fair and reasonable.

9.5. Learned counsel for the respondent, therefore, submits that the appellate court i.e. Division Bench of the High Court had rightly set aside the order of the learned Single Judge thereby restoring the award. Learned Single Judge had set aside the award in complete disregard to Section 34 of the 1996 Act. He submits that there is no merit in the appeal. Consequently, the appeal should be dismissed.

10. Submissions made by learned counsel for the parties have received the due consideration of the Court.

11. Let us first deal with the award. In this case, the arbitral tribunal comprised of a sole arbitrator Shri K. Srinivasan. He was appointed as the arbitrator on 05.01.2009. In the arbitral proceedings, as many as five claims were made on behalf of the appellant. On the other hand, the respondent

made three counter claims. In so far the appellant is concerned, the major claim was relating to refund of Rs. 82,43,499.00 deducted by the respondent as liquidated damages. This claim was framed as issue No. 3 by the arbitral tribunal. In so far respondent is concerned, it raised counter claims relating to reimbursement of rent paid by it for the period of delay in completion of the contract work as well as for loss of rent in the new complex due to delayed construction. As alluded to hereinabove, issue No. 3 pertains to claim of the appellant for refund of Rs. 82,43,499.00 deducted by the respondent as liquidated damages i.e. as compensation for the delay in execution of the contract. Both appellant and the respondent had submitted their relied upon documents and advanced their respective contentions. Arbitral tribunal had framed two questions:

(i) Whether the delay had occurred due to default on the part of the claimant(appellant)? and

(ii) Whether the respondent was entitled in terms of the contract to levy liquidated damages for the delay?

11.1. After going through the materials on record, arbitral tribunal held that respondent had produced documents to show that the delay in moving to the new premises had caused them direct financial loss in two ways:

(i) in having to continue to pay rent for ten and half months in the old premises; and

(ii) in having lost ten and half months in letting out portions of the new premises on rent.

11.2. Such a loss was on account of the breach of contract by the appellant. Respondent had established that the loss suffered by it indeed occurred due to delay in handing over the new premises. Clause 26 of the contract agreement permitted the respondent to levy liquidated damages. It also provided as to how the quantum of liquidated damages should be arrived at. According to the arbitral tribunal, the quantum was at the rate of 0.5% per week of delay. Delay in this case was more than ten months. Bulk of the delay was for reasons within the control of the appellant. The figure of Rs. 82,43,499.00 was correctly quantified and deducted as liquidated damages by the respondent. Therefore, the arbitral tribunal held that the

liquidated damages were legally and contractually valid. It was reasonable compared to the loss occasioned to the respondent due to default by the appellant. Therefore, arbitral tribunal held as under:

> In view of all that has been stated above I conclude that recovery of LD was valid contractually and legally. It was levied by a competent authority and the levied amount was fair and reasonable. I therefore award Nil amount against this claim.

11.3. Thereafter, the arbitral tribunal rejected the other claims of the appellant as well as the counter claims of the respondent. Summary of the award dated 10.05.2010 reads as under:

> In sum therefore I do not find that any of the claims by the claimant or counter claims by the respondents have been established and the award is NIL against all the claims and counter-claims.

12. Clause 26 of the contract agreement deals with liquidated damages. Clause 26 reads thus:

> 26. **Liquidated damages**
> If the contractor fails to complete the work by the date stated in the Appendix or within any extended time

> under clause 28 hereof the contractor shall pay or allow the employer to deduct the sum named in the Appendix as "Liquidated Damages" for the period during which the said works shall remain incomplete and the employer may deduct such damages from any money due or that may become due to the contractor.

12.1. Thus, what clause 26 says is that if the contractor fails to complete the work within the stipulated period or within the extended time as provided under clause 28 then the employer shall be entitled to deduct the sum named in the Appendix as liquidated damages for the period during which the contract work remained incomplete. The employer may deduct such liquidated damages from any money due or that may become due to the contractor.

12.2. In the Appendix, the time for completion was provided as 10 months from the 10th day of the written order to commence work or after the date on which the site was handed over to the contractor whichever was later. In so far determination of liquidated damages is concerned, it was mentioned in the Appendix that the same would be calculated

at the rate of Rs. 0.5 percent of the contract value per week subject to a maximum of 5 percent of the value of the contract.

13. Clause 27 provides for extension of time. Clause 27 reads as under:

> 27. **Extension of time**
>
> If the contractor shall desire an extension of time for completion of the work on the grounds of his having been unavoidably hindered (a) by force majeure or (b) by reason of any exceptional inclement weather or (c) reason of any proceedings taken or threatened by or dispute with adjoining or neighbouring employers or public authorities arising otherwise than through the contractor's own defaults or (d) by the work or delays of other contractors or tradesmen engaged or nominated by the employer or the architect and not referred to in the Schedule of Quantities and/or specifications or (e) by strikes or lockout affecting any of the building trades or (f) by reason of delays in the supply of materials stipulated to be supplied by the employer he shall apply in writing to the architect/employer within 15 days of such hindrance on account of which he desires such extension as aforesaid and the architect/employer, if in his opinion reasonable grounds have been shown therefor, may make a fair and reasonable extension of time for

completion of the contract works, but the contractor shall nevertheless constantly use his endeavours to prevent delay and shall do all that may reasonably be required of him to proceed with the work expeditiously provided.

(a) that the contractor shall have no claim other than extension of time for the delay in completion of the work due to such hindrance and nothing else and

(b) that the contractor shall suspend the works whenever called upon to do so in writing by the architect/employer and shall be allowed reasonable extension of time for completion of work due to such suspension of work and nothing else.

13.1. What clause 27 provides for is that if the contractor wants an extension of time for completion of the work on the ground that the work has been unavoidably hindered:

(i) by force majeure; or

(ii) by reason of any exceptional inclement weather; or

(iii) by reason of any proceedings taken or dispute etc. with neighbours otherwise then the contractor's own default; or

(iv) due to the work or delay of other contractors or tradesmen engaged or nominated by the employer or the architect; or

(v) by strike or lock out affecting any of the building trades; or

(vi) by reason of delay in supply of materials stipulated to be supplied by the employer; or

(vii) if the contractor wanted extension of time, he was required to apply to the employer/architect for such extension within the period specified and if the employer/architect was of the opinion that reasonable grounds were shown, it would make a fair and reasonable extension of time for completion of the contract work.

14. Since, there is a reference to clause 28 in clause 26, we may as well consider clause 28. It deals with consequence of failure of the contractor to comply with the instructions of the architect or the employer. Clause 28 reads thus:

> 28. **Failure of contractor to comply with Architect's/Employer's Instructions**
>
> If the contractor after receipt of written notice from the architect/employer requiring compliance within ten days fails to comply with such further drawings and/or architect/employer's instructions the employer may employ and pay other persons to execute any such work whatsoever that may be necessary to give effect thereto, and all costs incurred in connection therewith shall be recoverable from the contractor by the employer on the certificate of the architect as a debt or may be deducted

by him from any money due to or become due to the contractor.

15. From a conjoint analysis of clauses 26, 27 and 28 it is evident that if the contractor fails to complete the work within the stipulated period or within the extended time as may be provided, he would be liable to pay liquidated damages which may be deducted by the employer from any due to be paid by the employer to the contractor. How the liquidated damages is to be determined is provided in the Appendix as noted above. If the contract work is hindered beyond the control of the contractor such as the examples given in clause 27, the contractor may seek extension of time and if the same is found to be reasonable, the employer may make a fair and reasonable extension of time. On a combined reading of the above clauses, a plausible view may be taken that clause 26 is not controlled by clause 27.

16. What the arbitrator noted in this case is that on a number of occasions, appellant had sought for time. On each occasion respondent was compelled to allow the appellant to

carry on with the work beyond the extended time period by granting further extension, reserving its right to levy liquidated damages. It has come on record that in the review meeting held on 18.12.2006, respondent had put the appellant to notice that grant of extension of time for completion of the contract work would be without prejudice to the right of the respondent to recover liquidated damages. Though the first extended time limit was till 28.02.2007, further time had to be granted by the respondent on a number of occasions thereafter till 30.06.2007, on each occasion reserving the right to levy liquidated damages.

17. At this stage we may mention that appellant had continued execution of the work beyond 30.06.2007 and completed the same only on 30.11.2007 though the last extended period had expired on 30.06.2007. It was only after completion of the contract work that the appellant wrote letter dated 14.12.2007 to the respondent seeking extension of time. Respondent issued letter dated 26.09.2008 granting extension of time. So it was an *ex post facto* approval on the part of the respondent. Thus, appellant had continued with the contract

work even after the extended period had expired on 30.06.2007. Be it stated that all throughout respondent had put the appellant to notice that notwithstanding extension of time it reserved the right to levy liquidated damages.

18. Section 55 of the Indian Contract Act says that when a party to a contract promises to do a certain thing within a specified time but fails to do so, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract. If time is not the essence of the contract, the contract does not become voidable by the failure to do such thing on or before the specified time but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure. Further, if in case of a contract voidable on account of the promisor's failure to perform his promise within the time agreed and the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the

time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.

19. Sections 73 and 74 deal with consequences of breach of contract. Heading of Section 73 is compensation for loss or damage caused by breach of contract. When a contract is broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it. On the other hand, Section 74 deals with compensation for breach of contract where penalty is stipulated for. When a contract is broken, if a sum is mentioned in the contract as the amount to be paid in case of such breach or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled whether or not actually damage or loss is proved to have been caused thereby, to receive from the party

who has broken the contract reasonable compensation not exceeding the amount so named or the penalty stipulated for.

20. A conjoint reading of Sections 55, 73 and 74 would indicate that in a contract whether time is of the essence or not, if the contractor fails to execute the contract within the specified time, the contract becomes voidable at the option of the promisee and the promisee would be entitled to compensation from the promisor for any loss occasioned to him by such failure. However, in case of a contract where time is of the essence, the contract becomes voidable on account of the contractor's failure to execute the contract within the agreed time. The promisee cannot claim compensation for any loss occasioned by such breach of the contract unless he gives notice to the promisor of his intention to claim compensation. This is made more specific in Section 73. Section 74 contemplates a situation where penalty is provided for and quantified as compensation for breach of contract. In such a case, the party complaining of the breach is entitled to compensation whether or not actual damage or loss is proved

to have been caused thereby but such compensation shall not exceed the quantum of penalty stipulated.

21. Before we deal with the order of the learned Single Judge dated 02.01.2019 passed under Section 34 of the 1996 Act, it would be apposite to advert to Section 34 of the 1996 Act which is as follows:

> **34. Application for setting aside arbitral award-** (1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
> (2) An arbitral award may be set aside by the court only if—
>
> (*a*) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—
>
> (*i*) a party was under some incapacity; or
>
> (*ii*) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
>
> (*iii*) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

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

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

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

(*b*) the court finds that—

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

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

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

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

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

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

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

[(2-A) An arbitral award arising out of arbitration other than international commercial arbitration, 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.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]

22. Sub-section (1) of Section 34 provides that an application may be made to the competent court for setting

aside an arbitral award. This is the only remedy available for setting aside an arbitral award. The conditions for setting aside an arbitral award are mentioned in sub-sections (2) and (2A). Sub-section (2) provides for situations such as the agreed party was under some incapacity or the arbitration agreement is not valid under the law or the aggrieved party did not receive proper notice regarding appointment of arbitrator or of the arbitral proceedings which prevented it from presenting its case or the arbitral award deals with a dispute not contemplated by or not falling within the terms of arbitration or the composition of the arbitral tribunal or the procedure adopted in arbitration were not in accordance with the agreement of the parties or the subject matter of dispute is not capable of settlement by arbitration or the arbitral award is in conflict within the public policy of India. In terms of sub-section (2A), an arbitral award may also be set aside on the ground of patent illegality appearing on the face of the award. Sub-section (3) provides for the time limit for filing of an application for setting aside arbitral award. Therefore, the grounds on which an arbitral award can

be set aside are clearly mentioned in Sections 34(2) and 34(2A) of the 1996 Act. An arbitral award cannot be set aside on a ground which is beyond the grounds mentioned in sub-sections (2) and (2A) of Section 34.

23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section

34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.

24. Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act.

25. Keeping the above in view, let us now deal with the order of the learned Single Judge dated 02.01.2019 passed under Section 34 of the 1996 Act.

26. In the aforesaid order, learned Single Judge noted that the contract work was required to be executed within a

period of 10 months. Appellant could not complete the work within the contract period due to land slides and rains. Ultimately, appellant could complete the work on 30.11.2007 by seeking extension of time which was granted by the respondent. There is no complaint about the construction. Learned Single Judge also noted that there were rains and land slides during the contract period which is not in dispute. Thereafter, learned Single Judge observed as under:

> If the building had been erected and there were landslides, it would affect the building constructed and there would not only have been loss of money, but also loss of lives and that the 1st respondent should thank the stars that no untoward event took place.

27. Learned Single Judge also observed that clause 26 of the contract agreement could not be read in isolation without reference to clause 27. The fact that appellant was allowed to carry on the contract work and to subsequently complete the same cannot be denied. Once there is extension of time, there cannot be a narrow interpretation to clause 26. Purpose of extension of time was only for completion of work. Extension of

time and levy of liquidated damages cannot go hand in hand. Contention of the respondent would have been acceptable had there been no extension in time or the work remained incomplete even after the extended period. In such an event, respondent would have been justified to levy and recover liquidated damages. Once the appellant had completed the work during the extended period of time, claim of liquidated damages by the respondent could not be accepted. Therefore, the arbitral award dated 10.05.2010 was set aside.

28. We are afraid learned Single Judge had clearly gone beyond the grounds provided in Section 34 of the 1996 Act to set aside the arbitral award. Learned Single Judge exceeded the jurisdiction under Section 34 of the 1996 Act. There was no justification for setting aside the arbitral award by taking a different view. View taken by the arbitral tribunal is certainly a possible and plausible view. A different interpretation of clause 26 other than the one taken by the arbitral tribunal is possible but that will not bring the challenge to the arbitral award within the four corners of Section 34. In any view of the matter, mere

setting aside of the arbitral award did not confer any benefit to the appellant. In the circumstances, the Division Bench was justified in reversing the order of the learned Single Judge under Section 37 of the 1996 Act.

29. That being the position, we do not find any merit in this appeal. Consequently, the appeal is dismissed. However, there shall be no order as to cost.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
APRIL 28, 2025.