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

% Judgement delivered on: 27.05.2025

\+ **FAO (OS) (COMM) 59/2024**
OIL AND NATURAL GAS CORPORATION LTD. ....Appellant

versus

JSIW INFRASTRUCTURE PVT LTD .....Respondent

\+ **FAO (OS) (COMM) 60/2024**
OIL AND NATURAL GAS CORPORATION LTD. ....Appellant

versus

JSIW INFRASTRUCTURE PVT LTD .....Respondent

Advocates who appeared in this case

For the Appellant : Mr. Saurav Agrawal, Ms. Aakriti Dawar and Ms. Anshika Pandey, Advocates.

For the Respondent : Mr. Aayush Agarwala and Mr. Prakash Jha, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The Appellant has filed the present Appeals under Section 37 of the Arbitration and Conciliation Act, 1996, **('the Act')** being aggrieved

by the common judgment dated 20.12.2023, passed in O.M.P. (COMM) No. 148 of 2021 and O.M.P. (COMM) No. 149 of 2021 by the learned Single Judge of this court ('**Impugned Judgment'**).

2. The impugned judgment has allowed the applications under Section 34 of the Act and set aside identical Arbitral Awards, both dated 10.01.2020, ('**Awards'**) whereby the learned Arbitral Tribunal had rejected the claim of the Respondent seeking reimbursement of excise duty from the Appellant.

3. The impugned judgment has set aside the Awards holding that the conclusion arrived at by the learned Arbitral Tribunal was patently illegal and resulted in a manifest disregard of the terms of the contract.

FACTUAL BACKGROUND:

4. The dispute has arisen out of the contracts entered into between the Appellant and the Respondent for Pipeline Replacement Project on lump sum basis. ('**the Project**') The line pipes were a significant part of the project, which involved installation and commission of line pipes.

5. As the Respondent was the successful bidder, the project was awarded to the Respondent vide Notice of Award (**'NOA'**) dated 25.06.2008 and 30.06.2008 for a lump sum cost of ₹1,43,84,30,000 and ₹77,31,42,972 respectively ('**Contract Price**'). The Contract Price was inclusive of all tariffs, taxes, duties, levies etc. including but not limited

to custom duty, excise duty, service tax etc. The NOA required a formal contract to be signed by the parties within 30 days from the date of the NOA.

6. After the NOA, the Appellant and the Respondent exchanged correspondences by which the Respondent explained to the Appellant that there was difficulty in procuring the 'lines pipes' domestically and would have to pay Countervailing Duty ('**CVD'**) on the import of the line pipes and accordingly, the Respondent sought an amendment to the contract for reimbursement of the CVD to be paid on the same rate as the excise duty in lieu of payment of the excise duty.

7. In the letters dated 28.06.2008, 17.07.2008 and 06.08.2008, the Respondent had requested the Appellant to reimburse the CVD instead of excise duty. The Appellant vide letter dated 27.08.2008, agreed to the amendment to the contract to allow the reimbursement of the duty paid by the Respondent to the manufacturer of the line pipes as an exception to the contractual provision that only the excise duty, which was paid directly to the authorities by the Respondent will be reimbursed by the Appellant.

A tabular representation of the amendment to Clause 3.4.1.5 of the GCC is provided as under:

Reference	*Existing Clause*	*Amendment (in bold)*
GCC 3.4.1.5	*The Contractor shall furnish documentary evidence in support of payment of Customs Duty, Excise Duty, Service Tax and VAT/Sales tax on works/ work Contract tax (central or state) as identified in the contract price schedule for the purpose of claiming such amounts from the company. The Company shall reimburse the custom duty, excise duty, service tax and VAT/sales tax on works/ work contract Tax (central or state) paid by the contractor directly to the tax authorities at actual in Indian rupees against documentary evidence subject to the maximum of the amount of duty/tax indicated in the contract schedule.*	*The Contractor shall furnish documentary evidence in support of payment of Customs Duty, Excise Duty, Service Tax and VAT/Sales tax on works/ work Contract tax (central or state) as identified in the contract price schedule for the purpose of claiming such amounts from the company. The Company shall reimburse the custom duty, excise duty, service tax and VAT/sales tax on works/ work contract Tax (central or state) paid by the contractor directly to the tax authorities at actual in Indian rupees against documentary evidence subject to the maximum of the amount of duty/tax indicated in the contract schedule.* ***However, only for line pipes, company shall reimburse the Excise Duty paid by the manufacturer to the tax Authorities and invoiced to the Contractor, at actuals, in Indian Rupees against documentary evidence subject to the maximum of the amount of Excise Duty indicated in the Contract Price Schedule*** ***(emphasis supplied)***

8. In order to facilitate reimbursement of CVD in lieu of excise duty, the following changes were agreed:

   i. In Price Schedule (Annexure C) –Note 9 was added in General Notes

   "9. Reimbursement of only CVD (Countervailing duty) portion of Custom duty, for import of line pipes, equivalent to Central Excise Duty (ED) leviable on a like product manufactured in India shall be done. The CVD reimbursement shall be limited to amount of ED quoted in the price offer for import of line pipes only, against submission of supporting document (for payment of CVD). The CVD (14.42%) shall be calculated on the basis of assessable CIF value (and not on CIF + BCD + Surcharge, if any) for only line pipes imports made by contractor. Maximum reimbursement amount will be limited to amount of ED quoted in your offer."

   ii. Milestone Payment Formula (Annexure E) Note No 2 was added in respect of ED in same terms as above.

   2. Reimbursement of only CVD (Countervailing Duty) portion of Custom Duty, for import of line pipes, equivalent to Central Exise Duty (ED) leviable on a like product manufactured in India shall be done. The CVD reimbursement shall be limited to amount of ED quoted in the price offer for import of line pipes only against submission of supporting document (for payment of CVD). The CVD (14.42%) shall we calculated on the basis of assemble CIF value (and not on CIF +BCD + Surcharge, if any) line pipes imports made by contractor. Maximum reimbursement amount will be limited to amount of ED coated in your price offer.*

   iii. An additional sentence was added, at the end of Clause 3.4.1.5 of GCC:

> *"However, only for line pipes, company shall reimburse the Excise Duty paid by the manufacturer to the Tax Authorities and invoiced to the Contractor, at actual, in Indian rupees against documentary evidence subject to the maximum of the amount of excise duty indicated in the Contract Price Schedule."*

9. Thereafter, the contracts were executed on 04.09.2008 between the parties with the requisite modifications to give effect to the understanding between the parties.

10. However, the Respondent ultimately procured the line pipes domestically and submitted the tax invoices seeking reimbursement of excise duty on 09.11.2009. The Appellant returned the request of reimbursement on 10.11.2009 with an endorsement to submit proof if the excise duty was paid to authority directly to the authorities by the Respondent.

11. On 21.11.2009, the Respondent relying upon the additional sentence added in clause 3.4.1.5 of the GCC, requested the Appellant to release the payment of excise duty as the said sentence did not require the Respondent to pay the excise duty directly to the tax authorities.

12. On 24.11.2009, the Appellant *vide* handwritten note clarified that the additional sentence added to Clause 3.4.1.5 of the GCC was added only if the line pipes were to be imported and the CVD was applicable on such imports. Hence, the Appellant refused to reimburse excise duty as the letter dated 27.08.2008 had clearly stated that the change in the

original condition was only valid for reimbursement of CVD. As the excise duty was not directly paid by the Respondent to the tax authorities, the Appellant refused to reimburse the same.

13. In view of the same, the dispute arose between the parties with respect to the reimbursement of excise duty, under Clause 3.4.1.5 of the GCC. The parties attempted to resolve their dispute by conciliation and accordingly, the dispute was referred to Outside Experts Committee (**"OEC"**). The OEC vide their recommendation dated 12.12.2011, recommended that the Appellant should reimburse the excise duty. The Appellant refused to accept the recommendation of the OEC and requested the OEC to give another recommendation. The OEC reiterated their recommendation to their first recommendation and reiterated that the Appellant should reimburse Respondent for the excise duty. The Appellant was not agreeable to the same and thereafter, the Respondent invoked the arbitration clause and the dispute was referred to a three member arbitral tribunal.

14. The said arbitral tribunal rendered an award dated 20.02.2015, in favour of the Respondent and held that the Respondent was entitled to the reimbursement of the excise duty along with interest @12%. The said award was set aside by the consent of the parties and a Sole Arbitrator was appointed *vide* order dated 15.02.2019, passed by this Court in O.M.P. No. 429 of 2015 to adjudicate the dispute between the parties.

15. The learned Sole Arbitrator *vide* the Awards dated 10.01.2020 rejected the claim of the Respondent and held that the Appellant was not

liable to reimburse the excise duty considering the amended clause 3.4.1.5 of the GCC and relying on the letter dated 27.08.2008 as an internal aid to interpret the rationale behind the amendment to the clause 3.4.1.5 of the GCC.

16. The Respondent being aggrieved by the award preferred an application under Section 34 of the Act which was allowed by the learned Single Judge with the finding that the clause 1.2.5 of the GCC clearly stipulates that the terms of the contract supersede all communications, negotiations and agreement entered into prior to the date of the execution of the contract. The clause 1.2.5 of the GCC is as follows-

> *"l.2.5 Entire Agreement The Contract constitutes the entire agreement between the Company and the Contractor with respect to the subject matter of the Contract and supersedes all communication, negotiations and agreement (whether written or oral) of the parties with respect thereto made prior to the date of this Agreement."*

17. The impugned judgment concluded that where there is no quarrel with the proposition that an interpretation considering both the express terms of the contract and surrounding circumstances can sometimes be necessitated, the same does not apply when no ambiguity exists in the first place. The impugned judgment has relied upon clause b of the contract which provides that in case of any discrepancy, conflict, dispute in the interpretation of the terms of the contract, GCC shall have priority as compared to the Bidding Documents annexed to the contract. Since the letter dated 27.08.2008 formed part of the Bidding Documents, the

impugned judgment held that clause 3.4.1.5 of the GCC shall have precedence over the said letter. Given that there is no ambiguity in the language of clause 3.4.1.5 of the GCC, the impugned judgment came to the conclusion that the Awards were patently illegal as there was no requirement to refer to the contents of letter dated 27.08.2008 to interpret the real intention of the parties. Accordingly, the Awards were set aside by the impugned judgment.

18. Being aggrieved by the impugned judgment, the Appellant has preferred the present appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

19. Mr. Saurav Aggarwal, the learned counsel appearing for the Appellant has submitted that the learned Single Judge has gone beyond the scope of interference and erroneously set aside well reasoned Awards going beyond the scope of intervention as envisaged under Section 34 of the Act. It is further contended that the learned Single Judge has done a factual review of the findings of the Awards and reviewed the merits in the application under Section 34 of the Act which is impermissible.

20. The learned counsel for the Appellant has submitted that the learned Single Judge has erroneously held that the award suffered from patent illegality and while finding the award to be patently illegal the learned Single Judge reinterpreted the terms of the contract and substituted his view with the findings of the arbitrator which were plausible and well reasoned. The Appellants relied upon ***Raghunath***

Builders (P) Ltd. v. Anant Raj Ltd. 2023 SCC OnLine Del 7202, to submit that there is a limited scope of interference under Section 34 of the Act and the learned Single Judge has gone beyond the established contours of the scope of intervention.

21. The learned counsel for the Appellant has further contended that the reliance of the learned Single Judge on the decision of the Hon'ble Supreme Court in ***Provash Chandra Dalui vs Biswanath Banerjee 1989 Supp. (1) SCC 487***, to hold that if the contractual principles are unambiguous then they should be given effect to and internal aids shall be looked at only when there is an ambiguity is misconceived.

22. The Hon'ble Supreme Court in the said decision has further observed that in order to best ascertain the meaning of a clause of a contract it should be read as a whole and the whole context should be considered while trying to ascertain the meaning. As such, the communication between the parties especially the letter dated 27.08.2008 shall be read as part of the contract in order to interpret clause 3.4.1.5 of the GCC.

23. The learned counsel for the Appellant has further relied upon the judgment in ***Bihar State Electricity Board, Patna vs Green Rubber Industries and Ors. 1990 (1) SCC 731***, to submit that while adjudicating upon a contract the objects of the contract and all the surrounding circumstances should be considered to ascertain the true intention behind the contract. As such all the correspondence between the parties,

including letter dated 27.08.2008 should be looked into while deciding the issue of the payment of excise duty.

24. The learned counsel for the Appellant further submitted that it was at the instance of the Respondent that the amendment to the clause 3.4.1.5 of the GCC was executed. The amendment was premised on the assumption that the line pipes required would have to be imported and the Respondent would need to get a reimbursement of the CVD paid. The amendment was only with regard to the reimbursement of CVD and not for reimbursement of excise duty to the supplier.

25. The learned counsel for the Appellant further submitted that the amendment to clause 3.4.1.5 of the GCC by which the last line was added should not be considered in isolation and rather be considered from the context and the context would show that the amendment was applicable only when the line pipes were imported and the reimbursement of CVD would be an issue. The relevant background would show that the amendment was not applicable for reimbursement of excise duty.

26. The learned counsel for the Appellant has sought reliance upon the judgment in the case of ***Bank of India v. K. Mohandas, (2009) 5 SCC 313 and Asst GM, and SBI v. Radhey Shyam Pandey, (2020) 6 SCC 438***, to further submit that the contract should be read as a whole and the subsequent conduct of the parties should not affect what is unambiguously written in the contract. Further reliance has been placed on ***McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, D.D. Sharma v. Union of India, (2004) 5 SCC 325, Board of***

Trustees of Chennai Port Trust v. Chennai Container Terminal (P) Ltd., 2014 SCC OnLine Mad 73 to submit that the correspondences exchanged between the parties shall be looked into while adjudicating a contract for the purpose of interpretation and construction of the contract.

27. The learned Counsel for the Appellant has further relied on ***Tarapore & Co. v. Cochin Shipyard Ltd. (1984) 2 SCC 680*** and ***DLF Universal Limited v. Director, Town and Country Planning Department, Haryana (2010) 14 SCC 1*** to further submit that the background, purpose and intention of the contract must be looked at while interpreting a contract. Further, if there were assumptions made while executing a contract such assumptions must be considered while adjudicating a dispute arising out of the contractual terms.

28. Further it was submitted that the learned Single Judge, while observing that the learned Sole Arbitrator's reliance upon the letter dated 27.08.2008 was unnecessary has overlooked the fact that the letter dated 27.08.2008 formed part of the contract and was to be read in consonance with clause 3.4.1.5 of the GCC. The Appellant has sought reliance on ***N.E. Railway Co. v. Hastings 1900 AC 260, 267,*** to reiterate the principle that a deed shall be read as a whole and not in isolation so as to give it a harmonious interpretation along with the other clauses.

29. It was further argued that the contention of the Respondent that the Appellant was aware that the Respondent was not a manufacturer and could not directly pay the taxes to the authority and the amendment was brought in to solve this problem ought to be rejected. The Respondent

was aware of the terms of the contract before entering into the contract and should have bid responsibly. The Appellant should not be forced to bear the liability of the fault of the Respondent.

30. The learned counsel for the Appellant submitted that the reliance of the learned Single Judge on recital (b) of the Agreement dated 04.09.2008 is misplaced and argued that the priority given to the documents would come only when there is a discrepancy between the said documents. As such, there is no discrepancy between clause 3.4.1.5 of the GCC and the letter dated 27.08.2008, and reliance on clause 1.2.5 of the GCC to discount the letter dated 27.08.2008 was erroneous. The letter dated 27.08.2008 formed part of the contract and should be read into while interpreting clause 3.4.1.5 of the GCC.

31. It was further submitted that the interpretation of the terms of the contract is the prerogative of the Arbitral Tribunal as envisaged under Section 28(3) of the Act. The Appellant has relied upon ***HRD Corpn. v. GAIL (India) Ltd. (2018) 12 SCC 471,*** to reiterate that the construction of the terms of the contract is the sole prerogative of the arbitrator unless such a construction is not a possible one. Hence, the Single judge has erroneously allowed the application under section 34 of the Act which ought to be dismissed.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

32. Mr. Aayush Agarwala, the learned Counsel for the Respondent submitted that it is trite law that the scope of interference under Section 37 of the Act is very narrow and limited to whether the discretion

exercised by the learned Single Judge under Section 34 of the Act was judicious and in accordance with law. Reliance was placed upon ***Bombay Slum Redevelopment Corporation Pvt. Ltd. v. Samir Narain Bhojwani (2024) 7 SCC 218***, to submit that there is a limited scope of interference under Section 37 of the Act, and it is only limited to whether the Section 34 court has not gone beyond the scope of interference under Section 34 of the Act .

33. The learned Counsel for the Respondent submitted that the impugned judgment is well reasoned and properly adjudicates why the impugned award was liable to be set aside, as the learned Sole Arbitrator had erroneously interpreted clause 3.4.1.5 of the GCC. The learned Sole Arbitrator had failed to consider the hierarchical precedence of documents under recital (b) of the Agreement. The clause 3.4.1.5 of the GCC was without any ambiguity and therefore internal aids of interpretation should not have been relied upon. The learned Sole Arbitrator has essentially re-written the terms of the contract which is impermissible.

34. It was further submitted that it is not disputed that the Respondent had paid the excise duty for procurement of line pipes and the only dispute is in regard to the method of the payment of the excise duty. The case of the Appellant is that only the excise duty paid directly to the tax authorities would be reimbursed, the contention of the Appellant is impracticable, as only the manufacturer of line pipes can pay the excise duty to the authorities, which the Respondent admittedly, is not.

35. The learned counsel for the Respondent submitted that the Awards wrongly permit the Appellant to retain the excise duty on a hyper technical ground of the Respondent not making the payment of excise duty directly to the tax authorities. It was further submitted that the Awards have resulted into unjust enrichment of the Appellant when there was no dispute that the excise duty was actually paid by the Respondent to the manufacturer of the line pipes and the documentary proof thereof was provided to the Appellant

36. The learned counsel for the Respondent further submitted that the lump sum price quoted in the contract had separately provided for the excise duty to be reimbursed by the Appellant in format prescribed in Appendix A-3 in part III of the bid package and there was a clear understanding that excise duty would be reimbursed to the respondent on furnishing appropriate documentary proof. Therefore, the requirement for reimbursement of excise duty by the Appellant was fulfilled.

37. The learned Counsel for the Respondent submitted that the learned Sole Arbitrator had read into the requirement of the direct payment to the authorities, even when such a requirement is not present in the contract. The learned Sole Arbitrator has relied upon the correspondence exchanged between the parties to interpret clause 3.4.1.5 of the GCC even in the absence of any ambiguity in the clause. Such an approach of the learned Sole Arbitrator is untenable and was rightly set aside by the impugned judgment.

38. It was further submitted that when the language of the contract is unambiguous, plain, simple, and straightforward, it is not permissible to use internal aids for interpretation. The learned counsel for the Respondent has relied on the decisions of ***Pandit Chunchun Jha v. Sheikh Ebadat Ali, (1955) 1 SCR 174; United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, (2004) 8 SCC 644; State Bank of India v. Mula Sahakari Sakhar Karhana Ltd., (2006) 6 SCC 293 and Rajasthan State Industrial Development and Investment Corporation v. Diamond & Gem Development Corporation Limited, (2013) 5 SCC 470,*** to further submit that it is impermissible to rely on aids for interpretation of the contract when the terms of the contract are unambiguous, plain and simple. It is only when the words of the contract are ambiguous or unclear then only should the aids for interpretation be looked at.

39. The learned counsel for the Respondent submitted that the Awards failed to consider the material terms of the contract and as a result the Awards were rightly set aside and relied on the decision of ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum, (2022) 4 SCC 463***, to further his argument that if the arbitral award fails to consider the material terms of the contract, the award cannot stand.

40. Further, the learned counsel for the Respondent contended that it is trite law that when the interpretation of an award by the arbitrator is completely unsound, unreasonable and untenable, then such an award is liable to be set aside. The learned counsel for the Respondent has relied on ***South East Asia Marine Engineering & Constructions Ltd. v. Oil***

India Ltd., (2020) 5 SCC 164, Patel Engineering Ltd v. Northern Eastern Electric Power Corporation Ltd., (2020) 7 SCC 167, and DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357, to submit that when the award is completely unsound, unreasonable, perverse and untenable the award is liable to be set aside.

41. Hence, the impugned judgment correctly held that the Awards suffered from patent illegality and accordingly, deserved to be set aside.

ANALYSIS AND FINDINGS:

42. It is a settled position of law that the scope of Appeal under Section 37 of the Act is very limited and this Court cannot undertake an independent assessment of the evidence and merits of the award. The jurisdiction of this Court under Section 37 of the Act is circumscribed to only ascertaining whether the exercise of power under Section 34 of the Act has been within the scope of the provision. The appeal under Section 37 of the Act cannot travel beyond the restrictions laid down under Section 34 of the Act.

43. The scope of intervention under Section 37 of the Act is narrower than Section 34 of the Act. The limitation of the appellate court under Section 37 of the Act is to the extent of finding whether the court adjudicating the Section 34 of the Act petition has restrained itself to the grounds available under Section 34 of the Act. The primary function of the court under Section 37 of the Act is to find whether or not the Section 34 court has gone beyond the permissible limits.

44. The Hon'ble Supreme Court in ***Bombay Slum Redevelopment Corpn.*** (supra) has held that the jurisdiction of the appellate court under section 37 of the Act while dealing with an appeal of an application under Section 34 of the Act is limited to examining whether the court dealing with the section 34 application has decided the dispute within the realms of the section. The fundamental role of the appellate court under Section 37 of the Act is to determine whether the jurisdiction under Section 34 of the Act has been properly exercised. In undertaking this examination, the appellate court is vested with the same authority and jurisdiction as the court under Section 34 of the Act subject to identical limitations.

45. In the instant case, the Awards rejected the claim of the Respondent for recovery of reimbursement of excise duty by reading into Clause 3.4.1.5 of the GCC and placing reliance on the letter dated 27.08.2008 as an internal aid for interpretation of Clause 3.4.1.5 of the GCC.

46. When the language of the Clause 3.4.1.5 of the GCC is plain, clear and unambiguous, the internal aid of interpretation is impermissible. The law has been settled by various decisions of the Hon'ble Supreme Court in ***Pandit Chunchun Jha*** (supra)***, United India Insurance Co. Ltd.*** **(**supra**),** ***State Bank of India (***supra***)*** and ***Rajasthan State Industrial Development and Investment Corporation*** (supra) relied upon by the Respondent.

47. The decision in ***Provash Chandra Dalui*** (supra) relied on by the Appellant would not be applicable in the present facts and circumstances as the clause 3.4.1.5 of the GCC is unambiguous, plain, clear and express.

48. The impugned judgment has correctly held that when the terms of the contract were unambiguous, the negotiations between the parties in the contract should not have been looked into considering clause 1.2.5 of the GCC, which stated that the contract constitutes an entire agreement and supersedes all past negotiations, communications and agreements entered into between the parties prior to the execution of the contract. Ignoring an explicit clause of the contract or acting contrary to the terms of the contract amounts to patent illegality. The above law has been settled in the decision of the Hon'ble Supreme Court in ***Indian Oil Corporation Ltd.*** **(**supra**)**.

49. The Awards relied on the letter dated 27.08.2008 to hold that the Respondent was not entitled for reimbursement of the excise duty, whilst ignoring an explicit term of the contract. The law laid down in the decision of the Hon'ble Supreme Court in ***South East Asia Marine Engg. & Constructions Ltd.*** **(**supra**)** that a contract should be read as mutually explanatory to the extent possible has been ignored in the Awards to interpret clause 3.4.1.5 of the GCC. Accordingly, the conclusion arrived in the Awards is patently illegal, perverse and amounts to re-writing of the contract.

50. The judgments relied upon the Appellants in the cases of ***McDermott International Inc.*** (supra)***, D.D. Sharma*** (supra)***, Board of***

Trustees of Chennai Port Trust (supra)***, Tarapore & Co.*** (supra) ***DLF Universal Limited*** (supra) and ***Bihar State Electricity Board, Patna*** (supra) to submit that the correspondence exchanged between the parties and the background of the contract shall be considered are distinguishable, as the background of the contract and the prior correspondence exchange between the parties would be relevant only to interpret the contractual clauses that are ambiguous, unclear, and need internal aid for interpretation, which is not the case in the present facts and circumstances. Hence, these decisions relied upon by the Appellant are not helpful for the Appellant's submission.

51. The reliance placed on ***Bank of India*** (supra)***, Asst GM, and SBI*** (supra) and ***N. E. Railway Co.*** (supra) by the Appellant to submit that the contract shall be read as a whole, is not relevant as there is no contradiction between various terms of contract. In any event, clause 1.2.5 of the GCC provides that the contract constitutes an entire agreement in itself, and pre-contract negotiations, communications and agreements shall not be considered while interpreting clauses of the GCC.

52. In ***State of Chhattisgarh & Anr. v. Sal Udyog Private Limited, 2021 SCC OnLine SC 1027***, the Hon'ble Supreme Court, held that an arbitrator's failure to render a decision in accordance with the terms of the contract attracts the ground of "patent illegality". Such a lapse constitutes a flagrant breach of Section 28(3) of the Act, which mandates that the arbitral tribunal shall have due regard to the terms of the contract while delivering an award. This form of patent illegality is not only

manifest on the face of the award but also strikes at the very core of the dispute, thereby warranting judicial interference and hence the reliance of the Appellant on the decision of the Hon'ble Supreme Court in ***HRD Corpn.*** (supra)**,** wherein it is held that the construction of the terms of the contract is primarily the function of the arbitrator is not relevant when an arbitrator has ignored the clear and unambiguous terms of the contract. When there is only one view possible, it is open for the Court while exercising jurisdiction under Section 34 of the Act to set aside the Award when the view expressed by the arbitrator is not a plausible view.

53. The impugned judgment has rightly set aside the Awards and the law laid down in the case of ***Raghunath Builders*** (supra)**,** relied on by the Appellant is not applicable in the present case as although the jurisdiction under Section 34 of the Act is limited and the Court does not sit in appeal over the finding of the arbitral tribunal nor can they revisit the findings derived after the interpretation of the contract, in an appropriate case, the interference by the Court is required where the arbitral tribunal's interpretation is clearly erroneous and patently illegal. If such an interpretation renders a clause of the agreement meaningless or redundant, it cannot be allowed to stand. Courts are not expected to overlook interpretations that defeat the purpose of the contract itself. The proposition has been settled by the decisions of the Hon'ble Supreme Court in ***Patel Engineering*** (supra)**,** and ***DMRC Ltd.*** (supra) relied upon by the Respondent.

54. In view of the above, the impugned judgment has rightly set aside the Awards. Accordingly, the appeals are hereby dismissed as there is no infirmity with the impugned judgment. There shall be no orders as to the cost.

TEJAS KARIA, J

VIBHU BAKHRU, J

MAY 27, 2025/ *'AK'/'A'*