2026:AHC-LKO:48372-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

Arbitration Appeal No. - 35 of 2025

U.P. Public Works Deptt. through Chief Engineer Central Zone Lko.

.....Appellant(s)

Versus

M/s Vriddhi Infratech India Pvt. Ltd., through Signatory Sandeep Anne

.....Respondent(s)

Counsel for Appellant(s)	:	Pritish Kumar (AAG), Tushar Verma (ACSC)
Counsel for Respondent(s)	:	Manish Singh

AFR
Reserved on : 21.04.2026
Delivered on : 21.07.2026

Chief Justice Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.

(Per: Jaspreet Singh, J.)

1. The Uttar Pradesh Public Works Department (in short 'the appellant/department') has instituted the instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') against the judgment and order dated 18.07.2025 passed by the Commercial Court, Court No. I, Lucknow in Arbitration Case No. 25 of 2024 whereby the petition preferred by the appellant/department under Section 34 of the Act of 1996 was dismissed, as a consequence, the award passed by the Sole Arbitrator dated 27.01.2024, has been affirmed.

bid submitted by the respondent-contractor was accepted by the department and the parties then entered in a contract on 27.04.2016 for a total contract price of Rs. 155,89,46,798.65/-.

3. As per the contract, the date of commencement of work was 27.04.2016 and it was intended to be completed by 26.04.2018. However, the contractor sought time extension, which was granted and the contractor completed the work within the extended period and the department issued a completion certificate to the respondent on 10.04.2019.

4. The work under the aforesaid contract started in the year 2016 which was under the old tax regime, which comprised of Value Added Tax, State Excise etc. Significantly, from the 01st of July, 2017, a new tax regime was introduced known as the Goods and Service Tax, 2017 (in short 'GST') which repealed the Value Added Tax.

5. This change in the tax regime impacted the price of different items which were scheduled in the contract in question. At the time of entering in the contract, the respondent-contractor quoted the price of items, inclusive of all taxes applicable under the old tax regime.

6. However, with the advent of the new GST regime, constructions work (such as the contract in question) attracted 12% GST and was payable to the Contractor and the same was required to be deposited by the contractor, directly with the GST Department.

7. The dispute arose post 01.07.2017 when the respondent-contractor demanded GST on the running account bills for the scheduled items as mentioned in the bills of quantities (BOQ) relating to the work done after 30.06.2017 based on calculation as per the Standard Operating Procedure (in short 'the SOP') issued by the Ministry of Road Transport and

Notification/Government Orders issued by the State-Government dated 09.11.2017 and 10.12.2019.

9. The respondent invoked Clause 24 of the conditions of contract relating to disputes resolution and at the first instance sought adjudication by the Dispute Review Expert (hereinafter referred to as 'DRE').

10. Sri N.K. Kanodia who was the DRE submitted his finding on 21.12.2020 and held that the Government Orders dated 09.11.2017 and 12.10.2019 confirmed the procedure to be adopted and followed by the appellant-department relating to GST impact and its calculation in context of construction agreement. It also gave a finding that the respondent-contractor was entitled to payment of GST on the claim of price adjustment made by the contractor. Since the contractor was not satisfied with the conclusions of the DRE relating to the mode of calculation as per the Government Order dated 10.12.2019, hence, it invoked the arbitration clause to escalate the matter.

11. The contractor then filed a petition under Section 11(6) of the Act of 1996 bearing C.M. Arbitration Application No. 7 of 2022 which was allowed by this Court on 31.03.2022 and it appointed a Sole Arbitrator.

12. The claimant-respondent filed its statement of claim before the Sole Arbitrator on 11.07.2022 wherein it claimed a sum of Rs. 3,36,25,034/- towards the GST on the work done plus 15% penalty and 18% per annum interest from the March, 2019 till July, 2023 amounting to Rs. 8,26,61,388/-. It also claimed GST on the price adjustment relating to the work executed amounting to Rs. 94,77,038/-plus 15% penalty and 18% interest per annum from March, 2019 till July, 2023 amounting to Rs. 2,32,97,675/-. It also claimed a sum of Rs. 66,500/- which was payable by the appellant-department as their share of remuneration to the

hence, the department was bound by the Government Orders issued by the State Government dated 09.11.2017 and 10.12.2019 relating to the imposition of GST on running contracts i.e. to say which had commenced prior to the enforcement of GST and were being completed after the cut-off date i.e. 01.07.2017.

14. It was also pleaded that under the GST regime, the Contractor is to furnish the monthly returns with the GST Department and the contractor was called upon to furnish detailed statement relating to the deductions made under the GST but the statement was not provided by the claimant-respondent.

15. The department also stated that even the DRE had held that the Government Orders dated 09.11.2017 and 10.12.2019 were applicable and applying the procedure contained in the said Government Orders for calculating the GST, it revealed that the appellant had paid some amount in excess, hence, a sum of Rs. 75,90,431/- was recoverable from the respondents.

16. The department though relied on the findings of the DRE but it did not agree to the payment of GST on the price adjustments. It also stated that since the claimant-respondent has filed the claims on incorrect calculations and premise and it did not discharge its obligations of depositing the GST with the GST Department, hence, the appellant cannot be made liable for any tax, penalty or interest which was the liability of the respondent, arising on account of the failure of the respondent to comply with its tax obligations.

17. On the basis of the pleadings exchanged between the parties, the Sole Arbitrator framed 11 issues which are being reproduced hereafter for ease of reference:-

to the instant case for the purpose of calculation of G.S.T. amount?

3. Whether MoRTH circular dated 19.11.2018 is not applicable in the instant case, because, the project in question was of U.P. Government and was also funded by it?

4. Whether the U.P. Govt. G.O. No. 1956/23.10.2019-12 (Samanya)/2017TC-2, dated 10.12.2019 has not been complied with by respondent in calculating and paying G.S.T. Amount?

5. Whether there has been inordinate delay in registration of respondent under the provisions of U.P.G.S.T. Act 2017? If so, its effect?

6. Whether there was no need of fresh registration under the provisions of U.P.G.S.T. Act, 2017, because, the respondent was registered earlier on 19.10.2006 under the Commercial Tax Department?

7. Whether the respondent is liable to pay G.S.T. to claimant on price escalation/ adjustment?

8. Whether the claimant is entitled to receive G.S.T. amount from respondent as claimed in the claim petition?

9. Whether the claimant is entitled to get reimbursement of interest and penalty on alleged G.S.T. amount, due to alleged non-payment of G.S.T. amount by respondent in time?

10. Whether the claimant is entitled to get reimbursement of respondent's share of fee paid to Disputes Review Expert?

11. To what relief, if any, is the claimant entitled?"

18. The Sole Arbitrator after allowing the parties to lead evidence and granting detailed hearing made his award dated 27.01.2024.

18.1. In the award, the Sole Arbitrator while dealing with issue no. 1, held that the contract in between the parties was an item rate contract.

18.2. While considering issue nos. 2 and 3 which were taken up together, the Sole Arbitrator held that since the contract contained a specific stipulation that all work would be carried out as per the MoRTH specifications and all chapters of Ministry of Road Transport and Highways and specifications for road and bridge was made part of the agreement and even the State Government by its notification had made calculation of the GST would apply and not the Government Orders issued by the State Government dated 09.11.2017 and 10.12.2019.

18.3. In respect of issue no. 4, the Sole Arbitrator held that the claimant did not dispute the mode of calculation on GST but stated that those calculations were as per the Government Orders of the State dated 09.11.2017 and 10.12.2019 and while dealing with issue nos. 2 and 3, it was already held that the same were not applicable, hence, issue no. 4 came to be decided accordingly.

18.4. Issues nos. 5 and 6 were taken up together by the Sole Arbitrator and it was held that post the GST regime, there was no need for fresh registration under the GST Act for the appellant-department.

18.5. Considering issue no. 7, the Sole Arbitrator held that the appellant had paid the price adjustment to the respondent as it was part of the work done and there could be no justification for not paying the GST towards the said price escalation. It further held that this had also been noticed by the DRE while giving his findings but the amount was not paid by the appellant. Hence, the respondent was held entitled to the GST on the price escalation/adjustment.

18.6. Considering issue no. 8, the Sole Arbitrator found the respondent to be entitled to receive **(a)** a sum of Rs. 3,36.25.034/- as GST on the value of work done **(b)** Rs. 94,77,038/- on the price adjustments **(c)** Rs. 75,90,431/- which was unlawfully deducted by the appellant from the final bill payable to the respondent.

18.7. While considering issue no. 9, the Sole Arbitrator held that since the GST amount was not paid by the appellant, hence, the respondent was entitled to 15% penalty and 18% interest from March, 2019 till July, 2023 by reference to Sections 50 and 74 of the U.P. GST Act, 2017. It

18.8. Issue no. 10 was decided in favour of the respondent and it was held that the appellant was required to pay its share of the fee payable to the DRE, which was paid by the respondent, hence, a sum of Rs. 66,500/- was allowed on the aforesaid count.

18.9. With the aforesaid findings, the claim petition was allowed vide award dated 27.01.2024, awarding a total sum of Rs. 11,35,80,273/- with penalty @ 15% and interest @ 18% per annum was also granted. The award provided that the aforesaid payments, except the sum of Rs. 66,500/- (which related to the payment of appellant's share to the DRE), would be subject to the final assessment made by the GST Department. However, as far as the amount of Rs. 66,500/- is concerned, the same would carry interest at the rate of 9% per annum from the date of the award till the date of its actual payment. It further provided that after the final assessment by the GST Department, if any amount payable towards GST or interest or penalty, remains unpaid or is not required to be paid to the GST Department then after adjustment of the amount already deposited by the claimant, the same shall be refunded by the respondent to the appellant within a period of two weeks from the date of final assessment by the GST Department and the information in this regard would be given by the claimant-respondent to the appellant. In case if the contractor failed to refund the said amount then the appellant would be entitled to recover the same from the respondent in accordance with law.

19. The appellant being aggrieved from the said award dated 27.01.2024, filed a petition for setting aside of the award under Section 34 of the Act of 1996 before the Commercial Court-I, Lucknow which was registered as Arbitration Case No. 25 of 2024. The Commercial Court-I, Lucknow after hearing the parties dismissed the petition under Section 34 of the Act of 1996 vide its judgment dated 18.07.2025 holding

20. In the aforesaid backdrop, the award dated 27.01.2024 and the judgment of the Commercial Court-I, Lucknow dated 18.07.2025 were challenged before this Court, in this appeal under Section 37 of the Act of 1996.

SUBMISSIONS ON BEHALF OF THE APPELLANT:-

21. Sri Pritish Kumar, learned Senior Counsel and Additional Advocate General for the State of U.P. along with Sri Tushar Verma, learned Additional Chief Standing Counsel for the appellant has structured his submissions in three parts.

22. **A.** The dispute relating to GST was not arbitrable between the parties:-

22.1 Elaborating the aforesaid submission, it was urged that a dispute relating to taxation is not contractual, hence, it would not fall within the purview of disputes covered by the arbitration clause in the agreement.

It was submitted that within the contractual framework, if it was to be determined as to who was liable to pay the tax then such a dispute could fall within the contractual dispute and could have been referred for arbitration. However, the dispute in the instant case relates to the quantum and the manner in which the tax is to be calculated. This type of a dispute is within the exclusive domain of the Taxing Authority. Hence, the contracting parties nor the Sole Arbitrator could not have settled such a dispute or determine the quantum of tax payable.

22.2. It was further urged that the GST Act of 2017 is a complete code in itself. It is the Taxing Authority who determines the quantum of tax and finalizes the assessment. Any finding given by the Sole Arbitrator relating to the quantum of tax is not binding on the Taxing Authority.

failed to delve into this aspect of the matter and as such the award and the judgment of the Commercial Court is liable to be set aside.

23. **(B)** The learned Senior Counsel for the appellant next submitted that the circular and the guidelines including the SOP issued by the MoRTH relating to the issue of taxation was not binding on the appellant-department.

23.1. It was urged that the contract between the parties clearly provided that the MoRTH guidelines were applicable only for the purposes of technical specifications. Borrowing technical specifications for the project in question would not mean that any guidelines issued by MoRTH would be applicable even if it related to any tax matter. The contract was floated and funded by the State of U.P. and the appellant being a State instrumentality was bound by the Government Orders addressed to the appellant relating to imposition and calculation of tax.

23.2. Taking his submissions forward, the learned Senior Counsel further urged that even if at all the SOP issued by the MoRTH was applicable then at best it could only be for EPC contract and in the instant case, admittedly the contract between the parties was an item rate contract. The SOP of the MoRTH was not a document which could be mandatorily applied in the contract such as the present one. It was merely a directory document and could not be legally and compulsorily enforced against the appellant especially in respect of the contentious issues of tax.

23.3. Furthermore, there is no dispute between the parties regarding the technical specifications. There is no dispute relating to the measurement of the work done and other ancillary and related issues as provided in the contract. It is for these sort of issues that the technical specifications of MoRTH were borrowed in the instant contract and thus the reasoning of the Commercial Court which renders the impugned judgment and award susceptible to judicial scrutiny.

24. **(C).** The learned Senior Counsel next submitted that the Arbitral Tribunal while passing the award relating to a tax dispute has given his findings and made the tax payable by the appellant subject to the final assessment made by the GST Authority which makes the award inconclusive and it does not vest finality with the award.

24.1. In this regard, it was submitted that it is one thing to determine as to which of the contracting party is liable to pay tax relating to transactions covered by the contract. However, it is a completely different thing to determine and calculate the tax and determine which one of the contracting party would pay the tax to the other contracting party and the outcome thereof would be subject to final determination to be made by the Taxing Authorities.

24.2. It was urged that the Sole Arbitrator has not only quantified the tax liability but it has also held the amount to be payable along with interest and penalty irrespective of the fact whether such liability of penalty and interest had actually been demanded by the Taxing Authorities from the respondent i.e. the assessee who is liable to pay such tax.

24.3. Thus, for all the aforesaid reasons, it was urged that the award and the judgment passed by the Arbitral Tribunal and the Commercial Court respectively being patently erroneous deserve to be set aside and the appeal be allowed.

25. In support of his aforesaid submissions, the learned Senior Counsel for the appellant has relied upon the decision of the Apex Court in **Vidya Droliya v. Durga Trading Corporation : (2021) 2 SCC 1** for indicating

delegate its duty to adjudicate to any third party, as in the instant case, the Sole Arbitrator has made its award subject to final assessment made by the GST Authority.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:-

27. Sri Manish Singh, learned counsel appearing for the respondent submitted that the appellant had never disputed, at any stage, that the dispute between the parties was not arbitrable. The appellant did not raise the objection relating to non- arbitrability of the dispute before the High Court in proceedings under Section 11(6) of the Act of 1996. The aforesaid objection was also not raised before the Sole Arbitrator under Section 16 of the Act of 1996. Even before the Commercial Court, the appellant did not raise the ground of non- arbitrability of disputes and it is for the first time this issue has been raised before this Court in an appeal under Section 37 of the Act of 1996.

28. It was further submitted that actually there is no dispute between the parties as to who has to pay the tax. The dispute arose only on account of the fact that at the time the contract was entered between the parties prior to 31st July, 2017, the parties were governed by VAT. In the instant contract, all the items which were quoted by the respondent were all inclusive of 4% of VAT charges. The appellant under the VAT regime deducted 4% VAT from the running bills and deposited the same with the Commercial Tax Department. It is after the implementation of the GST regime that the GST charge on the work done, fell in 12% category and with the changed tax regime, the appellant paid the running bills without deducting VAT, however, it was required to pay the shortfall (12% GST - 4% VAT=8% (approx) GST). In this context, the appellant was required to pay 8% (approx) difference for the work done post 01.07.2017.

which the GST was to be calculated, in respect of contracts which had been entered between the parties under the VAT regime and continued and finished post 01.07.2017, under the GST regime.

30. It is in this context that the MoRTH had issued a SOP dated 19.11.2018 which explained the manner in which the tax was to be paid by factoring the change in the tax rates as well as the impact of the GST on such contracts.

31. It was further submitted that the two Government Orders relied upon by the appellant dated 09.11.2017 and 10.12.2019 both indicate that for contracts above Rs. 5 crores, the MoRTH document should be adhered. Once the parties had clearly agreed to incorporate the MoRTH specifications and guidelines then the issue of taxation as explained by the MoRTH in its SOP dated 19.11.2018 also became applicable. It is in this context that the Sole Arbitrator noticed the MoRTH specifications and SOP and applied the same to the dispute as to how the tax was to be determined while making payments in respect of contracts which were entered under the VAT regime and were continued and finished under the GST regime.

32. In the aforesaid backdrop, the learned counsel for the respondent submitted that the award made by the Arbitral Tribunal was bifurcated into three parts:-

32.1. The first part relate to the actual work done. The value of the work done was taken as the base for ascertaining the GST liability amounting to Rs. 3,36,25,034/-. It was submitted that ample evidence was before the Arbitral Tribunal indicating that the appellant in similar circumstances relating to another contractor, had paid the difference of the GST (12%-4% i.e. 8% (approx) additionally).

Another separate report from a third party Chartered Accounting and Auditing Firm was also placed on record. This expert evidence, indicating the impact of GST on the current project and the liability of GST, was not controverted by the appellant nor any expert evidence was led by the appellant to indicate that the evidence of the respondent was either unreliable or suffered from any error.

32.3. In such a situation, it was not open for the appellant to challenge the award, especially when the award had been passed after taking into account the material evidence available on record. The said award has been affirmed by the Commercial Court and needless to say that the scope of an appeal under Section 37 is narrow and it will not encourage this Appellate Court to enter into the realm of re-appraisal of evidence.

33. The second part of the award related to the unpaid GST on the price adjustment/escalation. It was submitted on behalf of the respondent that the contract in question was completed successfully after receiving time extension. Many items which were not taxable under VAT regime were made subject matter of tax under the GST regime attracting 12% tax. There was no dispute relating to the extra work done and the price escalation/adjustment. Once, this issue in itself was not disputed, in such circumstances, the GST attracted on the escalated/price adjustment as per the GST regime was liable to be paid by the appellant/department. This aspect of the matter was also ruled in favour of the respondent by the DRE while giving its findings.

33.1. Once, it was found that the respondent was entitled to the escalated/price adjustment then as a fortiorari, the respondent was entitled to the GST which was to be paid by the appellant on the aforesaid enhanced/price adjustment. Thus, the second part of the award

GST, on the premise that an excess amount had been paid to the respondent.

34.1. The appellant applying its own formula initially recovered a sum of Rs. 75,90,431/- on the premise that excess amount had been paid by the Department to the respondent. This deduction was found to be illegal and therefore the same was directed to be refunded.

35. It was also urged that three components, as mentioned above, constitute the major part of the awarded amount. Since the said amount had been illegally recovered and the Department did not pay the GST on the work done as well as on the price escalation/price adjustment, hence, considering Section 50 of the GST Act, 2017, the Sole Arbitrator directed the appellant to pay the interest and penalty, which the respondent would have paid to the GST Department. A minuscule portion of the awarded sum relates to the appellant's share of fee, which they were obligated to pay to the DRE, but was not paid, hence, that amount has been awarded in favour of the respondent.

36. It is thus urged that there is no patent illegality nor the findings returned by the Sole Arbitrator suffer from any violation of law or being against the public policy or law of the Country. The view taken by the Sole Arbitrator is based on the material evidence on record which cannot be said to be erroneous.

37. The learned counsel for the respondent in support of his submissions has relied upon following decisions which have been primarily relied upon for the purposes of emphasizing the scope of an appeal under Section 37 of the Act of 1996.

(i) **AC Choksi Share Broker (P) Ltd. v. Jatin Pratap Desai : (2025) 5 SCC 321.**

38. The Court had heard the learned counsel for the parties at length and also perused the material on record.

39. The first issue that requires consideration is whether a dispute relating to taxation can be made the subject matter of arbitration.

40. In this regard, a court while formally considering as to whether a dispute is arbitrable or non-arbitrable must follow the following postulates which have been culled out from judicial pronouncements of the Apex Court and has gained universal acceptance.

(i) Whether the action giving rise to the disputes lies in the realm of acts in rem. Any act which leads to a dispute which requires adjudication and the effect of such judgment or adjudication is that it determines a status of the party or things, which is distinct from a particular interest in it of a party to a litigation and such adjudication/judgment is conclusive evidence for and against all persons whether parties or strangers to the matter actually decided, such judgments operate in rem and such kind of disputes are generally not arbitrable. [**see Vidya Darolia (supra)**];

(ii) Legal action against sovereign function of the State is also non arbitrable as it is the State which has the exclusive domain, right and duty to perform such functions. Any decision and adjudication of and by the State which has a public interest element involved including such rights relating to legitimacy of marriage, citizenship, winding up of the companies, are considered to be non arbitrable. The only exception is where a statute in relation to a regulatory or adjudicatory mechanism either expressly or by clear contradistinction to cases where mutual adjudication would not be proper and enforceable, are also non-arbitrable;

(iv) Where the subject matter of the dispute is expressly or by implication made non arbitrable as per statute.

41. Now to answer specifically, the issue, whether a dispute relating to taxation is arbitrable or not, can be considered under two distinct heads:-

(A) Disputes relating to tax which can be resolved within the contract can be resolved through arbitration and

(B) Disputes which requires statutory determination through tax laws and such disputes cannot be resolved through arbitration.

41.1 **Head-A:** Such disputes are covered under Head A, which arise from an agreement over which the Arbitrator has the jurisdiction to interpret the terms of the contract to settle private obligations such as:

(i) Any such matter arising out of the contract which requires, deciding inter se tax liability that is to say which party is contractually liable and obligated to pay or deposit the tax;

(ii) Any such disputes which require adjudication within the contract relating to which party is obligated to receive reimbursement of tax paid;

(iii) Contractual issues relating to tax sharing or indemnity clause or determination of the fact as to which party to the contract is obligated to indemnify the other in respect of statutory taxes and penalties;

(iv) Any interpretation of any clause contained in the contract regime or if such tax may impact and constitute an ‘extra cost’, under the contract.

41.2. **Head B:-** All such matters would fall under Head B, which relates to tax and which cannot bind a third party, are generally not arbitrable such as:

(i) In matters relating to tax between the contracting parties, if any such issue or adjudication is made by an Arbitrator which may have the impact of encroaching upon the exclusive domain of a taxing authority then it cannot be decided by an Arbitrator;

(ii) Similarly, any issue arising between the contracting parties relating to the determination as to whether any particular transaction is legally taxable or has the impact of challenging a statutory tax arrangement issued by a taxing authority, cannot be made the subject matter of arbitration;

(iii) Issue which may involve determination of any classification or entry as specified by a taxing statute, which may be applicable in between the contracting parties;

(iv) Issue relating to determination of rate of taxation, which may be in dispute between the contracting parties including as to whether any of the contracting parties is eligible for any statutory exemption from tax or any tax concession;

(v) Disputes between any contracting party and the State Authority relating to tax also cannot be decided by the Arbitrator.

41.3. In other words, what is required to be truly seen is not what the parties agreed but what the law mandates. A question of statutory interpretation and fiscal categorization which may lie in the exclusive these are all issues which are in the hands of the taxing authorities and not the Arbitrator.

41.4. The Arbitrator is a creature of contract and its jurisdiction to decide the dispute may be co-extensive with the contract but if it requires any determination relating to tax rates or classification of goods under any particular entry of the taxing statute or the quantum of any tax liability or the adjudication requires referencing to any Executive Tax Notification and Statutory Tax Rates Schedules, then such disputes even though arising out of a contract ceases to be contractual in nature and it metamorphosis into a fiscal regulatory issue. Such issues are governed by the taxing statute which are a complete code in themselves and cannot be subjected to determination by a private forum such as an Arbitral Tribunal.

42. Now, the facts of the instant case would reveal that admittedly, there is no dispute between the parties as to whether the tax (GST in the instant case) is payable or not. Rather the dispute is confined only to the extent as to whether the payable tax is to be calculated as per the MoRTH guidelines and SOP dated 19.11.2018 or as per the Government Orders issued by the State of U.P. dated 09.11.2017 and 10.12.2019.

43. It is also not disputed that as per the contract which was entered between the parties in April 2016, the contractor had quoted the rates of the items to be supplied inclusive of 4% VAT (the then applicable tax). It is also not disputed that VAT regime of taxation was repealed and a new tax regime came into effect from 01.07.2017 (GST regime).

44. It is also not disputed that as per the new tax regime, the GST would be paid by the appellant department on the goods supplied to it by the respondent. It is also not disputed that post 01.07.2017 the

per the SOP of MoRTH dated 19.11.2018 or as per Govt. Orders issued by the State of U.P. dated 09.11.2017 and 10.12.019.

46. This dispute was first taken up by the DRE in terms of the dispute resolution mechanism envisaged in the contract itself and the DRE gave his finding that the department was liable to pay the GST to the respondent on the price adjustment/price escalation. It also gave a finding that in order to determine the quantum of GST, the Government Order issued by the State would be binding on the department.

47. It is from this point onward that the respondent escalated the matter before the Arbitral Tribunal urging that they were entitled to the GST, which is to be calculated in terms of the SOP of the MoRTH and not the Government Order issued by the State. Hence, it can be clearly deciphered that the dispute related as to the applicability of Government Orders issued by the State of U.P. or the SOP of the MoRTH dated 19.11.2018 for the purposes of GST calculation in the post GST era. It did not involves adjudication of any transaction, under the contact, attracting GST or not. It also did not involve challenge to any statutory tax arrangement nor did it involve determination of any classification or entry or rate of taxation specified by a taxing statute and certainly it did not involve any dispute between the contracting party and the State as a sovereign.

48. Thus, in light of the aforesaid factual background and applying the axiomatic principles as noticed hereinbefore, it would be seen that the issue raised in the instant proceedings are not which falls under the aforesaid considered **Head-B** rather it falls within the **Head-A** and thus it cannot be said that the dispute raised by the respondent was not arbitrable.

arbitral proceedings, no such objection was raised nor any such pleadings were delivered by the department raising any such plea. Hence, even the Arbitral Tribunal though framed 11 issues yet none related to jurisdictional and non-arbitribility of the dispute in context with **Head-B** mentioned hereinabove rather the tenor of the objections were to be effect that the Arbitrator had incorrectly relied upon the SOP of the MoRTH dated 19.11.2018 and erred in ignoring the State Government Notifications dated 09.11.2017 and 10.12.2019 and it is only for the first time during the course of submission before this Court that the appellant had taken the plea of jurisdictional non-arbitrability of disputes.

50. This Court has already held that the actual dispute between the parties falls under the **Head-A** as explained above and not under the **Head-B**, hence for all the aforesaid reasons, the first contention raised by the appellant regarding jurisdictional non-arbitrability of disputes does not find favour with this Court and hence it is turned down.

51. The next submission advanced on behalf of the appellant was that the SOP dated 19.11.2018 issued by the MoRTH was not applicable and it was the Govt. Orders dated 09.11.2017 and 10.12.2019 which were applicable and the Sole Arbitrator by holding that the SOP dated 19.11.2018 was applicable has erred and it has rendered the award patently illegal and liable to be set aside.

52. In order to examine the strength of the aforesaid submission, it will be appropriate to consider the nature of the contract, its relevant clauses and the reasoning given by the Arbitrator.

53. The contract in question, dated 07.04.2016, related to widening and strengthening of Bilraya and Panwari Road SH 21 from CH 75 to CH98 and Nepalapur Bijwar Road from CH 0 to CH 3 in Sitapur District

MoRTH specification i.e. all chapters of Ministry of Road Transport & Highway and Specification for Road & Bridge Works (V revision published by IRC New Delhi 2013) and it is part of the agreement.

In the contract, under the Head of Technical Specification, it states as under:

> “**TECHNICAL SPECIFICATION**”
>
> “Work will be executed as per MoRTH Specification Vth edition-2013/PWD detailed Specifications/IRC codes/latest circulars/ Govt. Orders issued from time to time and also as per directions Engineer-in-Charge.”

55. The contract also contained stipulation of price adjustment in Clause 47. Clause 25.3 related to arbitration. It will also be relevant to take note of the Govt. Order dated 24.07.2017 issued by the Special Secretary, Govt. of Uttar Pradesh and addressed to Chief Engineer (Development and all departmental heads of the PWD stating that all contracts of the PWD over five crore would follow the standard bidding documents procurement of civil works as published by the Ministry of Road Transport and Highways.

56. The contract further envisaged that the expenditure on the said project was to be met from the budget of the Govt. of Uttar Pradesh. In the bill of quantities (BOQ) in clause 8, it was mentioned that the method of measurement of completed work for payment shall be in accordance with Specification for Road and Bridge Work published by the Ministry of Surface Transport. Moreover, the contract also mentioned matters about the general methodology for construction of major items. Under the said heading, road work which required earth work, GSB, WNN, Cemented Sub Base, Prime Quote, TACK Quote, EC, (open graded), Seal Quote, DDM, BC, PCC, RCC, reinforcement of Steel of works and was to be done as per directions of the Engineer.

"45. Tax

45/1 the rates quoted by the contractor shall be deemed to be inclusive of the sales and other taxes that the contractor will have to pay for the performance of this contract. The employer will perform such duty in regard to the deduction of such taxes at source as per applicable law."

59. The Arbitral Award dated 27.01.2024 would reveal that the Sole Arbitrator had framed 11 issues but the bone of contention between the parties was encapsulated in issue nos.2, 3 and 4. Issue no.2 was whether the circular of MoRTH dated 19.11.2018 is applicable for the purposes of GST calculation. Issue no.3 was, whether MoRTH circular dated 09.11.2018 is not applicable because the project in question was funded by the U.P. Govt.. Issue No. 4 related to the fact whether the U.P. Government Order dated 10.12.2019 had not been complied with by the respondent while calculating and paying GST. As a corollary to the aforesaid three issues, the issue nos. 8 and 9 also gains significance. Issue no. 8 related to whether the claimant was entitled to receive GST amount from the appellant as claimed in the Claim Petition. Issue no.9 related to whether the claimant is entitled to receive reimbursement of interest and penalty on alleged GST amount, due to alleged non-payment of GST amount in time.

60. Before proceeding further, it will be appropriate to consider the two Government Orders dated 19.11.2017 and 10.12.2019 issued by the State-Government vis-à-vis with the SOP guidelines dated 19.11.2018 issued by MoRTH.

61. There are two Government Orders of the same date i.e. 09.11.2017 which have been brought on record at a running page 216 of the Supplementary Affidavit filed by the appellant dated 27.10.2025. The first Government Order bearing No. 1535/23.10.2017-12 (General)/2017 is a direction for the Public Works Department relating to chargibility of

relating to GST and its imposition and implementation including issued by the GST Council from time to time, would be compulsorily followed.

62. The other Government Order of the same date bearing No. 1614/23.10.2017-12 (General)/2017 related to the manner in which the GST was to be calculated. A complete formula was provided in terms whereof the Departments were required to make provisions for the GST as mentioned in the said Government order.

63. On the other hand, the SOP dated 19.11.2018, issued by MoRTH refers to implementation of CGST/Standard Operating Procedure. The said SOP in Clause 5 mentioned, the incidence of application of service tax/GST. It further refers to payments for EPC contracts which is mentioned in Clause 6 (i) to (v). The said SOP also gives an illustration regarding the manner in which the GST is to be worked out relating to EPC contracts.

64. For the ease of reference, Clause 5 and 6 of the MoRTH SOP dated 19.11.2018 is being reproduced hereinafter:-

"5. Incidence of application of Service Tax/GST

incidence of the applicability of taxes shall be as follows:-

Sr. No.	Completion of Service	Invoice Date	Payment Date	Applicability of Taxes			Applicable TDS
				Service Tax	Works Contract Tax (WCT)	GST	
1	Before June 30, 2017	Before June 30, 2017	Before June 30, 2017	Yes	Yes	No	WCT TDS
2	Before June 30, 2017	Before June 30, 2017	After June 30, 2017	Yes	Yes	No	WCT TDS
3	Before June 30, 2017	After June 30, 2017	After June 30, 2017	No	No	Yes	GST TDS
4	After June 30, 2017	After June 30, 2017	After June 30, 2017	No	No	Yes	GST TDS

6. Payments for EPC Contracts

(ii) Works completed up to 30.06.2017 and Billing not completed by 30.06.2017.

(iii) Works yet to be completed as on 01.07.2017.

6.2. GST Act, 2017 shall be applicable for all the works mentioned above at (ii) & (iii) Following procedure may be adopted by the Ministry/ ROs/ PIUs/ various Executing Agencies while making payments as per the provisions in the contracts:

(I) The project components under different major heads (like Earth, Sand, Aggregates. Steel, Cement, Bitumen etc.) are to be intimated by the contractor and checked/confirmed by the respective IE/ AE in consultation with the concerned RO/PD for each of the Project.

(ii) In order to compile the above information, an indicative Excel format is suggested for guidance and attached (at Annexure-I). It indicates various project components which attract various types of taxes including Excise Duty, CST, VAT/WCT and other taxes, which were already included in the contract price as per the original contract. The same format can be used to compile the information for each ongoing project, taking into consideration the GST Input Tax Credit available for the project. The project components and rates shown are only indicative and should be modified as per the project actuals and shall be certified by the statutory auditors of the Contractor/Developer/Company. In case, appointment of Statutory Auditor is not mandatory, then it can be certified by a Practicing Chartered Accountant.

(iii) After completion of the said exercise, the costs against the subsumed taxes (Excise duty, CST, VAT/ WCT etc.) in the particular contract are to be finalized and to be mutually agreed by IE/AE/ Ministry/concerned Executive Agency/ Contractor. The cost of subsumed taxes factored in the contract value is required to be reduced from the original contract price to arrive at the actual balance cost of the project.

(iv) Based on such certification and mutual agreement, the concerned RO/ PD shall either pay or recover the net impact of the GST after accounting for subsumed tax component and input tax (GST) credit. The contractor shall be responsible for correct declaration of GST liability and shall provide the supporting documents, if required.

(v) This will be an interim arrangement till the completion of the project and the final impact of GST (positive or negative) shall be worked out at the time of Final bill."

65. At this stage, it will also be extremely important to consider the significance of the two documents i.e. **(a)** the SOP/Guidelines issued by MoRTH and **(b)** the two Government Orders issued by the State of U.P.

quantity, quality, quality tests, details regarding recording of work done, measurement of the work done and other like related matters. Such guidelines or standards set by MoRTH cannot dictate statutory laws Central or State, even GST rates or compliances or local Tax Laws.

(ii) Taxes are governed by statutory laws and contractual clauses cannot override these laws. Moreover, the technical measures borrowed for the purposes of engineering standards cannot impose or create tax jurisdictions or obligations.

(iii) Contractual implementation and its administration generally treats the Technical, Financial and Commercial Requirements separately and borrowing one does not implicitly subsume the other, unless specifically provided for. Furthermore, financial aspect is different from the issues of taxation which is a specialized jurisdiction and unless there is a clear import made in respect thereto, it cannot be assumed.

(iv) It must be kept in mind that the Government Orders are issued by the State Government and can be of various types, depending upon its source. If a Government Order has its source from a Statute or a Legislation then it is treated as a subordinate and delegated legislation. However, certain Government Orders, which are issued for easing out its day to day work, then they are executive instructions which nevertheless is binding on the Government Department, though, may not have statutory enforceability against the citizen.

(v) It is in this context that the Government Orders dated 09.11.2017 and 10.12.2019 issued by the State Government were appended to the SOP reflects as to how the introduction of GST would impact EPC contracts which were entered prior to the appointed date i.e. 01.07.2017 but went on and were concluded in the GST regime.

(viii) In this backdrop, it is reiterated that in absence of any clear material or stipulation on record, it cannot be said that merely by borrowing technical specifications from the MoRTH, the taxing guidelines would also be applicable and would be binding on the contracting parties.

66. Now, the stage is set to examine the records and ascertain as to whether by merely borrowing the MoRTH technical specifications in the contract, the SOP issued by the MoRTH dated 19.11.2018 would also become binding on the appellant-department so as to subsume all rights within relating to tax matters including the GST and whether the Govt. Order would have an overriding impact over the MoRTH SOP, will also have to be seen in context with the discussions which shall take place hereinafter.

67. The instant contract relates to widening of road and road building. The contract states that technical specifications of MoRTH have been borrowed. The contract placed before this Court does not specify that any tax regime or provision relating to taxation mentioned in the MoRTH guidelines would also be applicable to the instant contract.

68**.** There is no material evidence on record which could establish that what were those specifications which were borrowed from the MoRTH document. It does not indicate as to whether the MoRTH document had any provision regarding the tax regime applicable to the parties entering into a contract as per the MoRTH guidelines. The MoRTH document was

69. Significantly, the special conditions of contract in Clause 3 states that the work shall be carried out as per the MoRTH specifications and it is for that limited purpose the MoRTH guidelines become applicable and binding. The said contract also has a specific clause relating to tax as contained in Clause 45 which only notes that the rates quoted by the contractor would be deemed to be inclusive of all the sales and other tax which the contractor has to pay for the performance of the contract. The employer i.e. the Department herein is also obligated to perform such duties in regard to the deduction of such tax at source as per applicable law.

70. The aforesaid two clauses 3 and 45 as mentioned herein have already been reproduced in the earlier paragraphs for the purposes of reference and to bring out with clarity a fact that the manner in which the reference to the MoRTH specifications have been borrowed in the contract is only in respect of technical specifications for building and widening of roads which includes and related to the nature, the quality and quantity of the material used and it did not include or relate to any tax including GST.

71. As already noticed above, there is a distinction between a tax liability which is squarely governed by the tax laws and a contractual liability even though related to tax would be only determinative of the fact that which of the two contracting parties is obligated to pay the tax. Any dispute in this regard may be binding between the parties but it can have no impact on the Taxing Authority.

72. In light of the above, before the Sole Arbitrator could have returned a categorical finding regarding applicability of MoRTH guideline, it ought to have first noticed as to what was the extent of the

be the MoRTH document which would prevail and that too relating to tax. In absence of any categorical contractual clause or agreement, any finding in this regard holding that the MoRTH Circular/SOP is applicable merely because the contract between the parties states that the technical specifications of the MoRTH would be applicable is not per-se not emerging or flowing from the contract or the material on record.

75. The contract entered between the parties is to be read as it is and in its entirety. In light of the clauses as mentioned above which borrows the MoRTH specifications read with Government Order dated 24th July, 2017 (which is at running page 215 of the Supplementary Affidavit filed before this Court by the appellant dated 27.10.2025) it only states that all such contracts over 5 crores would be done as per the standard bidding document, procurement of civil works as issued by the MoRTH.

76. In case if the respondent seeks to impute a specific tax compliance provision in the instant contract, then it was its burden to have brought the MoRTH document on record and ought to have referred to specific provisions therein to establish that it would override the clauses of the contract entered between the parties or even in case of any ambiguity in the contract or any part which is silent in the instant contract, the grey area would be filled or covered by the specifications/clauses/ arrangements as provided in MoRTH guidelines including relating to taxation or what would be the order of precedence to be followed in case of ambiguity.

77. In absence of this clear material, the finding given by the Sole Arbitrator holding that the contract provided for borrowing the technical specifications from MoRTH, hence, the illustrative SOP issued by MoRTH relating to calculation of GST for EPC contracts would become

provisions were specific and binding on the appellant and it would prevail over the MoRTH SOP.

79. The record would also indicate that initially there was a difference of opinion between the parties regarding the nature of the contract itself, however, before the Sole Arbitrator, there was a consensus and the contracting parties agreed that the contract in question was an item based rate contract.

80. The appellant had raised a dispute before the Sole Arbitrator that the MoRTH SOP dated 19.11.2018 was applicable to EPC contract (Clause 6 and the illustration as incorporated in the SOP, as quoted above). This Clause 6 indicates that the illustration given therein was in context with the EPC contracts. There is no material to indicate that the said SOP would be applicable to item rate based contract. It also does not indicate that the said SOP though applicable for EPC contracts could be borrowed or be made applicable to item rate based contracts.

81. Before a finding could have been recorded by the Sole Arbitrator applying the illustration as given in the SOP relating to EPC contracts to item rate based contract, then at least it should have considered some material evidence or reference to any clause in the contract between the parties which could throw some light or permit borrowing the illustration relating to EPC contract to item rate based contracts, especially when the MoRTH SOP did not extend its applicability to item rate based contracts nor it stated that the illustration was applicable to all types of contract.

82. There is no averment or evidence to suggest that there is no other separate document relating to item rate based contract. There is no positive statement that apart from this SOP relating to EPC contracts, there is no other separate guidelines for item rate based contract nor there

based rate contract on the premise that both the contracts are similar. However, in the trade industry relating to road construction contracts, there is a difference in EPC and item rate based contract. This distinction assumes significance for the reasons that it was a specific case of the appellant that the illustration and the methodology mentioned in the SOP dated 19.11.2018 is applicable only for EPC contracts and since the contract in between the parties in the instant case was an item based rate contract, hence, the same could not be made binding without consensus between the parties.

84. Furthermore, the usage of the word ‘may’ in Clause 6 in the SOP and clause 6.2 (iv) which speaks of mutual agreement is indicative that the said SOP is merely a guideline which may be directory in nature and not mandatory as already noticed hereinabove, hence, without any clinching evidence to the effect that the parties to the contract agreed to get their tax liability governed by the SOP dated 19.11.2018 or the parties mutually agreed to do so, till then it cannot be made binding upon the appellant.

84. If the Sole Arbitrator was of the view that the SOP relating to EPC contract could be made binding to an item rate based contract then it ought to have referred to some evidence, clauses of the contract entered between the parties. In absence of any such reference merely concluding that the SOP would bind item rate based contract also would amount to giving a finding based on conjectures and assumptions which has no role to play in an award. By doing so, the Sole Arbitrator has read into the contract something which is not present, which is reflected in his award which then would be based on conjectures and it would make the award susceptible for interference.

88. In the given situation, before this Court, the issue is not as much as who has to pay the GST but it has got to do with the manner in which the GST is to be calculated relating to the contract in question and the right of the contractor to recover the said GST paid to the Tax Authority, from the appellant.

89. It will be apposite to take a pinhole view of the GST Act. The GST regime introduced from 01st July, 2017 is primarily based on self-assessment under the GST laws. There are primarily two types of transactions. One where the transaction crosses two different State borders and in such a situation the transactions would attract the IGST i.e. Integrated Goods and Services Tax. This IGST is a composite and binding tax levied and collected by the Central Government which is later apportioned to the State where the goods are consumed. It is for this purpose that there can never be a CGST, SGST and IGST charged on the same invoice. However, where seller and the buyer are located within the same State then two components of CGST and SGST are charged simultaneously and one tax invoice clearly indicates the separate chargabiity of CGST and the SGST.

90. A party who is liable to pay the GST as per the scheme of the GST Act of 2017 is to furnish his returns periodically as mentioned in the Act on the basis of best self assessment. Once such returns are submitted before the GST Authorities, they have the discretion of either accepting the said returns, the way they are and conclude the assessment and in case if they are not satisfied then they have a right to enquire into the same in terms of the Section 73 and Section 74 of the GST Act, 2017.

91. However, in order to invoke the powers both under Section 73 and 74 of the GST Act, 2017, the tax Authorities are required to issue notice

or Section 74 is susceptible to scrutiny before the Appellate Authority or the GST Tribunal as envisaged in the GST Act itself.

92. Illustratively, the respondent being the contractor was required to furnish his statements/periodical assessments and it would necessarily have been made under the provisions of the GST Act and also indicating the payment of GST. The contractor could have furnished his GST returns as per the MoRTH SOP. In case if the same was accepted by the GST Authorities then the assessment would have been completed and it would have been clearly shown how much tax was paid referrable to the contract in question.

93. Since the work in the instant case stood completed in the Financial year 2018-19 and a completion certificate was issued on 10.04.2019 then any GST liability outstanding would have been made known to the respondent by the GST Authorities by issuing a notice, however, there is no document on record or brought to the notice of this Court nor any consideration regarding it has been made by the Sole Arbitrator indicating that for the period under the contract, any notice under Section 73 or Section 74 had been issued to the contractor by the GST Authorities.

94. The respondent along with his short counter affidavit dated 14th January, 2026 has annexed the copies of the rejoinder affidavit to the second supplementary affidavit filed by the respondent during the arbitration proceedings as Annexure SA-1. From the perusal of the said Annexure SA-1, it would indicate that the GST receipts have been placed on record including a statement regarding the input tax credit which was available to the respondent, however, that does not per se indicate that some amount, which in some of the receipts have been, shown as

95. As per the GST Act, the liability to pay tax is on the assessee i.e. the respondent and it was always open for him to deposit the tax in time in case if the same was not done then it is the respondent who is to bear the interest and penalty, if any. The respondent was required to mitigate his losses, inasmuch as, it was always open for the respondent to have paid the taxes in time to avoid imposition of penalty or interest and then could have recovered the same from the appellant (if permissible) and could have also claimed interest/penalty on the said outstanding amount, if it was solely attributable to the negligence or want of due diligence of the appellant.

96. This aspect has not been considered by the Sole Arbitrator who has merely on the premise that the GST has not been paid by the appellant to the respondent, hence, invoking the provisions of Section 50 of the GST Act, the amount determined by the Arbitrator has been made payable as per interest and penalty provided under the GST Act.

97. Even if the Sole Arbitrator had to do so then the Sole Arbitrator ought to have recorded a clear finding that the tax of a particular amount was due and payable by the respondent within time to be specified which could not be paid on account of negligence or non-payment by the department which led the respondent to suffer interest and penalty and had to be paid to the GST Department and this interest plus penalty was recoverable from the appellant under the contract.

98. The learned counsel for the respondents had referred to the report by the Chartered Accountant, another report of the Chartered Engineer and yet another report of an Independent Chartered Accounting Firm, they too indicate the impact of the GST on the contract and it is reflective of the fact, that with the change in the tax regime i.e. from VAT to GST,

99. The Sole Arbitrator has merely proceeded in a compartmentalized way i.e. to say, it held that the technical specifications were borrowed in the contract, therefore, the MoRTH guidelines even for tax purposes would become applicable, consequently, the formula given for the EPC contracts would be applicable to the instant contract despite the said contract being an item rate based contract and as a fortiorari, the Government Orders have been held to be not applicable. There is no consideration or reasons given in the award as to how a regulatory/directory document, would have an overbearing impact on a State-Government order, which was binding on the particular department to which it related to and it also prescribed, a particular methodology as to how the GST was to be calculated related to contracts entered in old tax regime and concluded in post GST regime.

100. Furthermore, the Sole Arbitrator while making his award has left the issue open to the extent that the amount as awarded by him is required to be paid by the appellant which would then be subject to the final assessment by the GST Authorities and in case if excess amount had been paid, the same would be returned by the respondent to the appellant and in case of any shortfall then the appellant would still be liable to pay the said shortfall. This finding given by the Sole Arbitrator in its award leads to ambiguity and it also does not attach finality to the award.

101. What is significant to notice that this arrangement could have been made only as an interim measure during the pendency of the proceedings especially in terms of the GST Act when the contract itself had concluded in the financial year 2018-19 and the maximum period for concluding an assessment under the GST Act is 3 years. Thus, at the time of making of the award in the year 2024, the assessments would have become final and

(i) The basic premise of the Sole Arbitrator in his award, is the applicability of the MoRTH SOP dated 19.11.2018. In this regard, as already noticed above, there was no material on record to indicate that the MoRTH specifications as made applicable in the contract included any tax arrangements.

(ii) The Sole Arbitrator did not discuss under what circumstances, the Government Orders dated 09.11.2017 and 10.12.2019 would not be binding and applicable which relates to GST and a particular formula having been indicated therein, when they being executive instructions were binding on the Department.

(iii) There was no consideration of any material on record by the Sole Arbitrator as to how the said SOP could be made binding when that in itself appeared to be directory and applicable to to the parties only with mutual consent and its applicability was limited only on EPC contracts and in absence of any clause or material evidence by which it could be made applicable to item rate based contracts, hence, it could not have been *ipso-facto* made applicable and that too without cogent reasoning.

(iv) In absence of any challenge to the Government Order dated 10.12.2019 and without recording any cogent reason to discard its applicability and then to hold that the said Government Order was not applicable merely because the MoRTH had issued a SOP and it did not prima facie establish that such tax arrangement of MoRTH was binding despite there being no such clause in the contract nor any material on record clear finding as to its quantum, periods and that such shortfall or deficiency in tax, or penalty/interest was paid by the respondent but on account of sole negligence or want of due diligence of the appellant it was recoverable from the appellant. Thus, the Sole Arbitrator erred by acting as an Assessing Officer.

(vi) The reference made by the Sole Arbitrator to certain exemplars to draw parallel that in cases of some other contractors, the State had paid the GST at same rate which is now being denied to the respondent, could only be considered with supporting assessment orders or other like evidence to show the similarity between the contract entered by the parties to the instant dispute and the one as mentioned in the exemplar and then it could be made applicable and binding on the appellant.

(vii) Importantly, the Sole Arbitrator and both the contracting parties have not noticed the import of Chapter XX of the GST Act, 2017 which contains the transitional provisions. In this regard *inter alia* Section 142 (2) which relates to contracts entered prior to the appointed date i.e. 01.07.2017 and wherein post the appointed date there is either upward or downward revision and how will it be catered to has been provided for. Thus, Section 142 (2), 142 (10) and 142 (11) may have some bearing on the controversy, which at least should have been noticed, considered and a finding should have been given whether the said sections were applicable or not. However, there is a stoic silence on this aspect as there is no reference to this aspect in the award.

the MoRTH guidelines and SOP would apply is rendered vulnerable as it looses its core integrity of reasoning.

103. The Sole Arbitrator being a creature of the contract is bound by its terms and it cannot re-write the contract or fill in the lacunae for any party. The position noticed hereinabove would indicate that the Sole Arbitrator has proceeded on conjectures and assumptions and the findings recorded are not backed by cogent evidence before it. Hence, the finding on issues nos. 2 to 4 and 8 to 9 being against the material evidence on record, cannot be sustained.

104. Additionally, an award can be set aside if it is found to be in violation of fundamental policy of Indian Law or suffers from the vice of ignoring judicial discipline regarding compliance with principles of natural justice or the reasoning in the award is based on perversity which goes to the root of the matter without there being any possibility of an alternate view.

105. This Court had the occasion to consider the scope of an appeal under Section 37 of the Act of 1996 in **UCM Coal Co. Ltd. v. Adani Enterprises Ltd. : 2025 SCC OnLine All 7608** and by taking aid of the previous decisions of the Apex Court on the aforesaid point, this Court in paras 63 to 67 noticed the perimeter within which the Appellate Court would exercise its jurisdiction. The relevant paragraphs read as under :-

> "63. At the outset, it will be appropriate to notice the contours of scope and jurisdiction of this Court while dealing with an appeal under Section 37 of the Act of 1996.
>
> 64. The Apex Court in MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293 has held 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

a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., [1948] 1 K.B. 223 (CA)] 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.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2) (b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]. Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445]; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

14. 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

submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. However, this question has been addressed by the courts in terms of the construction of the contract between the parties, and as such it can be safely said that a review of such a construction cannot be made in terms of reassessment of the material on record, but only in terms of the principles governing interference with an award as discussed above.

16. It is equally important to observe at this juncture that while interpreting the terms of a contract, the conduct of parties and correspondences exchanged would also be relevant factors and it is within the arbitrator's jurisdiction to consider the same. [See McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181]; Pure Helium India (P) Ltd. v. ONGC [Pure Helium India (P) Ltd. v. ONGC, (2003) 8 SCC 593] and D.D. Sharma v. Union of India [D.D. Sharma v. Union of India, (2004) 5 SCC 325 : (2005) 123 Comp Cas 135].]"

65. Similarly, the Apex Court in UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116 : (2022) 2 SCC (Civ) 401 has observed as under:

"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

"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

Sugumar v. Hindustan Petroleum Corpn. Ltd., (2020) 12 SCC 539], wherein it has been observed as follows : (SCC p. 540, para 2)

"2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

18. It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1], the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus : (SCC p. 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."

19. In Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. [Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552], adverting to the previous decisions of this Court in McDermott International Inc. v. Burn Standard Co.

Collieries case [Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552], SCC pp. 244-45, para 9)

"9.1. … It is further observed and held that construction of the terms of a contract is primarily 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 is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

9.2. Similar is the view taken by this Court in NHAI v. ITD Cementation India Ltd. [NHAI v. ITD Cementation India Ltd., (2015) 14 SCC 21 : (2016) 2 SCC (Civ) 716], SCC para 25 and SAIL v. Gupta Brother Steel Tubes Ltd. [SAIL v. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16], SCC para 29."

(emphasis supplied)

20. In Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1], the view taken above has been reiterated in the following words : (SCC p. 12, para 25)

"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. (Seamec Ltd.) v. Oil India Ltd. [South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd., (2020) 5 SCC 164 : (2020) 3 SCC (Civ) 1] and it has been held as follows : (SCC p. 172, paras 12-13)

‘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 [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] observed as under : (SCC p. 12, para 25)

‘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.”

66. Again, the Apex Court in Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd., (2024) 2 SCC 375 : (2024) 1 SCC (Civ) 182, has held as under:—

“32. Post award interference and the extent of the second look by the courts under Section 34 of the A&C Act has been a subject-matter of perennial parley. The foundation of arbitration is party autonomy. Parties have the freedom to enter into an agreement to settle their disputes/claims by an Arbitral Tribunal, whose decision is binding on the parties. [See Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549, which examines arbitrability and nonarbitrability of subject-matters and claims, which aspect will not be examined in this case.] It is argued that the purpose of arbitration is fast and quick one-stop adjudication as an alternative to court adjudication, and therefore, post award interference by the courts is un-warranted, and an anathema that undermines the fundamental edifice of arbitration, which is consensual and voluntary departure from the right of a party to have its claim or dispute resolution, the conduct of arbitral proceedings must meet the juristic requirements of due process and procedural fairness and reasonableness, to achieve a “judicially” sound and objective outcome. If these requirements, which are equally fundamental to all forms of adjudication including arbitration, are not sufficiently accommodated in the arbitral proceedings and the outcome is marred, then the award should invite intervention by the court.

33. To disentangle and balance the competing principles, the degree and scope of intervention of courts when an award is challenged by one or both parties needs to be stated. Reconciliation as a statement of law and in particular application in a particular case has not been an easy exercise. We begin by first referring to the views expressed by this Court in interpreting the width and scope of the post award interference by the courts under Section 34 of the A&C Act.

* * *

37. Explanation to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act, as quoted above and before its substitution by Act 3 of 2016, had postulated and declared for avoidance of doubt that an award is “in conflict with the public policy of India”, if the making of the award is induced or affected by fraud or corruption, or was in violation of Sections 75 or 81 of the A&C Act. Both Sections 75 and 81 of the A&C Act fall under Part III of the A&C Act, which deal with conciliation proceedings. Section 75 of the A&C Act relates to confidentiality of the settlement proceedings and Section 81 deals with admissibility of evidence in conciliation proceedings. Suffice it is to note at this stage that while “fraud” and “corruption” are two specific grounds under “public policy”, these are not the sole and only grounds on which an award can be set aside on the ground of “public policy”.

38. Act 3 of 2016 with retrospective effect from 23-10-2015 has substituted the Explanation referred to above, by two new Explanations that are differently worded. [Explanations 1 and 2 to sub-clause (ii) to clause (b) of Section 34(2) of the A&C Act suIn cases where the error cannot be corrected within the aforesaid
guardrails and if it would require a review on merits or re-adjudication,
the court must refrain from modifying the award and where permissible
in law, remand the matter to the Arbitral Tribunalbstituted vide Act 3 of 2016 read as under:“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.“Sub-section (2-A) of Section 34 of the A&C Act inserted vide Act 3 of 2016 reads as under:“34. (2-A) An arbitral

appearing on the face of the award. The proviso to sub-section (2-A) to Section 34 of the A&C Act also states that the award shall not be set aside merely on the ground of erroneous application of law or by reappreciation of evidence. The aforesaid sub-section need not be examined in the facts of the present case, as we are not required to interpret and apply the substituted Explanations to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act in the present case.

39. The expression "public policy" under Section 34 of the A&C Act is capable of both wide and narrow interpretation. Taking a broader interpretation, this Court in ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] (for short Saw Pipes), held that the legislative intent was not to uphold an award if it is in contravention of provisions of an enactment, since it would be contrary to the basic concept of justice. The concept of "public policy" connotes a matter which concerns public good and public interest. An award which is patently in violation of statutory provisions cannot be held to be in public interest. Thus, expanding on the scope and expanse of the jurisdiction of the court under Section 34 of the A&C Act, it was held that an award can be set aside if it is contrary to:

(a) fundamental policy of Indian law; or
(b) the interest of India; or
(c) justice or morality, or
(d) in addition, if it is patently illegal.

40. Nevertheless, the decision in Saw Pipes case [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] holds that mere error of fact or law in reaching the conclusion on the disputed question will not give jurisdiction to the court to interfere. However, this will depend on three aspects:

(a) whether the reference was made in general terms for deciding the contractual dispute, in which case the award can be set aside if the award is based upon erroneous legal position;

(b) this proposition will also hold good in case of a reasoned award, which on the face of it is erroneous on the legal proposition of law and/or its application; and

(c) where a specific question of law is submitted to an arbitrator, erroneous decision on the point of law does not make the award bad, unless the court is satisfied that arbitrator had proceeded illegally.

In Saw Pipes case [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705], the Court set aside the award on the ground that the award had not taken into consideration the terms of the contract before arriving at the conclusion as to whether the party claiming the damages is entitled to the same. Reference was made to the provisions of Sections 73 and 74 of the Contract Act, which relate to liquidated damages, general damages and

India v. L.S.N. Murthy [Union of India v. L.S.N. Murthy, (2012) 1 SCC 718 : (2012) 1 SCC (Civ) 368].

41. In 2006, this Court in McDermott International Inc. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] despite following the ratio of Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705], made succinct observations regarding the restrictive role of courts in the post-award interference. In addition to the three grounds introduced in Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644 : (1994) 81 Comp Cas 171], as noticed above, an additional ground of "patent illegality" was introduced in Saw Pipes Limited, for exercise of the court's jurisdiction in setting aside an arbitral award. This Court, in McDermott International Inc. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181], held that patent illegality, must be such which goes to the root of the matter. The public policy violation should be so unfair and unreasonable as to shock the conscience of the court. Arbitrator where s/he acts contrary to or beyond the express law of contract or grants relief, such awards fall within the purview of Section 34 of the A&C Act. Further, what would constitute public policy is a matter dependent upon the nature of transaction and the statute. Pleadings of the party and material brought before the Court would be relevant to enable the Court to judge what is in public good or public interest, or what would otherwise be injurious to public good and interest at a relevant point. So, this must be distinguished from public policy of a particular government.

42. A similar view was expressed in Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306 : (2012) 50 VST 443 : (2012) 14 GSTR 291] with the clarification that where a term of the contract is capable of two interpretations and the view taken by the arbitrator is a plausible one, it cannot be said that the arbitrator travelled outside the jurisdiction or the view taken the arbitrator is against the terms of the contract. The Court cannot interfere with the award and substitute its view with the award and interpretation accepted by the arbitrator, the reason being the Court does not sit in appeal over the findings and decision of the arbitrator, while deciding an application under Section 34 of the A&C Act. The arbitrator is legitimately entitled to take a view after considering the material before him/her and interpret the agreement. The judgment should be accepted as final and binding.

43. Subsequently, in ONGC Ltd. v. Western Geco International Ltd. [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] (for short Western Geco), a three-Judge Bench of this Court observed that the Court, in Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705], did not examine what would constitute "fundamental policy of Indian law". The expression "fundamental policy of Indian law" in the opinion of this Court includes

subject in a fair, reasonable and objective manner. Decision should not be actuated by extraneous considerations. Secondly, the principles of natural justice should be followed. This would include the requirement that the Arbitral Tribunal must apply its mind to the attending facts and circumstances while taking the view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best done by recording reasons in support of the decision. As noticed above, Section 31(3)(a) of the A&C Act ["31. Form and contents of arbitral award.—(1)-(2) * * *(3) The arbitral award shall state the reasons upon which it is based, unless—(a) the parties have agreed that no reasons are to be given, or(b) the award is an arbitral award on agreed terms under Section 30"] states that the arbitral award shall state the reasons on which it is based, unless the parties have agreed that no reasons are to be given. Sub-clauses (i) and (iii) to Section 34(2) also refer to different facets of natural justice. In a given case sub-clause to Section 34(2) and sub-clause (ii) to clause (b) to Section 34(2) may equally apply. Lastly, is the need to ensure that the decision is not perverse or irrational that no reasonable person would have arrived at the same or be sustained in a court of law. Perversity or irrationality of a decision is tested on the touchstone of Wednesbury principle of reasonableness [As expounded in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., [1948] 1 K.B. 223 (CA).]. At the same time, it was cautioned that this Court was not attempting an exhaustive enumeration of what would constitute "fundamental policy of Indian law", as a straightjacket definition is not possible. If on facts proved before them, the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which on the face of it, is untenable resulting in injustice, the adjudication made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards, may be challenged and set aside.

44. The decision of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] elaborately examined the question of public policy in the context of Section 34 of the A&C Act, specifically under the head "fundamental policy of Indian law". It was firstly held that the principle of judicial approach demands a decision to be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would not satisfy the said requirement.

45. Referring to the third principle in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], it was explained that the decision would be irrational and perverse if (a) it is based on no evidence; (b) if the Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or (c) ignores vital evidence in arriving at its decision. The standards prescribed in State of Haryana v. Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312 : (1990) 77 STC 1] (for short Gopi Nath & Sons) and Kuldeep Singh v. Delhi Police [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] should be applied and

reasonable person would act upon it. If there is some evidence which can be acted and can be relied upon, however compendious it may be, the conclusion should not be treated as perverse. This Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] emphasised that the public policy test to an arbitral award does not give jurisdiction to the court to act as a court of appeal and consequently errors of fact cannot be corrected. Arbitral Tribunal is the ultimate master of quality and quantity of evidence. An award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Every arbitrator need not necessarily be a person trained in law as a Judge. At times, decisions are taken acting on equity and such decisions can be just and fair should not be overturned under Section 34 of the A&C Act on the ground that the arbitrator's approach was arbitrary or capricious. Referring to the third ground of public policy, justice or morality, it is observed that these are two different concepts. An award is against justice when it shocks the conscience of the court, as in an example where the claimant has restricted his claim but the Arbitral Tribunal has awarded a higher amount without any reasonable ground of justification. Morality would necessarily cover agreements that are illegal and also those which cannot be enforced given the prevailing mores of the day. Here again interference would be only if something shocks the court's conscience. Further, "patent illegality" refers to three sub-heads : (a) contravention of substantive law of India, which must be restricted and limited such that the illegality must go to the root of the matter and should not be of a trivial nature. Reference in this regard was made to clause (a) to Section 28(1) of the A&C Act, which states that the dispute submitted to arbitration under Part I shall be in accordance with the substantive law for the time being in force. The second sub-head would be when the arbitrator gives no reasons in the award in contravention with Section 31(3) of the A&C Act. The third sub-head deals with contravention of Section 28(3) of the A&C Act which states that the Arbitral Tribunal shall decide all cases in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction. This last sub-head should be understood with a caveat that the arbitrator has the right to construe and interpret the terms of the contract in a reasonable manner. Such interpretation should not be a ground to set aside the award, as the construction of the terms of the contract is finally for the arbitrator to decide. The award can be only set aside under this sub-head if the arbitrator construes the award in a way that no fair-minded or reasonable person would do."

67. Recently, the Apex Court in AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai, (2025) 5 SCC 321 has held as under:—

"29. The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, para 52] The appellate jurisdiction under Section 37 is also limited, (Civ) 293, para 14 : ; Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218, para 26.]

* * *

31. The term "public policy" in Section 34(2)(b)(ii) has been interpreted by this Court as meaning (a) the fundamental policy of Indian law, or (b) the interest of India, or (c) justice or morality. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644 : (1994) 81 Comp Cas 171, para 66] In ONGC v. Saw Pipes Ltd. [ONGC v. Saw Pipes, (2003) 5 SCC 705], this Court further held that an arbitral award can be set aside as being contrary to public policy if it is patently illegal. The illegality must go to the root of the matter and must be so unfair and unreasonable that it shocks the court's conscience; it cannot be of a trivial nature. [Id, para 31; McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, para 59.] Such patent illegality includes a situation where the award is in contravention with substantive law. [ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705, para 54; Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204, para 42.1]

32. Further, an award can be set aside as being opposed to the "fundamental policy of India" if it is perverse, [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12, para 39] i.e. the finding is not based on evidence, or the Arbitral Tribunal takes something irrelevant into account, or ignores vital evidence. [Associate Builders v. DDA, (2015) 3 SCC 49, paras 32-33 : (2015) 2 SCC (Civ) 204, para 31] However, an award is not perverse if the finding of fact is a possible view that is based on some reliable evidence. [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429, para 10 : as cited in Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204.]"

106. Recently, the Apex Court in **Jan De Nul Dredging India (P) Ltd. v. Tuticorin Port Trust : (2026) 3 SCC 186** noticed the scope of the appeal under Section 37 of the Act of 1996 and in paragraphs 35 to 37 held as under:-

"35. 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 Sections 34 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.

36. 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

> 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.
>
> 37. Undoubtedly, in the case at hand, the award of the Arbitral Tribunal is not contrary to any substantive provision of law or any provision of the Act. Yet, it has been disturbed by the appellate court, apparently by giving a different interpretation of the clauses of the licence agreement which jurisdiction was not vested in it. Ordinarily, the interpretation given by the Arbitral Tribunal, as affirmed by the court in exercise of powers under Section 34 of the Act ought to have been accepted."

107. In light of the detailed discussions held hereinabove where the findings of the Sole Arbitrator on issues nos. 2 to 4 and 8 to 9 have been found to be vulnerable then the next delicate question that arises before the Court is, as to whether the entire award should be set aside or certain part of the award can be severed and saved by dissecting it from the offending portion. This specific question was referred to a Constitution Bench of the Supreme Court and in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd. : (2025) 7 SCC 1**, the Apex Court after considering the provisions of the Act and the law held that the Courts do possess limited powers under the Act of 1996 to modify the award by applying the doctrine of severability in limited circumstances.

108. What would be the limited scope and circumstances was explained in the majority judgment in **Gayatri Balasamy** (supra). The propositions and guidelines laid down by the Apex Court can be summarized as under:-

> **(i)** Only severable awards are amenable to modification;
>
> A composite or indivisible arbitral award cannot be modified. Modification is permissible only where the claims, or parts of the award, are legally and pragmatically severable from the valid portion. In such cases, the court may sever the invalid

(ii) The error sought to be corrected must be patent and apparent on the face of the record;

The Supreme Court has clarified that modification is confined to the correction of obvious and self-evident errors, such as clerical, computational, or typographical mistakes. Modification is permissible only where the court has no uncertainty or doubt as to the correction; if the alleged error is debatable or not apparent on the face of the record, the court lacks jurisdiction to modify the award;

(iii) Modification is permissible for correcting or adjusting post-award interest;

Courts may modify an arbitral award where such modification is confined to the correction or adjustment of post-award interest, without disturbing the substantive findings of the Arbitral Tribunal;

(iv) Where modification is impermissible, the matter must be remanded;

In cases where the error cannot be corrected within the aforesaid guardrails and if it would require a review on merits or re-adjudication, the court must refrain from modifying the award and where permissible in law, remand the matter to the Arbitral Tribunal.

109. Testing the award dated 27.01.2024 on the anvil of the postulates, as noticed above, which have been culled out from the decision of the Apex Court in **Gayatri Balasamy** (Supra)**,** it would reveal that the Sole Arbitrator has dominantly granted a sum of Rs. 11,35,80,273/- relating to

110. Hence, applying the principles as noticed above, this Court is of the clear view that the findings recorded on issues nos. 2 to 4 and 8 to 9 cannot be sustained. The award made in respect of a sum of Rs. 66,500/- along with interest at the rate of 9% per annum from the date of the award till the date of its actual payment emerging from issue no. 10 and the finding given on issue no. 1 which is based on the consensus of the parties, can be clearly severed and protected, hence, it is so done.

111. Thus, in view of the above detailed discussions, the instant appeal deserves to be partly allowed**.** The judgment of the Commercial Court-I, Lucknow dated 18.07.2025 passed in Arbitration Case No. 25 of 2024 is set aside. The award of the Sole Arbitrator dated 27.01.2024 shall stand partly modified to the extent that the findings on issue nos. 2 to 4 and 8 to 9 shall stand set aside and would be severed from the award and the remaining portion relating to issues no. 1 and 10 shall remain intact and protected. The claim relating to grant of Rs. 66,500/- under issue no. 10 is saved as also the finding on issue no. 1, which is based on consensus. The remaining portion of the award relating to the issues nos. 2 to 4 and 8 to 9 shall be re-adjudicated and for that purpose, the matter is remitted to the Arbitral Tribunal, to be constituted as per law, who would decide the issues nos. 2 to 4 and 8 to 9 afresh in light of the observations made by this Court hereinabove. Resultantly, the appeal is partly **allowed** in the aforesaid terms. The parties will bear their own costs.

(Jaspreet Singh, J) (Arun Bhansali, CJ)

July 21, 2026
Asheesh