



2024:CGHC:48980-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on 20-11-2024

Judgment delivered on 12-12-2024

ARBA No. 35 of 2022

{Arising out of order dated 8-8-2022 passed by the Judge, Commercial Court (District Level), Naya Raipur, Chhattisgarh, in case No.Arb.MJC 15 of 2021 }

1. M/s S.K. Minerals Through its Partner- Rajendra Kumar Khedia, Aged About 58 Years, S/o Late P.D. Khedia, R/o Hariniwas, P.O. Bijuri, Police Station Bijuri, District Anuppur (M.P.)

... Appellant

versus

1. South Eastern Coalfields Ltd. Through its Chairman-Cum-Managing Director, Seepat Road, Bilaspur, Police Station Seepat, District Bilaspur (C.G.)

... Respondent

For Appellant : Mr. Manoj Paranjape & Mr. Amit Soni, Advocates

For Respondent : Mr. H.B. Agrawal, Sr. Advocate with Ms Swati Agrawal, Mr. Anumeh Shrivastava and Mr. Akash Shrivastava, Advocate

Hon'ble Smt. Justice Rajani Dubey
Hon'ble Shri Justice Bibhu Datta Guru

CAV Judgment

Per Bibhu Datta Guru, J.

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (henceforth 'the Act, 1996') is against the order dated 8-8-2022 (Annexure-A/1) passed by the Judge, Commercial Court (District Level), Naya Raipur, Chhattisgarh, in case No.Arb.MJC 15 of 2021 wherein the application preferred under Section 34(2)(b)(ii) of the Act,

1996 filed by the respondent SECL has been allowed. Thus, this appeal by the appellant (hereinafter referred to as 'the claimant').

2. (i) The facts involved in this case are that the claimant is a Partnership firm and Registered Contractors with South Eastern Coalfields Ltd. and is engaged in the business of construction of Roads, buildings and allied Civil Engineering jobs. The Respondent invited open tender for the Construction of approach Road to Kapildhara Project of Hasdeo Area and the work has been awarded to the claimant for Rs.22,44,046.88. Thereafter, work order has been issued in favour of the claimant vide Work Order dated 04.10.93 and agreement has been executed between the parties on dated 06.01.1994. Date of commencement was 01.02.94 and date of completion was 31.07.1994. Claimant deposited earnest money Rs.33,500/- and agreed for retention of the same by respondent as initial security deposit. Work could not be completed in time, therefore, provisional extension of time up to 30-04-1995 has been granted by the respondent vide letter dated 09-05-1995 reserving the right to impose penalty at the time of final extension of time. Deviation estimate for the work has been approved for Rs.27,48,663.57.
- (ii) Claimant completed the work on 30.04.95 in all respects to the entire satisfaction of the Respondent and hence the application for Final Extension of time was processed with the recommendation not to impose any penalty, delay being 9 months out of which 8 months is attributable to Heavy Rains, Delay in forest Clearance and Delay in handing over the

site. Claimant made a request to get the revised Estimate and Deviation Estimate approved, and Final Extension of Time Granted and pay the final bill due along with retained ISD and SD but Respondent have not resorted to make payment. Thereafter, the claimant served 30 days notice for appointment of Arbitrator in pursuance to Clause No. 9 of the General Terms & Conditions on Chairman-cum-Managing Director on 20th April, 2008 under Certificate of Posting, but no reply has been received. Therefore, Case No. 13/2008 has been filed for appointment of an Arbitrator wherein the Respondent took the plea that the 30 days' Notice to the Application under Section 11(6) of the Act, 1996 is not proper and the this Court asked the claimant to file a fresh suit on serving 30 days' Notice. Accordingly, 30 days' notice again has been served on 07.08.2012 but respondent did not respond and as such the claimant filed ARBA No.40/2013, and thereupon this Court constituted the tribunal.

(iii) Albeit respondent has settled the claim of other two contractors in 2006 but they tried to subvert the claimant's claim questioning the limitation which is not fair and equitable before law. Claimant has raised his claim against respondent amounting to Rs.1,99,22,914/- with further interest @ 18% per annum till the date of payment, and the Cost of Arbitration.

3. (a) Case of the respondent/SECL is that as far as the provisional extension of time is concerned the same cannot be treated as final extension of time. The Claimant miserably failed to perform his

obligations as per the contract and has further failed in his duty to get the final extension of time duly approved by the competent authority and it was also categorically mentioned in the provisional extension of time letter dated 09.05.95 that the same has been done reserving the right to impose penalty at the final extension of time. Deviation Estimate or the work referred for Rs.27,48,663.57 may be varied at the time of finalization of the Revised Estimate.

(b) According to the respondent the Claimant has not submitted the mandatory documents for preparation and finalization of Revised Estimate. Although Claimant has stated in its claim the Revised Estimate of Rs.27,48,663.57 which is the Deviation Estimate without there being any approval for the Revised Estimate. The Revised Estimate is prepared after completion of the work and Deviation Estimate is made on assumptions and thus the claim of the Claimant being based upon the Deviation Estimate the same is not maintainable.

(c) The period for completion was six months from the date of issue of work order or from the actual date of handing over of the site. The work has been completed by the claimant on 30.04.1995 and thus there has been delay of nine months for which claimant is responsible. Respondent denied that the work was completed to the entire satisfaction of respondent. The claimant did not start the work even after handing over of the site till 29.11.93 and therefore a letter was sent to the claimant for immediate starting of the work and it has been categorically mentioned that the work is extremely of urgent nature. Vide letter dated

23.07.1994 it has been informed to the claimant that the laying of the oversize metal is not been done properly and thus it has been advised that proper care shall be taken for the completion of the contract as per the terms of the agreement. Claimant has been further informed by the respondent that the delay in work would cause whopping loss to the respondent if the work is not completed by the end of September 1994 as the coal has to be transported from the said road. According to the respondent, the claimant did not appeared before it for signing the revised estimate. Since the Claimant was not willing to sign the revised estimate, the final bill was not prepared.

(d) As regards to the other contractor M/s Anil Construction Co. is concerned, the Right to Information query has been raised in respect of completion finalization and final payment however it does not bear any such name and also that the Information categorically provides the details of the payments made to the respective contractors. The reason for the same is that the said contractors have timely signed the relevant documents and therefore their bills have been cleared timely. There is an inordinate delay in raising the claim as the claimant was sleeping over the claims and therefore the claims as made in the instant case is not maintainable being hopelessly barred by time. Respondent denied that the claimant had made a request to the respondent both oral and written to get the revised Estimate and Deviation Estimate approved and final Extension of time granted and pay the final bill due along with retained ISD and SD. Claimant never made any such request till 18.07.2006 i.e.

after 11 years from the date of the completion of the work thus being hopelessly barred by time. Claimant raising the dispute at a belated stage has preferred his claim to the Chairman-Cum-Managing Director on 20/04/2008. The Claimant failed to show as to how the information received from the Right to Information regarding some other contract is similar to that of the claimant. Claim of the applicant is exaggerated and cannot be claimed as he is trying to claim interest upon interest which is illegal and against the law and, as such, the claimant is not entitled for any relief.

4. Thereafter, pursuant to the order dated 22/11/2013 passed by this Court in ARBA No.40 of 2013 (M/s S.K. Minerals v South Eastern Coalfields Limited) and other connected matter, appointed the Sole Arbitrator, to adjudicate the disputes that have arisen between the parties, on such terms and conditions as the learned Sole Arbitrator deems fit and proper. It further observed that undoubtedly, the learned Sole Arbitrator shall decide all the disputes arising between the parties. Particularly at para 19 of the order dated 22/11/2013 it has been observed that 'I deem it appropriate to leave the question of limitation/long time barred claim exclusively to be considered and decided by the Arbitral Tribunal on the basis of proper pleadings evidence as same cannot be considered and decided while considering the application for appointment of Arbitral Tribunal under Section 11(6) of the Act, 1996.' It means this Court while deciding the application under Section 11(6) has left the question of limitation for Arbitral Tribunal.

5. On the basis of of the said order, the claim was filed by the appellant herein, thereafter, the learned Sole Arbitrator, after hearing the parties and considering the material available on record, passed the Arbitral Award dated 20-3-2021 in the following terms as mentioned in para 53 of the award :

53) Pleadings of both the parties, their oral and documentary evidence, oral arguments and submissions of both the parties in their written arguments have been considered and thereafter findings have been recorded taking into consideration all relevant facts, all relevant materials, all relevant evidence, all relevant contentions oral as well as made in written arguments of both the parties, award is passed in the following terms:-

a) Respondent shall pay to the Claimant Rs. 2,59,536/- (Rs. Two Lakh Fifty Nine Thousand Five Hundred Thirty Six) along with simple interest @ 9% PA from 1-5-95 to 19-03-2021.

b) Respondent shall pay to the claimant Rs. 1,47,203/- (Rs. One Lac Forty Seven Thousand Two Hundred Three) only (including EM) but shall not pay interest on this amount upto 19-03-2021.

c) Future interest @ 9% per annum, on arbitral award amount shall be payable by the respondent to the claimant from the date of award to the date of payment.

d) Taking into consideration all relevant facts and circumstances, respondent shall pay total sum of Rs.1,00,000/- (Rs. One Lac) towards cost (excluding arbitration fees and clerical charges) to the claimant.

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6. Being aggrieved by the award dated 20-3-2021 the respondent approached the learned Commercial Court by filing Arb.MJC No.15 of 2021, which was allowed by order dated 8-8-2022 by setting the arbitral award. In the impugned order, it has been held by the learned

Commercial Court that the award has been passed by ignoring the law of limitation and is vitiated by patent illegality appearing on the face of it and further held to be in conflict with the public policy of India. Thus, this appeal by the claimant.

7. (A) Learned counsel appearing for the appellant/claimant would submit that the learned Sole Arbitrator has passed the Award after appreciating the entire facts and evidence and upon due appreciation of the terms and conditions of the Contract executed between the parties. According to him, the Commercial Court ought not to have interfered with the findings of the fact with respect to the occurring of cause of action recorded by the Sole Arbitrator. He would further submit that the proceedings under Section 34 are not appellate proceedings and, as such, the such the findings of fact given by the Sole Arbitrator ought not to have been interfered with.

(B) Learned counsel would also submit that Section 34 of the Act, 1996, provides limited scope of review of Arbitral Award by the Court and the Court cannot interfere on its merits. According to him, the Court does not sit in appeal while deciding application under Section 34 of the Act 1996, and cannot look into factual aspects of the matter and cannot review or re-appreciate the evidence on merits. He would submit that the Arbitrator is the final fact finding authority under the Contract. In fact, the Commercial Court ought to have appreciated that the Sole Arbitrator after appreciating the entire facts and submissions has rightly held that the claim of the appellant/claimant was well within the

limitation inasmuch as the accrual of cause of action is a question of fact and findings thereupon are based upon the appreciation of evidence both oral as well as documentary and as such the same cannot be interfered with.

(C) Learned counsel would submit that the award was passed by the learned Sole Arbitrator after considering the evidence led by both the parties and the same cannot be interfered with under Section 34 proceedings. He would submit that it was the respondent which had delayed the preparation of revised estimate and final bill and as such it cannot raise the plea of limitation. The cause of action for claiming the amount under Arbitration does not accrue from the date of completion of work but from the refusal of payment. He would submit that the arbitral award passed by the Sole Arbitrator neither suffers from any patent illegality nor is contrary to the public policy of India.

(D) Learned counsel would submit that from perusal of the facts and circumstances, it cannot be said that the issue in the instant matter was plain legal/jurisdictional issue, but it was mixed question of law and facts. He would submit that the period of limitation has to be computed from the date of the claim is asserted and payment is denied and there is a denial repudential of the claim. To buttress his contention, learned counsel would place reliance upon the decisions of the Supreme Court rendered in the matters of *Oil & Natural Gas Corporation Ltd. v Saw Pipes Ltd.*¹, *NTPC Limited v Deconar Services Private Limited*², *Delhi*

1 (2003) 5 SCC 705

2 (2021) 19 SCC 694

*Metro Rail Corporation Limited v Delhi Airport Metro Express Private Limited*³, *National Highways Authority of India v Hindustan Construction Company Limited*⁴ and the decision of the High Court of Madhya Pradesh rendered in the matter of *Food Corporation of India v Ratanlal N. Gwalani*⁵.

8. Learned counsel appearing for the respondent, *per contra*, would submit that the Sole Arbitrator has erroneously decided the point of limitation in favour of the claimant. He would further submit that the claim was submitted by the claimant after 11 years of expiry of limitation period and, as such, the claim was barred by limitation, but without appreciating the said fact the Arbitral Tribunal has erroneously decided that the claim was not barred by limitation. In support of his contention, learned counsel would place reliance upon the decisions rendered by the Supreme Court in the matters of *Panchu Gopal Bose v Board of Trustees for Port of Calcutta*⁶, *J.C. Budhraj v Chairman, Orissa Mining Corporation Ltd. and Another*⁷, *Maharashtra State Electricity Distribution Company Limited v Datar Switchgear Limited and Others*⁸, *MMTC Limited v Vedanta Limited*⁹, *Ssangyong Engineering and Construction Company Limited v National Highways Authority of India (NHAI)*¹⁰, and *B and T AG v Ministry of Defence*¹¹.

3 (2024) 6 SCC 357

4 (2024) 6 SCC 809

5 2004 (1) MPLJ 552

6 (1993) 4 SCC 338

7 (2008) 2 SCC 444

8 (2018) 3 SCC 133

9 (2019) 4 SCC 163

10 (2019) 15 SCC 131

11 (2024) 5 SCC 358

9. We have heard learned counsel appearing for the parties and perused the documents.
10. It would be apt to relevant to quote Section 34 of the Act, 1996 for ready reference :

34. Application for setting aside arbitral award.--(1)
 Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if--

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that--

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

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

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

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

(b) the Court finds that--

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

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

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

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

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

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

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

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

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

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

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take

such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

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

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

11. Scope of Section 34 of the Act, 1996 has been considered by the Supreme Court in the matter of *Punjab State Civil Supplies Corporation Limited and Another v Sanman Rice Mills and Others*¹² and held that scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act. It further held that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Paras 10, 11, 12, 13, 19 & 20 of the said decision are quoted below :

10. Section 34 of the Act provides for getting an arbitral award set aside by moving an application in accordance with sub-Section (2) and sub-Section (3) of Section 34 of the Act which inter-alia provide for the grounds on which an arbitral award is liable to be set aside. One of the main grounds for interference or setting aside an award is where the arbitral award is in conflict with the public policy of India i.e. if the award is induced or affected by fraud or corruption or is in contravention with the fundamental policy of Indian law or it is in conflict with most basic notions of morality and justice. A plain reading of Section 34 reveals that the scope of interference by the court with the arbitral award under Section 34 is very limited and the court is not supposed to travel beyond the aforesaid scope to find out if the award is good or bad.

11. Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set

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aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.

12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

13. In paragraph 11 of *Bharat Coking Coal Ltd. v. L.K. Ahuja*, it has been observed as under:

“11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside.”

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19. In *Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani*⁸, a Division Bench of this Court followed and reiterated the principle laid down in the case of *MMTC Limited (supra)* and *UHL Power Company Limited v. State of Himachal Pradesh*. It quoted and highlighted paragraph 16 of the latter judgment which extensively relies upon *MMTC Limited (supra)*. It reads as under:

“16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of

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

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and *Wednesbury* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, [1948] 1 K.B. 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find 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 has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon

reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

12. From the provisions of Section 34 of the Act, 1996 and in view of the law laid down by the Supreme Court in the matter of *Punjab State Civil Supplies Corporation Limited* (supra), it is well settled that the scope of the intervention of the Court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act.
13. Particularly, in the case in hand, the observation of this Court made at para 19 of the order dated 22/11/2013 passed in ARBA No.40 of 2013 while deciding the application under Section 11(6) is also required to be seen, which is quoted below for ready reference :

19. In the instant case the non-applicant has simply made a statement that claim of the applicant is barred by limitation but neither supporting documents have been filed nor specific affidavit have been filed indicating as to how the claim of the applicant is barred by limitation, even otherwise the question of limitation is a mixed question of law and facts to be decided on the basis of proper pleadings and evidence thereon, I do not propose to decide the question as to whether the claim of the applicants is long

barred claim/barred by limitation relying upon the decision of Supreme Court in National Insurance Case (supra), followed by the Supreme Court in Bharat Rasiklal case (supra) and I deem it appropriate to leave the question of limitation/long time barred claim exclusively to be considered and decided by the Arbitral Tribunal on the basis of proper pleadings evidence as same cannot be considered and decided while considering the application for appointment of Arbitral Tribunal under Section 11 (6) of the Act, 1996. Thus, the issue No. III is answered accordingly.

14. Examination of the order of Commercial Court, which is under challenge in the present appeal, passed by exercising the power under Section 34 of the Act, 1996, has to be made under the touchstone of the provisions of Section 34; in view of the law laid down by the Supreme Court in the matter of *Punjab State Civil Supplies Corporation Limited* (supra); as also the observation made by this Court in ARBA No.40 of 2013.
15. First of all while deciding ARBA No.40 of 2013 this Court left the question of limitation/long time barred claim exclusively to be considered and decided by the Arbitral Tribunal on the basis of proper pleadings and evidence. Thereafter, the learned Sole Arbitrator examined the issue of limitation on the basis of pleadings and evidence and held thus at paras 31 to 35 :

31. On facts and circumstances of the case whether claimant's claim in the light of legal provisions and law pronounced by Hon'ble the Supreme Court is barred by limitation or is a live claim now it has to be considered. After completion of the work on 30-04-1995, because there was a period 9 month delay in completion of the work, it was mandatory that final extension of time should have been granted. Claimant's witness Mukesh Sharma in his statement on oath has deposed that the provisional extension of time was granted upto 30-04-1995 vide letter no. CGM/HSD/Civil/1512-1516 dated 09-05-1995 reserving the right to impose penalty at the time of final extension. Claimant's witness Rajendra Kumar Khedia in his statement

on oath has deposed they completed the job as per provisional extension of time granted upto 30-04-95 vide letter CGM/HSD/Civil/1512-1516 dated 09-05-1995 reserving the right to impose penalty if any at the time of final extension of time to be granted. He also stated that application for final extension of time was processed vide their letter dated 01-02-96. Annexure R-3 has been filed which is letter dated 01-02-1996 vide which claimant has made prayer to grant final extension of time upto 30-04-95 without imposition of penalty. Respondent did not deny. Terms and condition regarding payment has already been quoted in earlier para (*sic* parr) of this award. Final bill was to be prepared and paid to the contractor but in this matter without sanction of final extension and Revised estimate final bill could not be prepared and paid. Note sheet Annexure-1 relates to Final extension and Revised estimate. According to note sheet final extension without imposition of penalty has been recommended on 13-03-97. Final extension has not so far been accorded by the competent authority. Respondent although pleaded that claimant did not appear before the respondent for signing the revised estimate, since the contractor was not willing to sign the revised estimate therefore the final bill was not prepared, also pleaded that claimant has not submitted the mandatory documents for preparation and finalization of revised estimate but to prove this fact there is no substantial evidence on the other hand note sheet Annexure-1 shows contrary to it. Respondent's witness Brijesh Shukla although deposed that for finalization of the revised estimate and final bill of contractor, various document were to be submitted by the contractor, however since, he failed to submit the same within stipulated period, as provided under the contract, final bill of the contract could not be prepared. He did not disclose which document is required to be filed by the contractor. In cross examination he admit that he has not seen any document before his examination-in-chief on affidavit. He also admit that he has not seen Annexure-1 filed by the claimant. He admit that final bill have not being prepare till date. Note sheet Annexure -1 relates to revised estimate and final extension of time which shows that revised estimate was there.

32. On 30-04-95 work was completed by the claimant therefore claimant was entitled for final payment, but for final payment, final bill was to be prepared by the respondent after obtaining sanction of competent authority on final extension of time and after approval of revised estimate but respondent failed to do. Although in writing

claim has been raised by the claimant vide letter dated 18-07-2006 annexure A-5 but neither the claim has been paid nor refused. This document has been proved by claimant's witness Mukesh Sharma. Respondent in reply to statement of claim has stated that the claimant never made any request till 18-07-2006 ie. 11 years from the date of completion of the work thus hopelessly time barred. Respondent only on the ground of limitation are denying the claim. Respondent did not reply claimant's demand letter dated 18-07-2006.

33. In this matter final bill was to be prepared by respondent and payment was to be made but respondent till date has not prepared the final bill nor made the payment therefore claimant made assertion of his claim on 18-07-2006. In statement of claim para 9 claimant has pleaded "9. The applicant beg to state that 30 days notice for appointment of Hon'ble Arbitrator in pursuance to Clause No. 9 of the General Terms & Conditions annexed to the agreement No. CEO/BSP/Agt/2/316 dt. 06.03.1995 has been sent to the Chairman-cum-Managing Director on 20th April, 2008 under Certificate of Posting, but no reply has been received. Therefore, Case No. 13/2008 has been filed for appointment of an Arbitrator. After several hearings, when at a time the Hon'ble High Court is about to appoint an Arbitrator, the Respondent took the plea that the 30 days' Notice to the Application U/s 11(6) of Arbitration & Reconciliation Act, 1996 is not proper and the Hon'ble High Court asked the applicant to file a fresh suit on serving 30 days' Notice proper. Accordingly, 30 days notice again has been served on 07.08.2012 ANNEXURE A-6, and for this also the Respondent did not respond and allowed the applicant prefer filing a fresh suit no. 39/2013, and the Hon'ble High Court was pleased to appoint the Hon'ble Arbitrator." Respondent's reply to this para is "Reply to para 9: The answering respondent says and submit that in the instant case as per clause 9 of the agreement the Arbitration proceedings if any is to instituted the same was to be done under the old Act of 1940. However finding his claim to be a stale one the applicant has resorted to the proceedings under the new Act of 1996. That the dispute has been raised at a belated stage and the claim has been preferred to the Chairman Cum Managing Director on 20/04/2008".

34. Claimant asserted his claim on 18-07-2006, respondent did not made payment nor denied. Claimant invoked arbitration clause 9 of the General term and condition. As per sec. 21 of the Arbitration and Conciliation Act, 1996, arbitral proceeding in respect of a particular

dispute commence on the date on which a request for that dispute to be referred to arbitration received by the respondent. Clause 9 has been invoked on 20-04-2008. As per sec. 43(2) of the Act, 1996 arbitration shall be deemed to have commenced on the date referred in sec.21. As per law and legal pronouncements it is clear that in this matter cause of action arose on 18-07-2006 and arbitration commenced for limitation from 20-04-2008 therefore claimant 's claim is not barred by limitation.

35. After due consideration of all fact, evidence and legal aspects it is held that claimants claim is not barred by law of limitation accordingly ISSUE no.3 is answered.

16. In the arbitral award, the learned Sole Arbitrator has held that the claim and dispute of the appellant herein is within limitation period. However, the learned Commercial Court while exercising power under Section 34 of the Act, 1996 dealt with the point of limitation and held thus at para 14 :

14. In citation **Panchu Gopal Bose** (supra), Hon'ble Apex Court held as under :

16. The case on hand is clearly and undoubtedly hopelessly barred claim as the petitioner by his conduct slept over his right for more than 10 years. Statutory arbitrations stand apart. In these circumstances it is an exceptional case and the courts below have justifiably exercised their discretionary power, and jurisdiction under Section 5 and 12(2)(b) to permit the respondent to rescind the arbitration agreement and declared that the arbitration agreement shall cease to have effect with respect to the difference or dispute referred to in the notice of the petitioner and relieved the parties from the arbitration agreement. The Special Leave Petitions are accordingly dismissed without costs.

17. From the aforesaid facts, it is manifest that while exercising the power under Section 34 of the Act, 1996 the learned Commercial Court has not tested the finding of the arbitral award properly on the point of limitation and reversed the finding of Sole Arbitrator without assigning proper

reason. Thus, the learned Commercial Court committed gross error by setting aside the award passed by the learned Sole Arbitrator on the question of limitation, which is based on mixed question of law and facts and particularly when the limitation point was directed to be decided by the Sole Arbitrator by this Court while deciding ARBA No.40/2013.

18. The finding of the Commercial Court about the observation made by the Sole Arbitrator on the point of limitation is also not sufficient and hence the act of the Commercial Court in scrutinizing the finding of fact by the Sole Arbitrator on evidence is contrary to the well settled proposition of law as laid down by the Supreme Court in the matter of *Maharashtra State Electricity Distribution Company Limited v Datar Swithgear Limited and Others*¹³ wherein it has been held that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinized, as if the Court was sitting in appeal. Thus, the order impugned about the finding of limitation is perverse and contrary to Section 34 of the Act, 1996.
19. As far as the observation of Commercial Court by relying upon the decisions of the Supreme Court rendered in the matter of *Panchu Gopal Bose* (supra) and *J.C. Budhraja* (supra) is concerned, the same has not been properly appreciated and applied in the case at hand. In the present case the final bill was to be prepared and paid to the contractor but without sanction of final extention, revised estimate, final bill could not be prepared and paid. As per arbitral award, “according to the note sheet

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final extension without imposition of penalty has been recommended on 13-3-1997. The final extension has not so far been accorded by the competent authority. Respondent although pleaded that the claimant did not appear before the respondent for signing the revised estimate, since the contractor was not willing to sign the revised estimate, the final bill was not prepared but to prove this fact there is no substantial evidence was available on record.” The aforesaid fact has elaborately been held by the Sole Arbitrator in the arbitral award while deciding the point of limitation.

20. From the arbitral award, it is evident that the claimant made their assertion of claim on 18-7-2006 and prayed to appoint the Arbitrator and subsequently this Court appointed the Sole Arbitrator. Thereafter, after hearing the parties the Sole Arbitrator recorded a finding that the cause of action has arisen on 18-7-2006 and the arbitration commenced for limitation from 20-4-2008, and hence, the claim made by the claimant is not barred by limitation. In fact, the work was completed by the claimant on 30-4-1995 and the claimant was entitled to final payment but it was not paid by the respondent SECL. From the order impugned it is manifest that the Commercial Court has not tested the aforesaid finding recorded by the Sole Arbitrator in its true perspective particularly on the issue of limitation and final bill.
21. It is pertinent to mention here that after completion of the work on 30-4-1995, because there was a period of nine months delay in completion of the work, it was mandatory that final extension of time should have been

granted. Claimant's witness Mukesh Sharma stated that the provisional extension was granted up to 30-4-1995 reserving the right to impose penalty at the time of final extension. Another witness Rajendra Kumar stated that they completed the job as per extension order. Since the work was completed on 30-4-1995, the claimant is entitled for final payment, but the respondent failed to do the needful whereas they have taken the plea that the claim is barred by limitation.

22. In this regard, it is necessary to mention here that though the claimant asserted his claim on 18-7-2006, but the respondent did not made payment nor denied. Thereafter, the claimant invoked the arbitration clause 9 of the general terms and conditions. As per Section 21 of the Act, 1996, arbitral proceeding in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration received by the respondent. Clause 9 has been involved on 20-4-2008. As per Section 43(2) of the Act, 1996 arbitration shall be deemed to have commenced on the date referred in Section 21. In the case at hand, the cause of action has arose on 18-7-2006 and arbitration commenced for limitation from 20-4-2008 and, as such, the claimant's claim is not barred by limitation.
23. Learned counsel for the appellant would place reliance upon the decision rendered by the Division Bench of the High Court of Madhya Pradesh in the matter of *Food Corporation of India v Ratanlal N. Gwalani*¹⁴ wherein it has been observed that the delay in the preparation of the final bill for the work carried out by the plaintiff for the defendant-

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Corporation, it would not be permissible for the defendant thereafter to raise the point of limitation. In the present case also the delay in preparation of final bill is attributable to the respondent and the same cannot be a ground to reject the claim of the appellant. Even in *Food Corporation of India* (supra), the Division Bench of the High Court of Madhya Pradesh held that the plea of limitation (though the suit is within time) to deprive a just claim of the plaintiff though it should not have raised this objection in all morality and justice. Though a public authority is not prohibited from raising such a plea and the Court is duty bound to decide such plea when it is raised but such a plea should not ordinarily be taken up by the public authority unless the claim of the plaintiff is not well founded and by raising of delay of filing a suit the evidence for the purpose of resisting such claim has become unavoidable.

24. Applying the well settled principles of law to the facts of the present case and for the reasons mentioned hereinabove, the impugned order dated 8-8-2022 passed by the Judge, Commercial Court (District Level), Naya Raipur, Chhattisgarh, in case No.Arb.MJC 15 of 2021 is set aside and the arbitral award dated 20-3-2021 passed by the learned Sole Arbitrator is hereby maintained.
25. As a sequel, the present appeal is allowed, leaving the parties to bear their own cost(s).

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Bibhu Datta Guru)
Judge

Gowri

HEAD NOTE

Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinized, as if the Court was sitting in appeal.

माध्यस्थम् अधिकरण साक्ष्यों का विशेषज्ञ है तथा तथ्यों के निष्कर्ष जो मध्यस्थों द्वारा अभिलेख पर उपलब्ध साक्ष्यों के आधार पर निकाले जाते हैं, उनकी जांच इस तरह नहीं की जानी चाहिए जैसे कि न्यायालय द्वारा अपील में सुनवाई किया जा रहा है।