2026 INSC 1234

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 32968 OF 2026

RAJASTHAN RAJYA VIDYUT
UTPADAN NIGAM LTD. ...PETITIONER

VERSUS

PARSA KENTE COLLIERIES LIMITED ...RESPONDENT

J U D G M E N T

NONGMEIKAPAM KOTISWAR SINGH, J.

1. This Special Leave Petition preferred under Article 136 of the Constitution of India seeks to challenge the judgment of the High Court of Judicature of Rajasthan rendered under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act"), which had reversed the decision of the Commercial Court rendered under Section 34 of the Act, wherein the Commercial Court had set aside the awards made by the

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Reason:

Arbitral Tribunal. Thereby, the High Court ultimately restored the awards.

2. The learned Arbitrator made the award dated 15.01.2021 ("the Award") and, thereafter, made an additional award dated 05.07.2021 ("the Additional Award"). On being challenged by the Petitioner before the Commercial Court No. 1, Jaipur Metropolitan-II, Jaipur ("the Commercial Court") under Section 34 of the Act, 1996, both the awards were set aside by the Commercial Court vide the order dated 20.05.2023.

3. Being aggrieved, the Respondent preferred an appeal under Section 37 of the Act before the High Court of Judicature for Rajasthan, Bench at Jaipur, in D.B. Civil Miscellaneous Appeal No. 2007 of 2023 which was allowed by judgment dated 21.05.2026 ("the impugned Judgment"). The High Court thus, in turn, set aside the order dated 20.05.2023 passed by the Commercial Court, thereby restoring both the Award dated 15.01.2021 and the Additional Award dated 05.07.2021.

4. In short, the Awards which were set aside by the Commercial Court under Section 34 of the Act were fully restored by the High Court under Section 37 of the Act. The petitioner,

now, in this third round of judicial proceedings by invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, is urging this Court to interfere with the order of the High Court and seeking to annul the arbitral Awards.

5. In undertaking this exercise, the scope of this Court to intervene under Article 136 of the Constitution, in the backdrop of the circumscribed nature of the jurisdiction of the Court under Section 34 of the Act and the limited parameters under Section 37 of the Act, needs to be first appreciated.

6. It is apposite to remind ourselves that Article 136 of the Constitution is not an integral part of the legal architecture of the Arbitration and Conciliation Act, 1996 and that Article 136 is a special and residuary power conferred on the Supreme Court under the Constitution, of a purely discretionary nature to address serious legal errors or substantial miscarriage of justice by the judicial fora across the country. Thus, by its very nature, an appeal/petition preferred under Article 136 before the Supreme Court is not a matter of right of any litigant but is subject to the discretion of the Supreme Court.

The legal journey of an award under the Act would, ordinarily, after traversing through the Section 34 forum, culminate with the Section 37 forum of the Act. Thus, the legal status of an award ought to, under normal circumstances, attain finality at the stage of Section 37 of the Act. Hence, introducing Article 136 of the Constitution into this legal path would be an exception rather than the norm, keeping in mind, especially, the trend worldwide to have minimal judicial intervention in matters relating to arbitration.

7. This prologue must now be followed by a brief foray into the scope of Article 136 of the Constitution in the context of arbitration law. We thus, recall what had been observed by this Court in ***DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd.***,[1] in the following words:

> **"41.** *In the statutory scheme of the Arbitration Act, a recourse to Section 37 is the only appellate remedy available against a decision under Section 34. The Constitution, however, provides the parties with a remedy under Article 136 against a decision rendered in appeal under Section 37. This is the discretionary and exceptional jurisdiction of this Court to grant special leave to appeal. In fact, Section 37(3) of the Arbitration Act expressly clarifies that no second appeal shall lie from an order passed under Section 37, but nothing in the section takes away the constitutional*

[1] **(2024) 6 SCC 357**

right under Article 136. Therefore, in a sense, there is a third stage at which this Court tests the exercise of jurisdiction by the courts acting under Section 34 and Section 37 of the Arbitration Act.

42. *While adjudicating the merits of a special leave petition and exercising its power under Article 136, this Court must interfere sparingly and only when exceptional circumstances exist, justifying the exercise of this Court's discretion. [Chandi Prasad Chokhani v. State of Bihar, 1961 SCC OnLine SC 165 : AIR 1961 SC 1708; Pritam Singh v. State, 1950 SCC 189.] The Court must apply settled principles of judicial review such as whether the findings of the High Court are borne out from the record or are based on a misappreciation of law and fact. In particular, this Court must be slow in interfering with a judgment delivered in exercise of powers under Section 37 unless there is an error in exercising of the jurisdiction by the Court under Section 37 as delineated above. Unlike the exercise of power under Section 37, which is akin to Section 34, this Court (under Article 136) must limit itself to testing whether the court acting under Section 37 exceeded its jurisdiction by failing to apply the correct tests to assail the award."*

(emphasis added)

8. As to what the legal profiles of Sections 34 and 37 of the Act are, this has also been discussed in ***DMRC Ltd.*** (supra) in the preceding paragraphs by referring to the decisions in ***Associate Builders* v. *DDA*[2], *Ssangyong Engineering &***

[2] **(2015) 3 SCC 49**

Construction Co. Ltd. v. National Highways Authority of India (NHAI)[3], as follows:

> **"*34.*** *The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by "patent illegality" appearing on the face of the award.*
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> ***35.*** *In Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:*
>
> *(i) based on no evidence;*
>
> *(ii) based on irrelevant material; or*
>
> *(iii) ignores vital evidence.*
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> ***36.*** *Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute,*

[3] **(2019) 15 SCC 131**

as when for instance the award contains no reasons at all, so as to be described as unreasoned.

37. *A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] observed : (SCC pp. 75 & 81, paras 31 & 42)*

> *"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*
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> *(i) a finding is based on no evidence, or*
>
> *(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
>
> *(iii) ignores vital evidence in arriving at its decision,*
>
> *such decision would necessarily be perverse.*
>
> ***
>
> *42.1. … 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside."*

(emphasis supplied)

38. *In Ssangyong Engg. & Construction Co. Ltd. v. NHAI [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , a two-Judge Bench of this Court endorsed the position in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , on the scope for interference with domestic awards, even after the 2015 Amendment : (Ssangyong Engg. & Construction Co. case [Ssangyong Engg. & Construction Co. Ltd. v.*

NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , SCC p. 171, paras 40-41)

> *"40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).*
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> *41. … Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."*
>
> (emphasis supplied)

39. *In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149.] A "finding" based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the*

head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice.

40. *A judgment setting aside or refusing to set aside an arbitral award under Section 34 is appealable in the exercise of the jurisdiction of the court under Section 37 of the Arbitration Act. It has been clarified by this Court, in a line of precedent, that the jurisdiction under Section 37 of the Arbitration Act is akin to the jurisdiction of the Court under Section 34 and restricted to the same grounds of challenge as Section 34."*

9. Recently, this Court reiterated the settled position with regard to the limited scope of interference under Sections 34 and 37 of the Act. In ***Jan De Nul Dredging India (P) Ltd. v. Tuticorin Port Trust***[4]**,** it was observed as follows:

"***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 37 of the Act is exercisable only to find*

[4] **(2026) 3 SCC 186**

out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The appellate court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The appellate court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement."

10. The principles that emerge from the foregoing discussion, read with the scheme of Sections 34 and 37 of the Act, may be summarised as follows:

(a) The power of this Court under Article 136 of the Constitution is discretionary and is to be exercised sparingly, only where exceptional circumstances exist, as the award attains its finality at the Section 37 stage.

(b) A Section 34 court does not sit in appeal over the award. An award may be set aside only on the grounds mentioned in Section 34 of the Act. The party applying must establish the ground on the basis of the record of the Arbitral Tribunal.

(c) Under Section 34(2)(a), the grounds are: incapacity of a party; or invalidity of the arbitration agreement; or want of proper notice or inability to present one's case; or an award dealing with a dispute not contemplated by, or beyond the scope of the submission to arbitration (where, under the proviso, only the separable part dealing with matters not submitted may be set aside); or a composition of the tribunal or an arbitral procedure not in accordance with the agreement of the parties or, failing such agreement, with Part I of the Act.

(d) Under Section 34(2)(b), the grounds are: where the court finds that the subject-matter of the dispute is not capable of settlement by arbitration; or that the award is in conflict with the public policy of India. By Explanation 1, the latter is confined to an award induced or affected by fraud or corruption or made in violation of Section 75 or Section 81; or an award in contravention of the fundamental policy of Indian law; or an award in conflict with the most basic notions of morality or justice. By Explanation 2, the test of

contravention of the fundamental policy of Indian law does not entail a review on the merits of the dispute.

(e) Under Section 34(2-A), a domestic award may also be set aside if it is vitiated by patent illegality appearing on the face of the award. The proviso is explicit that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(f) Patent illegality, as explained in ***Associate Builders*** (supra) and ***Ssangyong Engg. & Construction Co. Ltd.*** (supra), is made out only where the finding is perverse, that is, based on no evidence, based on irrelevant material, or ignoring vital evidence, or where the tribunal's construction of the contract is one that no fair-minded or reasonable person would adopt; or where the award contravenes the Act itself, as when it is unreasoned in breach of Section 31(3), or breaches the principles of natural justice. Construction of the terms of the contract is primarily for the arbitral tribunal under Section 28(3), and a plausible

interpretation is not to be interfered with merely because another view is possible.

(g) The appeal under Section 37(1)(c) lies against an order setting aside or refusing to set aside an award, and is confined to the same grounds as Section 34. The appellate court under Section 37 only examines whether the Section 34 court acted within the limits prescribed or exceeded or failed to exercise its jurisdiction. It cannot consider the dispute on merits, reappraise the evidence or interfere on a mere possibility of an alternative view, and its powers are, if anything, more restricted than those under Section 34.

11. Applying these principles, the enquiry before us is therefore confined to three questions: whether the Arbitral Tribunal's findings on each claim are within the bounds of a plausible view and free from patent illegality, perversity or any other ground under Section 34; whether the Commercial Court, in setting aside the Awards, stayed within the limits of Section 34; and whether the High Court, in restoring it, correctly exercised its jurisdiction under Section 37 of the Act. Only if one

of these is answered against the impugned Judgment would the exceptional jurisdiction under Article 136 of the Constitution be invoked.

12. Having touched upon the broad principles of law governing Sections 34 and 37 of the Act and the overarching Article 136 of the Constitution, we will now consider the issues at hand for which a brief reference to the facts of the case would be beneficial.

BRIEF BACKGROUND FACTS

13. The Petitioner, Rajasthan Rajya Vidyut Utpadan Nigam Limited ("RVUNL"), is an undertaking of the Government of Rajasthan and engaged in the business of generation and sale of electricity in Rajasthan. The Respondent, Parsa Kente Collieries Limited ("PKCL"), is a joint venture company incorporated to develop the Parsa East and Kanta Basan ("PEKB") coal block and to mine, beneficiate, transport, and deliver coal therefrom to RVUNL's thermal power stations.

14. On 23.10.2006, RVUNL issued a Letter of Intent to Adani Enterprises Limited ("AEL") for development of the PEKB

coal block. On 19/25.06.2007, the Government of India allocated the PEKB coal block to RVUNL under the Government Company Dispensation Route. Subsequently, AEL and RVUNL executed a Joint Venture Agreement, pursuant to which PKCL was incorporated to undertake development of the block.

15. For executing the aforesaid work, RVUNL and PKCL signed a Coal Mining and Delivery Agreement ("the CMDA") on 16.07.2008, which was followed by an Addendum dated 22.09.2010. Some of the terms of the CMDA, insofar as relevant and material to the present proceedings, are summarised as follows:

- **Clause 3.2.1** talks about scope of work and provides that all expenses incurred for the Works shall be borne by PKCL including all expenses in relation to the cost of acquisition of land/ lease of land; fees and arranging all clearances, reports and licenses for the Term of the Agreement and all charges incurred for arranging mining data, geological data and reports and no expenses/ liabilities shall be borne/shared by RVUNL at any stage.

- **Clause 3.2.6(f)** obliges PKCL to obtain all statutory clearances and licences for the operation of the mines.

- **Clause 3.3** provides, vide sub-clause (a) thereof, that payments made by RVUNL for keeping the lease valid are to the account of PKCL, and, under sub-clause (b), where RVUNL makes payments on PKCL's behalf, as its agent, as required by Applicable Laws in relation to PKCL's scope of work, RVUNL "shall have no obligation or liability for and will not be required to bear such payments".

- **Clause 3.4.1** provides that all coal blocks and coal mined under the CMDA is RVUNL's property, except that coal washery rejects, capped at 29% (the "Rejects"), belong to PKCL and are disposable by PKCL.

- **Clauses 4.3.1 to 4.3.3** classify coal into Grades A, B and C, and provide that RVUNL shall reject coal below a Gross Calorific Value (GCV, ADB) of 4000 Kcal/kg or with ash content (ADB) above 34%. PKCL being obliged to wash or beneficiate coal of a grade lower than C to bring it within the specified parameters.

- **Clause 5.4.1** provides a formula for quality-based adjustment of the Contract Price by reference to GCV, ash content, moisture and size, and further provides that the quantity of coal reduced or rejected under that clause shall not be considered for payment of the Contract Price.

- **Clause 6.3** provides for interest on overdue payments at the rate of interest charged by the State

Bank of India to RVUNL on its working-capital loans, applicable mutatis mutandis to overdue payments from PKCL to RVUNL.

- **Clause 7.1** defines an event of "Force Majeure" as one beyond the reasonable control of the party claiming it, which "adversely and directly renders the performance by the Party of whole or part of its obligations under the Agreement impossible", and enumerates categories including any act, restraint or regulation of a Governmental Authority constituting a "Change in Law".

- **Clause 7.3** provides that a party affected by Force Majeure is excused from performance to the extent so affected, and that neither party shall be liable for "any claim for any loss, damage or compensation whatsoever" arising from a failure so caused, subject to provisos preserving the obligation to make payment for performance already rendered, and clarifying that a Force Majeure event does not relieve either party of its obligation to comply with Applicable Laws.

- **Clause 9.2 (i)** obliges PKCL to obtain, and during the term of the CMDA to renew and maintain, all permits, licences and approvals required under Applicable Laws, RVUNL covenanting to take such action as is necessary to enable this.

- **Clause 13.1** provides that PKCL shall at all times act as, and be deemed to be, an independent contractor, and that neither PKCL nor its employees shall act as, or be deemed to be, agents of RVUNL.

16. On 30.05.2012, a mining lease was granted by the Government of Chhattisgarh to RVUNL. In terms of the CMDA, PKCL paid stamp duty and other charges for registration of the lease. Extraction, beneficiation and dispatch of coal thus commenced in or about February–March 2013.

17. While the mining and the supply of coal was going on as per the CMDA, allegations came to be made about arbitrary and illegal allocation of coal blocks in many parts of the country. This led to a challenge of coal allocations before this Court, and this Court, by judgment dated 25.08.2014 and order dated 24.09.2014 in Writ Petition (Crl.) No. 120 of 2012 (***Manohar Lal Sharma v. Principal Secretary & Others***[5]***),*** cancelled the allocation of 204 coal blocks, including the PEKB. The cancellation of the allotment resulted in the cancellation of the mining lease dated 30.05.2012 granted by the Government of Chhattisgarh to RVUNL. This Court, however, allowed

[5] **(2014) 9 SCC 516**

continuation of coal mining till 31.03.2015. The Union Government in the meantime promulgated the Coal Mines (Special Provisions) Ordinance, 2014, which was replaced by the Parliamentary enactment, Coal Mines (Special Provisions) Act, 2015 ("the Coal Act"), whereby the cancelled coal blocks were to be allocated through an auction/allotment process by the Nominated Authority of the Ministry of Coal, Government of India.

18. In terms of the provisions of the Coal Act, the Nominated Authority allocated the PEKB coal block to RVUNL by letter dated 24.03.2015, subsequent to which an Allotment Agreement was executed on 26.03.2015. Section 11(1) of the Coal Act provides that an allottee may elect to continue such contracts as were in existence in relation to coal mining operations, which then constitutes a novation for the residual term or residual performance of such contract. According to PKCL, RVUNL, when given the option by the Central Government, intimated that it was desirous of continuing with the existing contract with PKCL, which would include the CMDA, and a condition to that effect was inserted in Clause 3(1)(f) of the Allotment Agreement dated 26.03.2015.

The Board of Directors of RVUNL resolved to adopt and continue the CMDA and the Addendum dated 22.09.2010. This decision was communicated to PKCL by RVUNL's letter dated 31.03.2015. PKCL conveyed its acknowledgment by its letter dated 01.04.2015.

19. RVUNL then submitted an application to the Government of Chhattisgarh, in accordance with the Coal Act, for grant of a fresh mining lease for the coal block. A fresh mining lease was thereafter executed in favour of RVUNL, and PKCL paid the stamp duty and other charges of Rs. 83,47,64,575 for its registration.

20. On 29.07.2016, a Supplementary Agreement was executed between the parties under Section 11(1) of the Coal Act, adopting and continuing the CMDA and the Addendum in their entirety, subject to certain additional obligations undertaken by PKCL. The following clauses of the Supplementary Agreement are relevant:

- **Clause (j)** of the Supplementary Agreement records an indemnity by PKCL in favour of RVUNL against liabilities relating to the furnishing and renewal of

performance securities, and against other financial liabilities imposed on RVUNL by a nominated or other governmental authority, so far as covered by PKCL's scope of work.

- **Clause (k)** of the Supplementary Agreement provides that PKCL "shall reimburse all charges related to furnishing and renewal of Performance Security by RVUNL to the Ministry of Coal, GoI as per rules/policy in force, on production of documentary evidence by RVUNL".

Separately, under **Clause 7.1** of the Allotment Agreement dated 26.03.2015 between RVUNL and the Nominated Authority under the Coal Act, RVUNL furnished a performance guarantee by way of bank guarantee(s) to the Ministry of Coal.

21. According to PKCL, though it continued to supply mine coal in terms of the agreements between the parties, RVUNL did not fulfil certain obligations by not making the necessary payments and not reimbursing PKCL for the expenses incurred by it on behalf of RVUNL on various occasions.

22. Accordingly, PKCL invoked the arbitration clause of the CMDA by notices issued in respect of different claims. The disputes were adjudicated by Justice Sudhir Kumar Katriar (Retd.), former Judge of the Patna High Court, as the Sole Arbitrator. PKCL raised nine claims including claims for interest and costs. By order dated 08.02.2019, the learned Arbitrator framed the issues for adjudication. PKCL thereafter amended its Statement of Claim, the amendment being confined to the prayer clause.

23. The nine claims, as also set out in the Award, are as follows:

(i) **Claim No. 1**, for non-payment for supply of rejected rakes of coal, in the sum of Rs. 71,77,82,356;

(ii) **Claim No. 2**, for reimbursement of stamp duty and other charges paid for registration of the fresh mining lease, in the sum of Rs. 83,47,64,575;

(iii) **Claim No. 3**, for short payment of interest on overdue payments computed till 30.09.2018, in the sum of Rs. 67,27,40,731;

(iv) **Claim No. 4**, for reimbursement of legal fees and litigation expenses said to have been incurred on RVUNL's behalf, in the sum of Rs. 3,75,35,000;

(v) **Claim No. 5**, for recovery of bank guarantee charges, in the sum of Rs. 58,96,93,602;

(vi) **Claim No. 6**, for reimbursement of expenses incurred on account of 267 additional project-affected families as part of RVUNL's resettlement and rehabilitation obligations, in the sum of Rs. 8,01,00,000;

(vii) **Claim No. 7**, for reimbursement of expenses incurred in setting up a vocational training centre, in the sum of Rs. 3,38,71,562;

(viii) **Claim No. 8**, for reimbursement of additional cost incurred towards acquisition of land for the coal block, in two parts – Rs. 66.70 crore already incurred in respect of four villages (Parsa, Kente, Salhi and Hariharpur), and a further, contingent claim in respect of a fifth village (Ghatbara); and

(ix) **Claim No. 9**, for interest on the sums claimed, at 24% per annum, together with costs of arbitration.

24. On 15.01.2021, the learned Arbitrator passed the Award.

Claims Nos. 1, 2, 3, 4, 6 and 7 were allowed in full.

Claim No. 5 was allowed in part, in the sum of Rs. 43,59,18,563, and RVUNL was directed to furnish certain supporting documents within four weeks in respect of the balance.

Claim No. 8, relating to the fifth village, was rejected as premature on the footing that no acquisition proceedings had commenced in respect of the fifth village.

Claim No. 9 was allowed in part: interest at 24% per annum was held excessive and was declined; instead, simple interest pendente lite, and future interest if payment was not made within four weeks, was awarded at 11.95% per annum, and costs of arbitration of Rs. 2,19,06,176 were awarded.

25. After the passing of the Award, PKCL filed an application under Section 33(4) of the Act on 04.02.2021 before the learned

Arbitrator, contending that the Award had omitted to deal with the first part of Claim No. 8, namely, the sum of Rs. 66.70 crore already incurred in respect of four villages, and sought an additional award in that regard. RVUNL opposed the application, contending that Claim No. 8 had already been adjudicated and, since no relief was granted, it was deemed to have been rejected and hence, no claim would lie at this stage.

26. After hearing the parties, the learned Arbitrator passed the Additional Award on 05.07.2021, holding that the claim in respect of the four villages had been omitted from consideration in the Award, and allowed the claim by awarding Rs. 66,70,00,000 together with interest from the date of PKCL's payment to the land acquisition authorities and landholders.

27. Being aggrieved, RVUNL challenged both the Award and the Additional Award before the Commercial Court No. 1, Jaipur Metropolitan-II, Jaipur, under Section 34 of the Act. By order dated 20.05.2023, the Commercial Court disposed of the said proceedings.

The Commercial Court rejected the challenge to the findings of the learned Arbitrator on Claim Nos. 1, 3 and 5.

As regards Claim No. 9, the Commercial Court held the award of interest at 11.95% to be a plausible view.

The Commercial Court set aside the findings on Claim Nos. 2, 4, 6 and 7.

The Commercial Court set aside the Additional Award on Claim No. 8 on the ground of limitation.

After arriving at the aforementioned analysis, the Commercial Court, holding that, as per the law then stood, it had no power to modify the Award, allowed the application under Section 34 of the Act and set aside in its entirety both the Award dated 15.01.2021 and the Additional Award dated 05.07.2021.

28. Being aggrieved by the order of the Commercial Court in setting aside the awards, PKCL preferred an appeal under Section 37 of the Act before the Division Bench of the High Court of Judicature for Rajasthan, Jaipur Bench, which was registered as D.B. Civil Miscellaneous Appeal No. 2007 of 2023.

29. By the impugned Judgment dated 21.05.2026, the High Court in exercise of its appellate jurisdiction under Section 37 of the Act allowed PKCL's appeal and held that the Commercial

Court exceeded its jurisdiction under Section 34 of the Act, and consequently, set aside the order dated 20.05.2023 of the Commercial Court, as a result of which, the Award dated 15.01.2021 and the Additional Award dated 05.07.2021 stood restored. RVUNL, in turn, being aggrieved, has preferred the present Special Leave Petition.

30. For ease of reference, the fate of the claims and the amounts awarded on each claim, as recorded in the Award and the Additional Award, the order of the Commercial Court, and the impugned Judgment, are tabulated below:

Claim	**Arbitral Tribunal**	**Commercial Court**	**High Court**
Claim No. 1 – on rejected rakes of coal	Allowed – Rs. 71,77,82,356	Challenge rejected	Order of the Commercial Court dated 20.05.2023 set aside; Award dated 15.01.2021 and Additional Award dated 05.07.2021 restored
Claim No. 2 – on stamp duty and other charges on the fresh mining lease	Allowed – Rs. 83,47,64,575	Finding of the Tribunal set aside	
Claim No. 3 – on interest on overdue payments	Allowed – Rs. 67,27,40,731	Challenge rejected	
Claim No. 4 – on legal fees and litigation expenses	Allowed – Rs. 3,75,35,000	Finding of the Tribunal set aside on limitation	
Claim No. 5 – on bank guarantee charges	Allowed in part – Rs. 43,59,18,563 (of Rs. 58,96,93,602); RVUNL directed to	Challenge rejected	

	furnish documents for certain heads		
Claim No. 6 – on 267 additional project-affected families	Allowed – Rs. 8,01,00,000	Finding of the Tribunal set aside	
Claim No. 7 – on vocational training centre	Allowed – Rs. 3,38,71,562	Finding of the Tribunal set aside	
Claim No. 8 – on additional cost of land acquisition	Award: claim for the fifth village rejected as premature. Additional Award: Rs. 66,70,00,000 for the four villages, with interest	Additional Award set aside on limitation	
Claim No. 9 – on interest and costs	Interest at 24% declined; simple interest at 11.95% per annum; costs of Rs. 2,19,06,176	Interest at 11.95% held to be a plausible view	

OUR ANALYSIS

31. The impugned Judgment passed by the High Court in exercise of Section 37 of the Act arises out of the order of the Commercial Court passed under Section 34 of the Act, which examined the Award and the Additional Award on a claim-by-claim basis. The Commercial Court set aside both the awards in their entirety on the ground that it lacks power to modify the award. The High Court, in turn, held that the Commercial Court had exceeded its jurisdiction under Section 34 of the Act and accordingly set aside the order of the Commercial Court. The

Petitioner, however, contends that the High Court had done so by a single, omnibus finding, without testing the claims individually and without examining whether the findings of the Commercial Court had disclosed an error of jurisdiction and/or suffered from patent illegality or perversity.

In this background, we propose to examine each of the nine claims separately, as to whether the Commercial Court was correct in allowing or rejecting the claims in exercise of its power under Section 34 of the Act and whether the High Court in turn, in exercise of power under Section 37, was right in setting aside the order of the Commercial Court and in upholding the awards.

32. Before doing so, we must deal with the question of cross-objection, as raised by the RVUNL, since it affects how Claim Nos. 1, 3, 5 and 9 are to be considered. The issue at hand is that RVUNL filed no appeal under Section 37 of the Act, as it was not aggrieved by the setting aside of the awards by the Commercial Court, and no cross-objection was filed in PKCL's appeal. The question is whether RVUNL could still press its objections to Claim Nos. 1, 3, 5 and 9 before the High Court. The Commercial Court had decided those four claims in PKCL's

favour, but it had set aside the whole Award on RVUNL's own Section 34 application. The impugned Judgment does not specifically deal with this issue clearly.

33. It was submitted on behalf of RVUNL that, since the Commercial Court had set aside the Awards in their entirety on RVUNL's own application under Section 34 of the Act, there was no requirement, nor occasion, for RVUNL to pursue an appeal under Section 37 of the Act or to file a cross-objection in PKCL's appeal, and that RVUNL was entitled to press its objections to those four claims without a cross-objection, in terms of Order XLI Rule 22 of the Code of Civil Procedure 1908. Reference was made to the orders of the High Court dated 22.04.2026.

34. By the order dated 22.04.2026, the High Court recorded that, in view of ***Rattanindia Power Limited v. Maharashtra State Electricity Distribution Company Limited***[6], it was prima facie inclined to accept the contention of RVUNL that it may be entitled to address the issues which had been allowed in favour of PKCL. However, in view of ***Gayatri Balasamy v. ISG***

[6] **2025 INSC 1502**

Novasoft Technologies Ltd.[7], the said order was recalled by the High Court.

35. However, we do not consider it necessary to answer this question in the present case as the petitioner had addressed this Court exhaustively on every issue that arose before the Commercial Court and the High Court, including the objections of RVUNL to Claim Nos. 1, 3, 5 and 9, on their merits.

36. Accordingly, we proceed to examine the issues at hand in the light of the legal principles as discussed above.

37. CLAIM NO. 1 – REJECTION OF RAKES OF COAL

37A. **Claim No. 1** is for payment of Rs. 71,77,82,356 for rakes of coal delivered to RVUNL's thermal power stations between May 2016 and July 2018, which RVUNL rejected on quality parameters. The question is whether, having regard to Clauses 3.4.1, 4.3.3 and 5.4.1 of the CMDA mentioned in paragraph 15 above, PKCL was entitled to be paid for the rakes so rejected.

[7] **(2025) 7 SCC 1**

37B. Finding of the Arbitral Tribunal :

The learned Arbitrator held as follows:

(a) RVUNL consumed the entire coal before receipt of the analysis reports, which deprived PKCL of the opportunity to improve its quality, as is implicit in Clause 4.3.3. Further, RVUNL itself said it had no space to stack the rakes pending the receipt of the test results, and by its conduct, as in the words of the arbitrator:

> "**98**. …. *has rendered the entire mechanism for testing of samples and granting an opportunity to the claimant to improve the quality of coal in case of an adverse result totally redundant and otiose*".

(b) Applying the doctrine of contra proferentem, the Tribunal held that if the agreement is ambiguous on whether the allegedly rejected rakes could be consumed without paying for the mining and delivery of that coal, the ambiguity is resolved against the party who drafted the agreement, namely RVUNL.

(c) RVUNL neither pleaded nor proved any loss, and its witness admitted there was no loss of generation of power;

payment could be claimed as a pass-through expense under Section 62 of the Electricity Act, 2003, and Section 70 of the Indian Contract Act, 1872 ("the Contract Act") applied, as the delivery was not gratuitous.

(d) Clause 5.4.1 will apply only if the coal is rejected. Coal accepted and consumed is to be considered for the monthly weighted average price, and hence Claim No. 1 was allowed for Rs. 71,77,82,356.

37C. Finding of the Commercial Court :

The Commercial Court upheld the Tribunal's finding on Claim No. 1. Although the Commercial Court observed that the Tribunal's "opportunity to improve quality" reasoning was outside the terms of the CMDA and therefore, patently illegal, it went on to hold that the Tribunal's core reasoning was a plausible view. That the Tribunal's use of contra proferentem against RVUNL was plausible, although RVUNL foresaw difficulties in stacking the coal, it took no remedial steps. It held that the Tribunal was right to place the onus of proving the rejection reports on RVUNL, whose officers who authored the reports were not examined.

37D. Finding of the High Court :

The High Court under Section 37 of the Act set aside the decision of the Commercial Court, noting that it exceeded its jurisdiction under Section 34 of the Act.

37E. Submissions on behalf of the Petitioner before this Court :

Clauses 4.3.3 and 5.4.1 impose an absolute bar on payment for coal rejected on quality parameters. Clause 3.4.1 vests title to such coal in RVUNL, and the finding that RVUNL's consumption of the coal pending analysis reports amounted to an implied waiver rewrites the bargain recorded in the CMDA. It was submitted that neither the Award nor the Commercial Court discloses the rate or formula applied to arrive at the sum awarded, which is contrary to Section 31(3) of the Act requiring an award to state the reasons on which it is based, and a contravention thereof amounts to patent illegality as held in ***Associate Builders*** (supra). It was further submitted that the Commercial Court sustained the claim only on the footing that the Arbitrator's view on Sections 70 and 73 of the Contract Act was possible, whereas Section 70 cannot apply where Clause

5.4.1 exhaustively governs the matter [***Mahanagar Telephone Nigam Ltd. v. Tata Communications Ltd***[8]].

37F. Submissions on behalf of the Respondent before this Court :

That PKCL supplied the coal, and RVUNL consumed the same. RVUNL has neither pleaded nor proved that it suffered any loss on account of the deficiency in quality of the coal. That RVUNL deviated from the contractual methodology for quality determination which required joint inspection within the thermal power station premises. Further, RVUNL failed to establish functional laboratories within the premises. The CMDA does not contemplate about the situation of consumption of coal which are later declared rejected. According to PKCL, rejected rakes are its property under Clause 3.4.1 of the CMDA. The Tribunal gave reasons for holding that consumption without payment for the same was incorrect, as well as for arriving at the quantification. Lastly, there are concurrent findings in favour of PKCL.

[8] **(2019) 5 SCC 341**

37G. Our analysis :

The Tribunal did not hold that RVUNL had no right to reject coal on quality. It held that RVUNL, having consumed the coal before receipt of the analysis reports, was deemed to have accepted it, and that Clause 5.4.1 applies only to coal that is rejected and not consumed. That is a construction of the CMDA which is a possible view, and the Commercial Court itself held the Tribunal's views on contra proferentem, on the burden of proof and on Sections 70 and 73 of the Contract Act to be plausible. The finding that RVUNL failed to prove the analysis reports and suffered no loss rests on the evidence of its own witness, and re-appreciation of evidence is not permissible under Section 34 and certainly not under Section 37 of the Act.

For these reasons, having examined the objections of RVUNL to Claim No. 1, we see no reason to hold that the finding by the Tribunal, nor the view taken by the Commercial Court suffers from any patent illegality appearing on the face of the Award. Hence, the decision of the High Court to uphold the Award cannot be faulted with.

38. CLAIM NO. 2 – STAMP DUTY AND OTHER CHARGES FOR REGISTRATION OF THE FRESH MINING LEASE

38A. Claim No. 2 is for reimbursement of Rs. 83,47,64,575 paid by PKCL as stamp duty and other charges for registration of the fresh mining lease executed after the cancellation of the allotment of the coal block by the judgment of this Court dated 25.08.2014 and its re-allocation to RVUNL. The question is whether, having regard to Clauses 3.2.1, 3.3, 7.1 and 7.3 of the CMDA, Clause (j) of the Supplementary Agreement and Section 11(1) of the Coal Act, the liability rested on RVUNL or PKCL.

38B. Finding of the Arbitral Tribunal :

The learned Arbitrator held as follows:

(a) It was admitted by both parties that cancellation and re-allotment of the mine was never in their contemplation, that the CMDA provides for change in law through its "force majeure" clause, and that RVUNL's counsel "agreed that change of law will include a judgment of the courts". The events "have fundamentally altered the basis on which the contract had been executed".

(b) The Tribunal held that the event under clause 7.1 must be beyond control and "should adversely and directly render the performance" of the whole or part of the agreement impossible.

(c) PKCL had adopted the CMDA under Section 11 of the Coal Act only "for the residual term and residual obligations"; RVUNL itself so described it in its Board decision of 30.03.2015 and letter of 31.03.2015; and in the Supplementary Agreement RVUNL put the bank guarantee charges on PKCL but not stamp duty and other charges, which is a "clear and evident indication of the intention of the parties" that stamp duty and other charges are not covered by the Supplementary Agreement.

(d) The stamp duty was in the nature of capital expenditure already incurred by PKCL in 2012, and it would be "contrary to the contractual terms but also inequitable" to make it bear the liability a second time. Accordingly, the Tribunal awarded Rs. 83,47,64,575 to the claimant.

38C. Finding of the Commercial Court:

The Commercial Court under Clause 7.1 treated "and" in "adversely and directly" as a co-ordinating conjunction joining the two, so "adversely" cannot be read in isolation. It held that the Tribunal interpreted the clause only on the basis of "adverse impact" and did not consider whether the cancellation rendered performance "adversely and directly" impossible. The cancellation "may be adverse to the economic interest of the claimant but it will not "directly" render the performance of contract wholly or partly impossible", and reading "adversely" in isolation from "directly" is a patent illegality. Thus, the Commercial Court set aside the finding of the Tribunal in favour of the claimant on claim no. 2.

38D. Finding of the High Court:

The High Court recorded RVUNL's submission on "change in law" and held that the Arbitrator, though did not explicitly examine the word "directly", did examine the effect of subsequent legislative changes on the operation of the CMDA itself and therefore, the said view cannot be said to be patently

illegal and no grounds to interfere with the said interpretation arise.

38E. Submissions on behalf of the Petitioner before this Court:

The Petitioner submitted that the cost of obtaining and renewing the mining lease is the Respondent PKCL's own responsibility under the CMDA. It relied on Clauses 3.2.1, 3.2.2(e), 3.2.6(f), 3.3(a) and (b) and 9.2, and said the cost cannot be shifted to RVUNL under "force majeure" or "change in law". Further, even if a court judgment is a change in law, Clause 7.1 still requires an event beyond the party's reasonable control that "adversely and directly" renders performance impossible. That in any event, Clause 7.3 excuses performance only to the extent affected and bars any claim for loss or compensation. Clause 7.2 puts the burden of establishing a "force majeure" on the claiming party, and Clause 7 has no mechanism for reimbursing costs occasioned by a "force majeure" event. Lastly, the supplementary agreement provides that the CMDA and the Addendum are adopted and continued in their entirety, with additional obligations of PKCL only.

38F. Submissions on behalf of the Respondent before this Court:

Respondent, on the other hand, submitted that RVUNL admitted before the Arbitrator, as recorded at paragraph 148 of the Award, that the judgment of this Court in ***Manohar Lal Sharma*** (supra) is a "change in law" within Definitions Clause 1.1. Further, that this Court has held, between the same parties under the same CMDA, in ***Parsa Kente Collieries Ltd. v. RVUNL***[9]**,** that a claim arising from "force majeure" is maintainable under Clause 7.1; and that other events, such as delay in forest clearance and in the railway siding, had earlier been treated as "force majeure" under the same CMDA. Additionally, after reallocation, the Supplementary Agreement under Section 11(1) of the Coal Mines (Special Provisions) Act, 2015 listed the residual obligations. Stamp duty had already been paid in May 2012, and the Supplementary Agreement does not list additional stamp duty among those obligations.

[9] **(2019) 7 SCC 236**

38G. Our analysis :

(i) The Arbitrator's finding rests on three foundations: (a) that the cancellation and re-allotment altered the fundamental basis of the CMDA and was an adverse event under Clause 7.1; (b) that PKCL had adopted the CMDA only for the residual obligations, with no obligation placed on it for the charges on the fresh lease; and (c) that the stamp duty was a one-time expenditure already incurred once by PKCL. The Commercial Court interfered chiefly because the Arbitrator read "adversely" in isolation from "directly".

(ii) The Arbitrator set out Clause 7.1 in full, noticed the requirement of "adversely and directly", and held with reasons that the continued allocation of the mine was a fundamental basis of the CMDA, that its cancellation removed that basis, and that the restoration brought new costs for which the contract had no mechanism to deal. Whether that is the only possible construction is not the question, but whether it is a construction that no fair-minded person could take. Therefore, in substituting its

own construction of Clause 7.1, the Commercial Court exceeded its jurisdiction.

(iii) Having examined the findings of the learned Arbitrator on Claim No. 2, we see no perversity in the findings of the learned Arbitrator as would have warranted interference by the Commercial Court by preferring a construction of a clause over that of the Arbitral Tribunal. The High Court had committed no error in upholding the award of the Arbitral Tribunal allowing the claim.

39. CLAIM NO. 3 – INTEREST ON OVERDUE PAYMENTS

39A. Claim No. 3 is for Rs. 67,27,40,731, being short payment of interest on overdue payments till 30.09.2018. Delay in payments and the liability to pay interest under Clause 6.3 of the CMDA were not in dispute; the dispute was as to the rate.

39B. Finding of the Arbitral Tribunal :

The learned Arbitrator held that the present dispute is limited in scope to the applicable interest rate on overdue payments. That RVUNL has not denied the pending payments or overdue payments and has also not denied its obligation to pay interest.

39C. Finding of the Commercial Court :

The Commercial Court upheld the finding of the Tribunal. It was held that, though the issue of limitation was not taken by RVUNL, the Tribunal and the court could look into it, but RVUNL was not able to show what was that payment which was pending beyond three years. Further, the obligation to pay interest was not denied by RVUNL and the Arbitral Tribunal is correct in its approach of basing the rate on the rates in RVUNL's other financial documents.

39D. Submissions on behalf of the Petitioner before this Court:

It was submitted that interest on overdue payments is governed by Clause 6.3(i) of the CMDA. That clause fixes the rate at the prevailing lending rate of interest charged by SBI to RVUNL for RVUNL's working capital loans. Interest accrues only from the twenty-third day of delay, after a fifteen-day period and a further seven-day grace period. It was submitted that the Arbitral Tribunal recorded that the rate contemplated by the contract was "*not being available on record*". For that reason, it took a broad average of the rates being charged by the State

Bank of Bikaner and Jaipur (SBBJ), a different bank, and fixed interest at 11.95% per annum. The Tribunal's own finding that this rate was not proved is therefore a finding that the claim under Clause 6.3(i) was not established on the evidence the clause itself requires. An award computed by averaging the rates of a different bank is not a construction of Clause 6.3(i). It substitutes a rate the clause does not provide for the one it does. It is submitted in any case that Claim No. 3 depends on the other claims and would not survive standalone if the other claims are not accepted.

39E. Submissions on behalf of the Respondent before this Court:

RVUNL never disputed that it owes interest on delayed payments. That the dispute is only about the rate. That the Tribunal found SBBJ to be a subsidiary or associate of SBI, and found that RVUNL took its working capital loans from SBBJ. On that view, 11.95% is the rate the contract points to.

39F. Our analysis:

(i) The Arbitrator recorded that RVUNL did not deny the overdue payments or its obligation to pay interest, and

that Clause 6.3 could not be applied literally as RVUNL had no working-capital loan from the State Bank of India; the Tribunal therefore took the rates actually paid by RVUNL to other banks, which averaged about 11.95%.

The Commercial Court, while not disturbing the finding of the Arbitral Tribunal, recorded that RVUNL did not identify any payment pending beyond three years, and no material has been shown to the contrary.

(ii) Having examined the challenge of RVUNL to Claim No. 3, as no perversity or patent illegality is discernible, in the concurrent finding on this claim first by the Tribunal, which was upheld by the Commercial Court and not disturbed by the High Court, we see no reason to interfere with the same.

40. CLAIM NO. 4 – REIMBURSEMENT OF LEGAL FEES AND LITIGATION EXPENSES

40A. **Claim No. 4** is for Rs. 3,75,35,000, said to have been paid by PKCL on behalf of RVUNL as legal fees in litigation. Two questions arise here: whether the claim is barred by limitation,

and, if not, whether the liability for these expenses was RVUNL's, having regard to Clauses 3.2.1, 3.3, 9.2 and 13.1 of the CMDA and Section 230 of the Contract Act.

40B. Finding of the Arbitral Tribunal:

The learned Arbitrator held as follows:

On the issue of limitation, it was held that RVUNL, though initially denied liability by its letter of 20.07.2016, had later called for and received documents in support of the claim. On account of inaction, PKCL invoked arbitration by notice dated 06.12.2017 and RVUNL, by letter dated 21.12.2017, said the claim was being re-examined, and that action on the notice would follow only after the re-examination of the claim, which continued till February 2018, and the claim was rejected only on 19.02.2018. It is the refusal of payment which constitutes the starting point of limitation, and PKCL invoked arbitration immediately by notice dated 18.04.2018.

On merits, RVUNL's authorised officers signed the Vakalatnamas, pleadings and affidavits, and the advocates' bills were in RVUNL's name. RVUNL pleaded and proved no deficiency on PKCL's part. PKCL operated the mine as the agent of RVUNL,

and reliance on Section 230 of the Contract Act is the correct proposition of law. Further, under Clause 9.2, maintenance of permits was RVUNL's responsibility, and on a commercial reading of Clause 3.2.1, undertaking litigation or defending the same will not come within the scope of work of the claimant. Accordingly, Rs. 3,75,35,000 was awarded.

40C. Finding of the Commercial Court :

The Commercial Court observed from PKCL's pleadings that the last payment cheque is dated 19.08.2014, RVUNL denied liability on 30.09.2016, and PKCL invoked arbitration on 06.12.2017. RVUNL's letter is dated 21.12.2017 with respect to examination of the claim, and RVUNL denied liability on 19.02.2018. Relying on Section 21 of the Act and ***State of Goa v. Praveen Enterprises***[10]**,** it held that the Limitation Act will be applicable to the arbitration and, for the same, an arbitration shall be deemed to have commenced on the date on which a request for that dispute to be referred to arbitration is received. Therefore, the cause of action started on 19.08.2014, so limitation expired on 18.08.2017. The notice of 06.12.2017 was

[10] **(2012) 12 SCC 581**

therefore barred by limitation. It was held that in none of the letters exchanged between the parties did RVUNL acknowledge the debt or liability. Although the Tribunal's view under Section 230 of the Contract Act "may be a plausible view", it set the finding aside on the issue of limitation.

40D. Submissions on behalf of the Petitioner before this Court:

That Clause 13.1 makes PKCL at all times an independent contractor and not an agent. Clause 3.2.1 provides that all expenses for the Works are borne solely by PKCL, with no expenses or liabilities to be borne or shared by the Petitioner at any stage. On this score, the cost of defending the clearances and licences obtained by the Respondent for its own mining operations is therefore not a liability the CMDA places on the Petitioner. On the issue of limitation, it was submitted that the last payment was made on 19.08.2014 and limitation expired on 18.08.2017, whereas the arbitration was invoked on 06.12.2017, and that in none of the letters did the Petitioner acknowledge the debt or liability.

40E. Submissions on behalf of the Respondent before this Court:

On limitation, it is submitted that the Tribunal rightly concluded that although the last payment was made in August 2014, the cause of action for invoking arbitration under Article 137 of the Limitation Act arose only when RVUNL explicitly denied the claim on 19 February, 2018. That RVUNL had asked for details of the payments in July 2016 for the stated purpose of processing the claim, thereby acknowledging its existence, and that as late as December 2017 RVUNL told PKCL it was reconsidering the claim. The Tribunal therefore correctly applied the principle that under Article 137 of the Limitation Act, limitation begins only when there is both an assertion and an explicit denial.

On Clauses 13.1 and 3.2.1, the Respondent submitted that the argument that all litigation expenses are PKCL's liability is factually and legally untenable. The evidence showed that RVUNL's authorised officers signed the Vakalatnamas, pleadings and affidavits in those proceedings. Bills were raised in RVUNL's

name and forwarded to PKCL for payment, and the CMDA has no provision fastening the liability to defend litigation on PKCL.

40F. Our analysis :

(i) The Arbitral Tribunal allowed the Claim No. 4 by holding in favour of the claimant both on the ground of limitation as well as on merit of the claim:

As regards limitation, the Arbitral Tribunal, after a thorough examination of the relevant dates of the claims and denial of claims, made observations in para 206 of the Award as follows:

> *".....When on account of inaction on the part of the respondent, the claimant invoked arbitration on this issue by their notice dated 6th December 2017, the respondent by their letter dated 21st December 2017 apprised the claimant, that the claim of reimbursement of legal fees is being re-examined by them and that any action in furtherance to the notice dated 6th December, 2017 would be undertaken only after such re-examination. The re-examination of the claim on this account continued till February 2018. It was only on 19th February 2018 that the respondent rejected the claim. The period of limitation will commence only when the claim has been rejected and the present claim petition is thus within the period of limitation."*

As regards the merit of the claim, the Arbitral Tribunal, after examining in detail the relevant

materials before it, and also relying on Section 230 of the Contract Act allowed the claim.

(ii) On the other hand, on the issue of limitation, the Commercial Court went into detail by reappreciating the evidence and took a contrary view that merely because there was an exchange of communication between parties, it cannot extend the period of limitation by relying on the decision in ***Geo Miller and Co. Pvt. Ltd. v. Chairman RVUNL***[11]**.** The Commercial Court held that the Arbitral Tribunal ignored vital evidence and proposition of law in arriving at a conclusion which amounts to a patent illegality and goes to the root of the matter, though on merit the Commercial Court held that the view of the Arbitral Tribunal based on Section 230 of the Contract Act may be a "plausible view". Thus, only on the ground of limitation, the Commercial Court set aside the Tribunal's finding on Claim No. 4.

(iii) Having examined the reasoning given by the learned Arbitrator on Claim No. 4 and also the grounds on

[11] **(2020) 14 SCC 643**

which the Commercial Court reversed the decision of the Arbitral Tribunal, it is clear that the Commercial Court acted in a manner which went beyond the scope of Section 34 of the Act as if it was sitting on appeal on facts and law. The reason given by the learned Arbitrator, as extracted above, in our opinion, cannot be said to be perverse or patently illegal, keeping in mind the *proviso* to sub-section (2A) of Section 34 of the Act, which provides that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

We, thus, see no perversity or patent illegality in the reasoned findings of the learned Arbitrator, which could have warranted interference by the Commercial Court.

41. CLAIM NO. 5 – BANK GUARANTEE CHARGES

41A. **Claim No. 5** is for Rs. 58,96,93,602, being the amounts which RVUNL deducted from payments due to PKCL under heads said to relate to charges on the bank guarantees furnished by RVUNL to the Ministry of Coal. The question is the scope of

Clause (k) of the Supplementary Agreement, discussed in paragraph 20 above, under which PKCL "shall reimburse all charges related to furnishing and renewal of Performance Security" on production of documentary evidence by RVUNL.

41B. Finding of the Arbitral Tribunal:

The Tribunal held that PKCL must pay the charges for furnishing and renewing the performance bank guarantee, but only when RVUNL furnishes documentary evidence, since it is only then that the obligation of the claimant to reimburse the respondent arises. It held that the words "all charges" in Clause (k) cannot bring within it any amount paid to any other party. Interest on margin money, interest on bank guarantee and the payment to the State Government to stand as guarantor were therefore not charges for furnishing the guarantee. The Tribunal awarded Rs. 43,59,18,563 to the claimant and RVUNL was directed to furnish the documents within four weeks and to adjust any excess deduction.

41C. Finding of the Commercial Court:

The Commercial Court held, in substance, that the Tribunal interpreted Clause '(k)' of the Supplementary

Agreement and even if a different interpretation is also possible, the same is not within the scope of Section 34 of the Act. Further, there is no perversity or patent illegality in the finding of the Arbitral Tribunal on this issue.

41D. Submissions on behalf of the Petitioner before this Court:

The Arbitral Tribunal held that the words "*all charges*" can only mean an amount charged by the bank for furnishing the guarantee and any amount paid to the third party falls outside the clause. However, it was submitted that Clause (k) of the Supplementary Agreement is to be construed by reference to the subject matter, namely charges "related to" furnishing and renewal of the performance security, which is an expression of wide meaning and not by reference to identity of the payee. Reference was made to ***Doypack Systems Pvt. Ltd. v. Union of India***[12]; ***State of Rajasthan v. Nav Bharat Construction Co.***[13]. Further, under Clause (j), the indemnity against financial

[12] ***(1988) 2 SCC 299***
[13] ***(2006) 1 SCC 86***

liabilities imposed by a governmental authority was not referred to by the Arbitrator, the Commercial Court or the High Court.

41E. Submissions on behalf of the Respondent before this Court:

PKCL supported the findings of the Tribunal. It was further submitted that despite repeated requests, RVUNL failed to produce any documentary evidence of the charges it said it had incurred. The Respondent submitted that RVUNL's argument that the Tribunal did not refer to Clause (j) of the Supplementary Agreement must be rejected, as no pleading or argument on Clause (j) was advanced before the Tribunal, and RVUNL is setting up a new case in the SLP.

41F. Our analysis :

Having examined the finding relating to Claim No. 5, we see no patent illegality or perversity in the concurrent findings by the Tribunal and the Commercial Court, and hence there is no reason to interfere with the Award on this claim. RVUNL also cannot set up a new case before this Court, which was not there before the Tribunal.

42. CLAIM NOS. 6 AND 7 – ADDITIONAL PROJECT-AFFECTED FAMILIES AND VOCATIONAL TRAINING CENTRE

42A. The issues:

Claim No. 6 is for Rs. 8,01,00,000 incurred by PKCL on 267 project-affected families ("PAFs") in addition to the 458 PAFs as was contemplated in the MoU entered into between RVUNL and the Collector.

Claim No. 7 is for Rs. 3,38,71,562 spent by PKCL in setting up a Vocational Training Centre required by the Forest Clearance in pursuance of the Ministry of Environment and Forests notification of 04.01.2011, which post-dates the CMDA.

The question in both the claims is whether the expense fell within PKCL's scope of work under Clauses 3.2.1, 3.2.2 and 9.2 of the CMDA, or is reimbursable by RVUNL as an incident of a change in law.

42B. Finding of the Arbitral Tribunal:

On Claim No. 6, the learned Arbitrator held in substance that PKCL's obligation was only with regard to the figures as had

been detailed at the initial stage of the agreement, meaning relief to 458 families was a part of the one-time obligation of PKCL, and any later change will definitely fall within the category of the change of law and legal provisions as per the contract, entitling PKCL to reimbursement. Further, requiring PKCL to rehabilitate the additional 267 families cannot be said to be a part of the scope of work under clause 3.2.1 or clause 3.2.2. Moreover, this additional obligation did not find mention in the supplementary agreement.

On Claim No. 7, the learned Arbitrator held in substance that the requirement of a vocational training centre was not one of the requirements for grant of the requisite permissions. The said condition has only been inserted in the year 2011, much after the issuance of the notification for acquisition of land in the year 2009 and much after the parties had executed the CMDA. The imposition of the said conditions by a statutory authority falls within the category of "change of law". An additional

condition imposed later by a statutory authority will constitute a change in law and not part of the obligation under the CMDA.

42C. Finding of the Commercial Court:

The Commercial Court took up Claims 6 and 7 together. On Claim No. 6, it held in substance that under Clause 3.2.1 read with Clause 3.2.2(2), PKCL had to obtain clearances including rehabilitation and resettlement. The parties had to perform these obligations even if any changes occur in any law as per the definition of "applicable laws". That the present case did not come under the event of "force majeure" and so the claimant was not relieved of its obligation.

On Claim No. 7, the Commercial Court held that under Clause 9.2, the maintenance of all permits etc. is also the obligation of the claimant and the applicant has also to take such necessary action. It cannot be said that the maintenance was the sole responsibility of RVUNL. Accordingly, it set aside the findings of the Arbitral Tribunal.

42D. Submissions on behalf of the Petitioner before this Court :

That Clauses 13.1 and 3.2.1 apply to both claims as they do to Claim No. 4. Under Clause 13.1, PKCL is at all times an independent contractor and not an agent. Under Clause 3.2.1, all expenses for the Works are borne solely by PKCL, with no expenses or liabilities to be borne or shared by the Petitioner at any stage. Under Clause 9.2, PKCL covenants to obtain, renew and maintain all permits, licences and approvals required under applicable laws. RVUNL relied on the Commercial Court's findings.

42E. Submissions on behalf of the Respondent before this Court :

On Claim No. 6, it was submitted that at the bidding stage, the environmental impact assessment report prepared under RVUNL's instructions identified only 458 PAFs under the prevailing State policy, in which eligibility was determined by the date of the Section 4 notice under the Land Acquisition Act, 1894. PKCL's bid and CMDA obligations were framed on those

458 families alone. The cut-off date was later changed from 22.10.2009 to 31.12.2012 by a Gram Panchayat resolution, so that 267 more families became eligible. This was a "change in law" covered by Clause 7.1(A)(ii)(a) as a political "force majeure" event. Further, Clause 3.2.1 does not apply to "force majeure" situations. Lastly, RVUNL never disputed before the Tribunal, the Section 34 Court or this Court that the change in eligibility criteria was a "change in law". Its argument on the CA certificates is a new case in the SLP, because it has never disputed the quantum or that PKCL incurred the expense. For this, the Respondent relied on ***Ramesh Kumar Jain v. BALCO***[14].

On Claim No. 7, the Respondent submitted that RVUNL's argument mirrors its argument on Claim No. 6, relying on Clauses 3.2.1 and 9.2. The obligation to set up vocational training centres arose under the MoEF notification of 04.01.2011, introduced well after the CMDA and PKCL's application to acquire the land. It imposed a new and unforeseen burden and is a "change in law" falling within Clause 7.1(A)(ii)(a).

[14] **2025 SCC OnLine SC 2857**

The Respondent submitted that RVUNL has never disputed that the notification was a "change in law", and that Clause 7.1 overrides Clause 3.2.1 in such cases. It added that the issue is settled by this Court's decision in ***Parsa Kente Collieries*** (supra), that "force majeure" claims are maintainable under Clause 7.1 and the affected party is entitled to compensation.

42F. Our analysis:

The Arbitrator's finding on Claim No. 6 does not depend on "force majeure". It rests on the construction of PKCL's scope of work. PKCL's obligation was limited to the 458 families recorded in the Environmental Impact Assessment Report on which RVUNL obtained clearance. The additional 267 families arose from a Gram Panchayat resolution after the signing of the CMDA, which RVUNL, the party to the MoU, did not challenge. That is a possible view of the interpretation of the contract, and we cannot say that the Arbitrator wandered outside it.

On Claim No. 7, the Arbitrator found that the condition was inserted in 2011, after the acquisition notification of 2009 and the CMDA, by a statutory authority. It was not in existence

when approval was applied for and therefore, fell within "change in law," PKCL's obligation being limited to the expense of conditions as on the date of the CMDA. That is a construction of the scope of work under the CMDA, and it is a possible view taken by the Arbitrator.

Having examined the findings of the learned Arbitrator on Claim Nos. 6 and 7, we see no perversity or patent illegality in the findings of the learned Arbitrator, being possible views. The Commercial Court, thus, went beyond the scope of Section 34 of the Act.

43. CLAIM NO. 8 – ADDITIONAL COST OF LAND ACQUISITION AND THE ADDITIONAL AWARD

43A. The issue:

Claim No. 8 is for reimbursement of additional cost of land acquisition said to have resulted from the 2010 amendment to the Resettlement and Rehabilitation Policy of Chhattisgarh, 2007. It was in two parts: Rs. 66.70 crore already incurred in four villages (Parsa, Kente, Salhi and Hariharpur), and a declaration for future additional cost for a fifth village, Ghatbara,

where acquisition had not commenced. The Award rejected the fifth-village claim as premature. On PKCL's application under Section 33(4) of the Act, the Additional Award allowed Rs. 66.70 crore with interest. The questions are whether the Additional Award is without jurisdiction because the Arbitrator was functus officio, and whether the claim is barred by limitation, on which ground the Commercial Court set the Additional Award aside.

43B. Finding of the Arbitral Tribunal:

The Tribunal held that Section 33(4) of the Act covers a case where the Tribunal does not render any finding on any of the claims. A relief not granted is deemed rejected only where the issue was considered, and in the present case, this aspect had escaped adjudication entirely. On merit, it was held that the Rehabilitation Policy of 2007, issued under authority conferred on the State Government, is a "law" and its 2010 amendment is a "change in law". Therefore, the reasoning with respect to "change in law" as per the provisions of the CMDA on Claims 6 and 7 will equally apply to Claim No. 8. Further, as the issue of whether government notifications and statutory circulars will constitute a "change in law" stands concluded in the award, the

said decision would be binding in subsequent proceedings such as under Section 33(4) of the Act. Accordingly, the claim of Rs. 66.70 crore was awarded with 11.95% interest.

43C. Finding of the Commercial Court:

The Commercial Court held that the Arbitral Tribunal did not deal with the issue of limitation in the Additional Award even though it had observed that absence of pleading as to limitation is not fatal and the same could be considered by the Tribunal. It held that the claim is for reimbursement of payments made in 2011-12. If the last payment is taken as 31.03.2012, the notice of invocation was given after 6 years and 7 months, while the period of limitation for this type of claim is provided as 3 years. It held that the Tribunal did not delve into the facts and law related to the bar of limitation. Therefore, it concluded that the Additional Award is liable to be set aside on this ground alone.

43D. Submissions on behalf of the Petitioner before this Court :

That the claim was rightly barred by limitation. It is also submitted that the Additional Award could not have been made, because the Arbitral Tribunal had by then become *functus officio*.

The fifth-village part of Claim No. 8 was rejected as premature in the main Award. Having rejected that claim, the Tribunal could not, on an application under Section 33(4) of the Act, revisit the four-villages part of the very same claim. Section 33(4) of the Act permits an additional award only for a claim omitted from the award, and a claim considered and refused is not a claim omitted. On limitation, the Petitioner relied on the Commercial Court's finding that the Tribunal, though it had held under Claim No. 4 that limitation may be considered though not pleaded, did not deal with that aspect in the Additional Award.

43E. Submissions on behalf of the Respondent before this Court :

That the first part of Claim No. 8 (Rs. 66.70 crore for the four villages) was never dealt with in the Award, which addressed only the fifth village; hence, an application under Section 33 (4) was the correct remedy. For the same, reference was made to ***Gayatri Balasamy*** **(supra)**, ***McDermott International Inc. v. Burn Standard Co. Ltd.***[15]**;** ***NHAI v. Trichy Thanjavur Expressway Ltd***[16]**.** On limitation, it was submitted that RVUNL

[15] **(2006) 11 SCC 181**
[16] **2023 SCC OnLine Del 5183**

never raised it before the Arbitrator or in its Section 34 pleadings, its stand before the Tribunal being that claim was premature, and that a plea not raised before the Tribunal cannot be raised for the first time under Section 34 of the Act.

43F. Our analysis:

As to the first objection, the Arbitrator, who authored both the awards, recorded that the claim of Rs. 66.70 crore had escaped adjudication entirely, and rejected the plea of deemed rejection on the reasoning that it applies only where the issue was considered. We find no infirmity in this view.

As to limitation, no plea of limitation is recorded in the Additional Award. The Commercial Court itself computed the period from 31.03.2012. Whether time ran from payment or from a later demand and refusal depends on facts and correspondence. It is well settled that a plea of limitation cannot be decided as an abstract principle of law divorced from facts, as in every case the starting point of limitation has to be ascertained based on the peculiar facts obtaining. A plea of limitation is a mixed question of fact and law. In the present case, the plea of limitation was not raised before the Tribunal and, having not

been raised, it was not examined by the Tribunal. Hence, in absence of appropriate facts and pleadings, it could not have been considered by the Commercial Court, and proceed to set aside the Tribunal's award on the ground that the Tribunal had not considered the issue of limitation. Further, a plea not raised before the Tribunal ought not to have been considered by the Commercial Court in the challenge under Section 34 of the Act. We are thus of the view that the Additional Award cannot be said to be vitiated by patent illegality merely because it is silent on limitation, a plea which was not raised before the Arbitral Tribunal. The reason given by the Commercial Court in setting aside the Additional Award on the ground that the Tribunal did not go into the question of the limitation cannot be said to be proper in law and within the scope of Section 34 of the Act.

On merits, the Additional Award rests on the reasoning of the Award on Claims 6 and 7, and on RVUNL's acceptance of the quantum and payment in its Statement of Defence. These are findings on the construction of the CMDA and the record.

Having examined the findings of the learned Arbitrator on Claim No. 8 in the Additional Award, we see no perversity in the

findings of the learned Arbitrator as to have warranted interference by the Commercial Court under Section 34 of the Act.

44. CLAIM NO. 9 – INTEREST AND COSTS

44A. The issue:

Claim No. 9 is for interest at 24% per annum on the awarded amounts and for costs of arbitration.

44B. Finding of the Arbitral Tribunal :

The learned Arbitrator held that both the parties agreed that interest is in the discretion of the Tribunal; the claim of 24% per annum "is excessive and cannot be granted". PKCL, having itself claimed 11.95% on overdue payments, was granted simple interest pendente lite at 11.95% per annum from the filing of the Statement of Claim to the Award, and, if payment was not made within four weeks, at the same rate till payment is made.

44C. Finding of the Commercial Court :

The Commercial Court held that there is no dispute that the award of interest is in the discretion of the Arbitral Tribunal. Therefore, the rate of interest awarded is a plausible view.

44D. Submissions on behalf of the Petitioner before this Court :

It was submitted that the interest under this head is not an independent claim but a consequence of claims allowed and amounts awarded. Further, as per the Tribunal's own reasoning, interest is compensation for being kept out of money a party is entitled to; therefore, if the principal claim does not survive, the interest would also not survive.

44E. Submissions on behalf of the Respondent before this Court :

That the award of interest is within the discretion of the Tribunal. That the rate of 11.95% was based on the contractual

benchmark and no patent illegality was found by the Section 34 court as well.

44F. Our analysis :

The Arbitrator exercised the discretion, which both parties accepted can be done while awarding interest, which awarded simple interest at 11.95%, the rate PKCL itself claimed on overdue payments. The Commercial Court held this a plausible view. No submission or material has been placed before us to show that it is contrary to the CMDA or the Act, or perverse. Interest and costs being consequential on claims upheld by us, we see no reason to interfere with the Award on Claim No. 9, which was upheld by the Commercial Court and stands restored by the High Court.

45. <u>SEVERABILITY OF THE AWARD AND THE PRAYER FOR REMAND</u>

45A. Submissions on behalf of the Petitioner before this Court :

That ***Gayatri Balasamy*** (supra) permits severance only of separable portions that are not intertwined with the invalid ones.

It therefore required a claim-by-claim inquiry into which portions were invalid and whether they could be separated from the rest, or a remand of the matter to the Commercial Court for that purpose, as no such exercise was undertaken. The High Court examined only Claim 2, and it did not examine Claims 4, 6, 7 and 8, nor separability in respect of any claim. It restored both the Awards in full. It has been submitted that once the Awards were set aside entirely by the Commercial Court, the findings on Claims 1, 3, 5 and 9 had no operative effect, so the Petitioner had no occasion to file a cross-objection. Those findings have become operative against it for the first time under the impugned Judgment. The Petitioner has thus lost the chance to show that the valid and invalid portions are intertwined, which is the very exercise ***Gayatri Balasamy*** (supra) contemplates. Claims 1, 3, 5 and 9 were never set aside, so the question of severance did not arise for them. Without prejudice, even if the Petitioner's challenge to Claims 1, 3, 5 and 9 were foreclosed for want of a cross-objection, that would not make an Award that cannot be severed severable.

45B. Submissions on behalf of the Respondent before this Court :

It was submitted that it was settled, even before ***Gayatri Balasamy***, that ***Project Director, NHAI v. M. Hakeem***[17], does not prohibit the partial setting aside of an award, relying on ***NHAI v. Trichy Thanjavur Expressway Ltd.*** (supra); ***Union of India v. Alcon Builders and Engineer Pvt. Ltd***.[18], ***NHAI v. Additional Commissioner, Nagpur***[19], and ***Navayuga Engineering Co. Ltd. v. Union of India***[20], ***Gayatri Balasamy*** (supra) merely reiterated this settled position, and a judgment which clarifies the law applies retrospectively. Further, the claims were the subject of separate notices of arbitration, each disclosing a distinct cause of action, consolidated only for convenience of adjudication, and were accordingly severable.

45C. Our analysis :

The settled principle is that the authority to sever an invalid portion of an award from a valid portion arises for consideration only if some part of the award is found to be

[17] **(2021) 9 SCC 1**
[18] **2023 SCC OnLine Del 160**
[19] **2022 SCC OnLine Bom 1688**
[20] **2021 SCC OnLine Ker 5197**

invalid. The Petitioner's submissions that the Award is practically inseparable, and its alternative prayer that the matter be remanded to the Commercial Court for a claim-wise severability exercise, are premised on the invalidity of Claim Nos. 2, 4, 6, 7 and 8. We have examined each of the nine claims and the Additional Award, in the manner set out above, and in respect of each of them we have recorded that we see no reason to interfere with the Award or the Additional Award. Where the Commercial Court had upheld the findings of the Arbitral Tribunal, we have given our reasons for finding that there is no reason to interfere, and where the Commercial Court had set aside the findings of the Arbitral Tribunal, we have found no perversity in those findings of the Tribunal. No part of the Award or the Additional Award having been found to be invalid, the question whether the valid and invalid portions are severable, and the alternative prayer for remand, do not arise.

The submission that the impugned Judgment disposed of the appeal on a single, omnibus finding without a claim-wise examination, and did not address the specific objections of the Petitioner, has been met by the claim-wise examination undertaken by us as above, in which the objections of the

Petitioner to each claim, as pressed before us, have been considered on their merits by applying the well-settled legal principles governing Section 34 and Section 37 of the Act.

CONCLUSION

46. In the result, our conclusions on the individual claims considered by the Arbitral Tribunal and courts under Sections 34 and 37 of the Act are as under:

(i) As regards Claim Nos. 1, 3, 5 and 9, which were allowed by the Arbitral Tribunal and in respect of which the Commercial Court found no ground to interfere, after hearing the parties and on examining the reasons given by the Arbitral Tribunal as well as the Commercial Court, we see no ground to interfere with the Award on these claims for the reasons discussed above. Consequently, the impugned Judgment of the High Court does not warrant any interference.

(ii) As regards Claim Nos. 2, 4, 6, 7 and 8 in respect of which the Commercial Court had set aside the findings of the Arbitral Tribunal, after having examined the findings

of the learned Arbitrator and also the reasons given by the Commercial Court, we see no patent illegality or perversity in the findings of the learned Arbitrator as discussed above. The Commercial Court erred in setting aside the findings of the Tribunal on Claims Nos. 2, 4, 6, 7 and 8. For the same reason, the impugned Judgment of the High Court does not warrant any interference.

47. It is to be noted that the exercise we have undertaken in the preceding parts, of examining the analysis of each claim by the Arbitral Tribunal and then by the Commercial Court, was not a review on merits. It was a limited exercise to satisfy ourselves that neither forum deviated from the established legal principles governing the scope of examining an arbitral award under Section 34 of the Act. We have therefore asked only whether the Arbitral Tribunal's findings rest on a plausible interpretation of the Coal Mining and Delivery Agreement and the Supplementary Agreement, whether they are supported by the material before it, and whether there was any patent illegality or perversity in the findings by the Arbitral Tribunal, whether the Tribunal strayed from the terms of CMDA and the Supplementary Agreement and whether the Commercial Court,

in setting aside the Award on Claims 2, 4, 6, 7 and 8, stayed within the confines of Section 34 of the Act.

48. We have not asked whether we would have reached the same conclusion on the same material. On close and minute scrutiny, some of the Arbitral Tribunal's findings may admit of another plausible view. Others may appear to rest on an incorrect appreciation of the facts or even an erroneous application of the law. That, however, is not the test under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 as delineated above.

49. The limits within which a court may examine an arbitral award are well settled. The proviso to sub-section (2A) of Section 34 of the Act provides that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence. Patent illegality, on which a domestic award may be set aside, is an illegality that goes to the root of the matter and appears on the face of the award. It does not extend to an error in appreciating evidence, or to a construction of the contract merely because the court could have construed it differently. An award is perverse only when a finding is based

on no evidence, or are based on irrelevant material, or that the Tribunal ignored vital evidence. The Arbitral Tribunal is the final arbiter of the facts, and the construction of the contractual terms is primarily its domain. Where the interpretation adopted is a possible and plausible one, the court cannot substitute its own interpretation, however persuasive the alternative reading may be. The Section 37 court is, moreover, confined to the grounds available under Section 34 of the Act and cannot undertake an independent assessment of the merits of the award. Taking a holistic view, we find that both the Awards, read as a whole, do not suffer from patent illegality, perversity or any other ground that would justify these being set aside under Section 34 of the Act. This accords with the consistent approach of this Court, which has emphasised the restricted scope of interference with arbitral awards, so that the autonomy and finality of arbitration are respected, and the process of scrutiny is not turned into an ordinary appeal on facts and law. Having found that the Arbitral Tribunal has not deviated from the established principles in a manner warranting interference, we decline to interfere with the impugned Judgment of the High Court which has upheld the Awards.

50. The High Court, by the impugned Judgment, set aside the order of the Commercial Court dated 20.05.2023 and restored the Award dated 15.01.2021 and the Additional Award dated 05.07.2021. We find no ground, within the limited scope of Article 136 of the Constitution, to interfere with the impugned Judgment and hence, we see no reason to entertain and admit the Special Leave Petition. The only logical consequence is that the Special Leave Petition is liable to be dismissed and is, accordingly, dismissed. There shall be no order as to costs.

Pending application(s), if any, shall stand disposed of.

.....J.
(SATISH CHANDRA SHARMA)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
NOVEMBER 16, 2026