

HIGH COURT OF ANDHRA PRADESH

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INTERNATIONAL COMMERCIAL ARBITRATION APPEAL **No. 1 of 2025**

Between:

M/s. Orind Special Refractories Ltd.
Having its Office at No.37-52-2,
An Fu Li, Xi Shi District,
Yingkou City, Liaoning Province,
P.R.China 115003,
Rep.by Mr.Sundar V. Setley, General Manager

.....APPELLANT

AND

M/s. Rashtriya Ispat Nigam Ltd.
Visakhapatnam Steel Plant,
Purchase Department,
Administrative Building (3rd Floor),
Visakhapatnam

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: 11.09.2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

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.....RESPONDENT

! Counsel for the Appellant : Sri S. Ram Babu

Counsel for the Respondent : Sri S. Vivek Chandrasekhar

< Gist :

> Head Note:

? Cases Referred:

1. 2007 (1) ALT 515
2. (2021) 7 SCC 657
3. 2005 SCC OnLine Del 237
4. 2025 SCC OnLine Del 1133
5. 2023 SCC OnLine Del 2477

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
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INTERNATIONAL COMMERCIAL ARBITRATION APPEAL
No. 1 of 2025

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri S. Ram Babu, learned counsel for the appellant and Sri S. Vivek Chandrasekhar, learned counsel for the respondent.

2. This International Commercial Arbitration Appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (in short 'the Act 1996') has been filed by M/s.Orind Special Refractories Limited, challenging the judgment dated 27.08.2024, passed by the learned Single Judge of this Court (Hon'ble Ms Justice B. S. Bhanumathi) in International Commercial Arbitration Original Application No.4 of 2018 (in short 'ICOMAOA. No.4 of 2018') under Section 34 of the Act 1996.

3. By the said judgment dated 27.08.2024, the learned single Judge dismissed the application ICOMAOA.No.4 of 2018 and upheld the majority award in ICA Case No.2034 of 2016, dated 02.06.2017 passed by the Arbitral Tribunal, which consisted of Three Arbitrators, the Presiding Arbitrator, namely, Sri T. V. B. Haranath (in short 'Presiding Arbitrator') and two Co-Arbitrators, namely, Justice S. S. Parkar (in short 'Co-Arbitrator-1') and Justice NRL Nageswararao (in short 'Co-Arbitrator-2') respectively.

4. The majority Award was by the Presiding Arbitrator & Co-Arbitrator-2. Separate Award/dissenting opinion was passed by the Co-Arbitrator-1.

I. Facts:

5. Briefly stated the facts of the case are, that the appellant is a Company incorporated in the Republic of China and engaged in the business of manufacturing refractories. The respondent – M/s. Rashtriya Ispat Nigam Limited, Visakhapatnam is a company incorporated in India and engaged in the business of manufacturing steel products. As per the agreement, the appellant had to supply to the respondent 260 sets of ladles comprising both imported and indigenous material as per the delivery schedule. When the differences arose due to alleged incorrect interpretation of the terms, specifically regarding the delivery schedule, the respondent deducted (USD 159,638.50 and Rs.15,72,960.52) towards liquidated damages from out of the amount payable to the appellant on the allegation of the delayed delivery. Thereafter, the respondent deducted liquidated damages on account of the ladles out of the amount payable to the appellant, by applying rate of exchange prevailing on the date of the release of the payment as opposed to date of reverse e-auction as agreed. Thus, excess amount of Rs.12,75,651.13/- towards exchange rate and Rs.4,18,00,355.13/- towards liquidated damages by way of penalty for under performance was deducted. Despite the efforts of the appellant, the respondent did not release the amount payable to the appellant. The appellant issued a notice dated 10.09.2015 to the respondent to settle the dispute amicably and invoked the arbitration clause. The Arbitral Tribunal, as aforesaid, was constituted.

6. The claims of the appellant were made as under:

- 1) "Recovery of sum of USD 1,59,638.50 and for a sum of Rs.15,72,960.52/- (Rupees fifteen lakhs seventy two thousand nine hundred and sixty and fifty two paise only) on behalf of the appellant and its consortium partner on account of the wrongful and arbitrary deductions for the alleged delay, along with interest at the rate of 20% per annum from the date of deduction till payment;
- 2) For recovery of a sum of Rs.12,75,651.13/- (Rupees twelve lakhs seventy five thousand six hundred and fifty one and thirteen paise only) with interest at the rate of 20% per annum from the respondent wrongly deducted on account of fluctuation of exchange rate by the respondent, and
- 3) For recovery of Rs.4,18,00,355.51/- (Rupees four crores eighteen lakhs three hundred and fifty five and fifty one paise only) wrongly deducted by the respondent on account of penalty with interest at the rate of 20% per annum;"

7. The respondent filed counter denying the claim of the appellant, to which the appellant filed rejoinder.

8. The following points were framed in the majority award:

- i) "Whether imposition and deduction of liquidated damages by the respondent is not legal, valid and enforceable as being contrary to contract?
- ii) Whether the parties are entitled to the variation of the foreign exchange rate with regard to the materials supplied?

- iii) Whether the deduction of Rs.4,18,00,355.51 towards penalty for under performance of the refractories by the respondent is not correct and the claimant is not liable for the same?
- iv) What are the amounts, if any, the claimant is entitled to?
- v) Whether the claimant is entitled to interest and if so, at what rate?
- vi) What relief?"

9. On behalf of the appellant/claimant, Mr.Vikram (CW-1) was examined and Exs.C1 to C38 were marked on behalf of the applicant/claimant.

10. The respondent did not lead oral evidence, but marked Exs.R1 to R13.

11. The Arbitral Tribunal by a majority (by Presiding Arbitrator, and by Co-Arbitrator-2) passed an award dated 02.06.2017 rejecting the major portion of the claims and awarded damages to a tune of USD 21,837 payable to the appellant and Rs.2,12,268/- payable to the appellant's consortium partner for the liquidated damages deducted for the first lot of supply. Point No.6 in the Award is reproduced as under:

“Point No.6”-

38. In the result an award is passed for payment of 21,837 USD payable at present rate of exchange and Rs.2,12,268/- with interest at 12% from date of award. The other claims are rejected. Each party to bear their expense.

PER Justice SS Parkar: Separate award is passed granting the claims 1&2 and rejecting claim no.3.

Separate award enclosed.

Per Justice NRL Nageswara Rao: Award is passed accepting the reasons and conclusions of the presiding arbitrator. Award enclosed.

As per the majority conclusions and award the following award is passed.

- 1) The claimant will be entitled for payment of 21,837 USD payable at present rate of exchange and Rs.2,12,268/- payable with interest at 12% on both amounts under claim No.1.
- 2) The claims no.2&3 are rejected.
- 3) Each party do bear their own costs.

Written and pronounced by the Presiding Arbitrator on this the 2nd Day of June 2017 at Visakhapatnam.”

12. The Co-Arbitrator-1 passed a separate award (minority award/opinion) directing the respondent to pay the appellant a sum of USD 1,59,638.50 (US dollar one lac fifty nine thousand six hundred and thirty eight and point fifty only) and a sum of Rs.15,72,960.52/- (Rupees fifteen lacs seventy two thousand nine hundred and sixty and fifty two paise only) on behalf of the consortium partner of the appellant with interest thereon @ 12% p.a. from the date of respective deductions till the payment and a further sum of Rs.12,75,651.13/- (Rupees twelve lacs seventy five thousand six hundred and fifty one and thirteen paise only) to the applicant/consortium partner deducted on account of the fluctuation in exchange rate along with interest thereon at the rate of 20% p.a. from the date on which payment was liable to be made till payment. Para-10 of the minority award/opinion is reproduced as under:

“10. In the result the following Award is passed:

- A. The Respondent is directed to pay to the Claimant a sum of USD 1,59,638.50 (US Dollar One Lac Fifty Nine Thousand Six hundred and thirty eight and point fifty only) and a sum of Rs.15,72,960.52 (Rupees Fifteen Lacs Seventy Two Thousand Nine Hundred and Sixty and fifty two paise only) on behalf of the consortium partner of

the Claimant with interest thereon @ 12% p.a. from the date of respective deductions till the payment.

- B. The Respondent is directed to pay a further sum of Rs.12,75,651.13 (Rupees Twelve Lacs Seventy Five Thousand Six Hundred and Fifty One and Thirteen Paise only) to the Claimant / Consortium partner deducted on account of the fluctuation in exchange rate along with interest thereon at the rate of 20% p.a. from the date on which payment was liable to be made till payment.
- C. The Respondent is directed also to pay to the Claimant/consortium partner the amount of institution fee paid by the Claimant in respect of the claims which are allowed.

Place: Mumbai

Date: 31st May, 2017

Justice S.S.Parkar (Retd.)

Co-Arbitrator”

II. ICOMAOA.No.4 OF 2018:

13. The appellant/claimant being aggrieved by the award, dated 02.06.2017 filed an Application under Section 34 of the Act 1996 (ICOMAOA.No.4 of 2018) to set aside the Award of the Arbitral Tribunal dated 02.06.2017 passed in ICA Case No.2034 of 2016.

14. The learned single Judge of this Court dismissed the ICOMAOA.No.4 of 2018 for the reasons recorded, holding that the Award did not require interference and was not liable to be set aside, vide Judgment & Order dated 27.08.2024.

15. Challenging the Judgment/Order dated 27.08.2024, appeal has been filed under Section 37 of the Act 1996 by the claimant appellant.

III. Argument of the learned counsels
(i) for the Appellant:

16. Sri S. Ram Babu, learned counsel for the appellant submitted that the Award under challenge was not signed by all the arbitrators and the reasons for the omission of the signature in the Award of the Co-Arbitrator not signing were also not recorded. He submitted that the same was in violation of Section 31 (1) & (2) of the Act 1996 and therefore, the Award was not an Award in the eyes of law which required to be set aside in proceedings under Section 34 of the Act 1996, on that ground alone.

17. Sri S. Ram Babu, learned counsel for the appellant, submitted that the purported majority award was claimed to have been delivered by the Presiding Arbitrator and Co-Arbitrator-2. The award of the Presiding Arbitrator was signed only by the Presiding Arbitrator. He submitted that the purported endorsement of the award proposed by the Presiding Arbitrator, by Co-Arbitrator-2 did not meet the requirements of Section 31 (1) and (2) of the Act 1996. He submitted that in the event of the majority of the Arbitrators signing the Award, the Award must mandatorily state the reasons for the inability of the Co-Arbitrator, whose signature was omitted. He submitted that the same is a statutory requirement, placing reliance in the judgment of the Division Bench of this Court in ***Transmission Corporation of Andhra Pradesh Ltd. (A.P.Transco), Hyderabad v. Galada Power and Telecommunication Ltd., Hyderabad***¹ and the judgment of the Hon'ble Apex Court in ***Dakshin Haryana Bijli Vitran Nigam Limited v. M/s. Navigant Technologies***

¹ 2007 (1) ALT 515

***Private Limited*², and of the Delhi High Court in *Mahanagar Telephone Nigam Ltd. v. Siemens Public Communication Network Ltd.*³ and *M/s. ISC Projects Private Limited v. Steel Authority of India Limited*⁴.**

18. Learned counsel for the appellant submitted that the judgments cited before the learned single Judge, were not noticed by the learned single Judge. He submitted that, even if the ground of violation of Section 31 (1) & (2) of the Act 1996 was not taken in the pleading in ICOMAOA No.4 of 2018, the learned single Judge ought to have adjudicated upon the point, based on Section 31 (1) & (2) of the Act 1996, as it was a pure question of law which could be taken at any stage, when that non-compliance made the award itself, void.

19. He further submitted that the learned Single Judge erroneously presumed and without any basis that on the majority award the signature of co-arbitrator was not reflected as many times copying depends on the quality of ink.

20. No other ground to challenge the judgment/order of the learned single Judge was raised before us during arguments.

(ii). For the Respondent:

21. Learned counsel for the respondent submitted that the Presiding Arbitrator signed his award. The Co-Arbitrator-2 agreed with the said award vide his separate award and signed that award. The Co-Arbitrator-1 not being in agreement passed a separate award. He signed his separate award/opinion. All the three were compiled by the Presiding Arbitrator and

² (2021) 7 SCC 657

³ 2005 SCC OnLine Del 237

⁴ 2025 SCC OnLine Del 1133

were forwarded to the Registrar of the Indian Council of Arbitration through e-mail dated 02.06.2017 and were also forwarded *inter alia* to the respective parties and their counsels. He submitted that the said procedure is in consonance with Section 31 (1) & (2) of the Act 1996, as also the Rules of International Commercial Arbitration. He submitted that there is no specific procedure prescribed with respect to signing the award, by all the Arbitrators of the Arbitral Tribunal. The Arbitrator/Co-Arbitrator, in agreement with the award of other Arbitrator/Co-Arbitrator can by a separate award under his signature concur with the award of such other Arbitrator. The learned counsel for the respondent placed reliance in ***Medeor Hospital Limited v. Ernst and Young LLP***⁵.

22. He further submitted that the learned Single Judge, in considering the petition under Section 34 of the Act 1996, considered the argument as raised herein with respect to Section 31 (1) & (2) of the Act 1996. The submission of the appellant that it was not so considered merely because the appellant did not take that plea in the petition under Section 34 is not correct. He submitted that there is no illegality in the order impugned.

IV. Point for determination:

23. The point for determination which arises in view of the submissions advanced is as follows:

"Whether the Award of the Arbitral Tribunal deserved to be set aside under Section 34 of the Act 1996 by the learned single Judge on the submissions advanced before us that the Award was not signed by all the

⁵ 2023 SCC OnLine Del 2477

Arbitrators and for the omission of the signature for which no reason was assigned? To put it differently, the question is whether the Award deserved to be set aside for the alleged violation of Section 31 (1) and (2) of the Arbitration & Conciliation Act 1996? And whether the appeal deserves to be allowed?

V. Analysis:

24. We have considered the aforesaid submissions and perused the material on record.

(A):

25. The submissions advanced by the learned counsel for the appellant is based on the premise that the arbitral award was not signed by all the arbitrators and for the omitted signatures of the co-arbitrators, i.e, other than the Presiding Arbitrator, the reasons were not assigned. The same was mandatory requirement and in the absence of compliance with Section 31 (1) and (2) of the Act 1996, there was no award in the eyes of law, which required to be set aside.

26. Section 31 of the Arbitration and Conciliation Act 1996 reads as under:

“31. Form and contents of arbitral award.—(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless

—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).

(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.

Explanation.—For the purpose of clause (a), “costs” means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators and witnesses,
- (ii) legal fees and expenses,
- (iii) any administration fees of the institution supervising the arbitration, and
- (iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.”

27. We may also refer to Rule 2 (b), (n) & (o) and Rule 26 (1), (2) and (14) of the Rules of International Commercial Arbitration (in short 'ICA Rules'), which were referred to us, as under:

“2. Definitions:

(b) “Award” means decision of the Tribunal on a particular dispute and includes an interim or final Award or an Award of an emergency arbitrator.

(n) “Tribunal” means a Tribunal composed of a Sole Arbitrator or all the arbitrators where more than one is appointed.

(o) “Act” means the Arbitration and Conciliation Act, 1996 and any amendment thereof.”

“26. The Award:

(1) The award must be in writing and signed by the members of the Tribunal.

(2) For the purpose of sub-rule (1) above, in arbitral proceedings with more than one arbitrator the signatures of the majority of all the members of the Tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(12) The arbitrators constituting the Tribunal shall sign the award and the Registrar shall give notice in writing to the parties of the making and signing thereof and of the amount of costs, expenses and charges payable in respect of the arbitration and the award. The arbitrator/s fee shall be payable by the Council on receipt of the award and upon requisite deposit of the arbitration cost made by the parties.

(14) When an Award has been made, a copy of the Award certified by the Registrar shall be furnished to the parties provided the arbitration costs have been fully paid to the Council by the parties or by one of them.”

28. Section 31 (1) of the Act 1996 clearly provides that the arbitral award shall be made in writing and shall be signed by the Members of the Arbitral Tribunal. Sub-Section (2) further provides that in arbitral proceedings

consisting of more than one arbitrator, signatures of the majority of all the Members of the Arbitral Tribunal shall be sufficient so long as the reason for any omitted signatures is stated.

29. In ***Dakshin Haryana Bijli Vitran Nigam Limited*** (supra) the Hon'ble Apex Court held that Section 31 (1) of the Act 1996 is couched in mandatory terms and provides that an arbitral award shall be made in writing and signed by all the members by the Arbitral Tribunal. If the Arbitral Tribunal comprises of more than one arbitrator, the award is made when the arbitrators acting together finally express their decision in writing, and is authenticated by their signatures. An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award except after it is signed, since signing of the award gives legal effect and validity to it. The making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it. The statute makes it obligatory for each of the members of the Tribunal to sign the award to make it a valid award. The usage of the term 'shall' makes it a mandatory requirement. It is not merely a ministerial act, or an empty formality which can be dispensed with.

30. Paragraph – 26 of ***Dakshin Haryana Bijli Vitran Nigam Limited*** (supra) reads as under:

“26. Section 31(1) is couched in mandatory terms, and provides that an arbitral award shall be made in writing and signed by all the members of the Arbitral Tribunal. If the Arbitral Tribunal comprises of more than one arbitrator, the award is made when the arbitrators acting together finally express

their decision in writing, and is authenticated by their signatures. [Malhotra's Commentary on *Law of Arbitration*, Wolters Kluwer, 4th Edn., Vol. 1, p. 794.] An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it. The making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it. The statute makes it obligatory for each of the members of the Tribunal to sign the award, to make it a valid award. The usage of the term “shall” makes it a mandatory requirement. It is not merely a ministerial act, or an empty formality which can be dispensed with.”

31. In ***Transmission Corporation of Andhra Pradesh Ltd. (A.P.Transco), Hyderabad*** (supra) a coordinate Bench of the common High Court held that the arbitral award shall have to be in writing and shall be signed by the arbitral Tribunal. It was obligatory on the part of each of the members of the Arbitral Tribunal to sign the award to make it as a valid one or in the absence of any of them necessarily it contemplates to state the specific reasons for such omission.

32. Para-26 of ***Transmission Corporation of Andhra Pradesh Ltd. (A.P.Transco), Hyderabad*** (supra) reads as under:

“26. A reading of the aforesaid provisions, what all it could spell out clearly is a legal requirement under law, apart from a minimum but basically, is that the arbitral award shall have to be in writing and shall be signed by the arbitral Tribunal. Further the said decision has to be made by the majority unless a reason is given for any omitted signature. Admittedly, in this case, the arbitral Tribunal consists of three arbitrators namely the respondents 2 to 4. The award is stated to have been pronounced on 23-12-2002. In the award, as produced before the Court below, it only contains the signatures of two

arbitrators, *i.e.*, the respondents 3 and 4. The name of the Presiding Officer namely Justice *Bhate* (Retd.) is neither shown or typed, nor it contains his signature. Therefore, it can only follow that the award which was stated to have been pronounced on 23-12-2002 was only by two arbitrators but not by the presiding arbitrator Justice *Bhate* (Retd.). Even on a look at the proceeding sheet and the contents of the award, it is nowhere indicated much less shown specifically any reasons or explanation for the absence or omission of the respondent No. 2 either in person or by signature. The Counsel on either side are not able to explain in any manner properly. Nor there was such attempt any time at either of stages to show any valid justification. In fact as contemplated under the aforesaid provision, the question of subsequent jurisdiction also does not arise since it contemplates the signatures of all the arbitrators and in case where there is a majority or any absence, the reasons have to be found placed in the proceedings of the award for the absentee. In this case, admittedly, either in the arbitrary proceedings or in the award, no such reasons have been existing or shown. The record is surprisingly silent all the way. It is also noticed that in the entire award, each of the page contains only two signatures from the 1st page till last page. Further, it has been shown during the course of the documents, the copy of the award which has been furnished to the parties which is signed on 23-12-2002 contained signatures: of only two arbitrators. Another glaring lapse which is most staring is that in fact on all the pages of the award at the bottom, the names of the three arbitrators are typed. However, the signatures are found only that of the two arbitrators but there is no signature of the presiding arbitrator *i.e.*, Justice *Bhate* (Retd.,) on any of the pages of the entire award. It is stated that the true copy of the original award which has been furnished to the parties was filed in Civil Court at the time of the filing of the present application challenging the award. The entire award runs into 39 pages and the said copy which has been filed is shown as true copy of the original. Therefore, it is amply clear that as per the requirement under those provisions, there is no award duly signed by all the arbitrators and there is no reason also for the absence of the signature of omitted arbitrator. In fact, during the course of arguments, it has been contended that the presence of the presiding arbitrator

was very much doubted at the place or on the date when the award was stated to have been pronounced *i.e.* on 23-12-2002. Even in this regard, there is no proper explanation or material forthcoming from any side as to the presence of the omitted arbitrator or for the absence of the signature of that arbitrator and any reasons for such a omitted arbitrator. This lapse is apart from serious is directly in the teeth of the mandate as contemplated under the aforesaid provision.”

33. The law has thus been well settled by the Hon’ble Apex Court in ***Dakshin Haryana Bijli Vitran Nigam Limited*** (supra) that Section 31 (1) of the Act 1996 is couched in mandatory terms. An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it. The statute makes it obligatory for each of the members of the Arbitral Tribunal to sign the award to make it a valid award. Signing is not a merely ministerial act or empty formality which can be dispensed with. The other judgments which have been cited by the learned counsel for the appellant also reiterate the same legal position.

34. The question therefore for consideration is, firstly, if the award was signed by all the arbitrators and if not whether by the majority of the arbitrators *i.e.*, 2 arbitrators, as the Arbitral Tribunal consisted of three arbitrators, and in case of its signing by the majority of arbitrators, whether it contains the reasons for the omitted signature of the other arbitrator. If the arbitral award was signed by all the arbitrators, the further question of recording reasons for the omission would certainly not arise.

35. In the present case, the arbitral award was made by the Presiding Arbitrator (Sri T.V.B. Haranath), the other Co-Arbitrator-2 (Justice NRL Nageswara Rao (Retd.)) concurred with the award vide his separate award, to that effect. The Presiding Arbitrator signed his award, the arbitrator concurring with that award, signed his award in which he agreed with the award of the Presiding Arbitrator. The third arbitrator Justice S.S. Parkar (Retd.) Co-Arbitrator-1, gave separate opinion. He also signed his separate award/opinion. The appellants have filed a Memo dated 16.04.2025 bringing on record Annexure-P16 & P17, which show that the Presiding Arbitrator (Sri T.V.B. Haranath) sent to the Registrar of the Indian Council of Arbitration, Federation House, Tansen Marg, New Delhi, under the signatures of the Presiding Arbitrator, of the date 02.06.2017, all the three, enclosing in one booklet containing the award. From the said letter/Email/P16 it is evident that the award of the Presiding Arbitrator, award of Co-Arbitrator-2, concurring with the award of the Presiding Arbitrator, were of the same date. We find from the Memo filed by the appellant's counsel Ex.P16, that the separate award/opinion of the Co-Arbitrator-1 (Just S.S. Parkar), had signed his opinion. The booklet containing the award thus, contained the signatures of the respective Arbitrators on their respective award. We are, therefore, satisfied that there is no violation of Section 31 (1) & (2) of the Act 1996. The award would be operative and valid being an award by majority and the majority (Presiding Arbitrator and Co-Arbitrator-2) signing the award and the Co-Arbitrator-1 signing his dissent/opinion. Consequently, there would be no requirement to

record the reasons for the omission, in terms of Sub-Section (2) of Section 31, as there is no such omission. It is a case where the Presiding Arbitrator signed his award, Co-Arbitrator-2 signed his concurring award, agreeing with the reasons and conclusions of the award prepared by the Presiding Arbitrator and the Co-Arbitrator-1 signed his separate award/opinion. All these three were compiled in one and sent by Presiding Arbitrator to the Registrar, Indian Council of Arbitration, on 02.06.2017.

36. At this stage, we refer to the arguments of the appellant's counsel that the award of the Arbitrator concurring with the Presiding Arbitrator does not contain the date. We find from perusal of the said award filed by the appellant that it mentions the award dated 02.06.2017 after the name of the parties and it finds enclosed in the e-mail of the Presiding Arbitrator and with his Award which are dated 02.06.2017. So, the award of the Co-Arbitrator-2 cannot be of a date other than 02.06.2017. He might not have put the date at the place of his signature but that would not affect the validity of the award.

37. In ***Medeor Hospital Limited*** (supra) upon which learned counsel for the respondent placed reliance, one of the contentions to challenge the award in proceedings under Section 34 of the Act 1996 before the Delhi High Court was that "one of the co-Arbitrators simply consented to the award drafted by the other Arbitrator without assigning any reason". The further contention was that the award was made without awaiting the draft award of the Presiding Arbitrator, whose signature was absent thereon and no reason for such omission was stated. In this case, the two Co-Arbitrators had rendered the

award on 17.08.2021 and the Presiding Arbitrator gave her decision on 04.10.2021 i.e., after a period of almost two months. The Delhi High Court, held that the Presiding Arbitrator did not put her signature in the majority award nor had stated any reason for such omitted signature. But, the reason was very clear and that was that, she had given separate opinion which was duly signed. It was held that the award dated 17.08.2021 was signed by the majority of its Members as the two co-Arbitrators signed the award, so the same shall be construed as the award of the Arbitral Tribunal, referring to Section 29 of the Act 1996 that any decision of the Arbitral Tribunal with more than one arbitrator shall be made by the majority of its members.

38. From the aforesaid judgment in ***Medeor Hospital Limited*** (supra), it is evident that, (i) where one of the Arbitrators of the Arbitral Tribunal consisting of three arbitrators writes an award signed by him and the other co-arbitrator consents to such award by a separate award which separate award is also signed, the award would be by the majority of the arbitrators. It follows that the detailed award passed by one arbitrator can be simply consented to by the other arbitrator, and (ii) that the arbitrator of the Arbitral Tribunal, not agreeing with the majority award or differing with it, or passing his separate opinion, signed by him, would fulfill the requirement of Sections 31 (1) & (2) of the Act 1996 and in such a situation reason for omission of signature on the majority award would be very clear and i.e., that, such arbitrator passed his separate differing award/opinion and so, in the majority award his signatures were omitted. Any specific reasons need not be assigned in such a case. Such

a majority award would be valid and binding and cannot be said to be no award for that reason.

39. In ***Mahanagar Telephone Nigam Ltd.*** (supra) cited by the appellant's counsel, the award was signed only by two Arbitrators and the reason for not affixing the signature of the third Arbitrator had not been stated. So, in the said case, the facts were different. There was violation of Section 31 (2) of the Act 1996. So, it was held that the document purported to be a majority award could not be termed as an award within the meaning of this term under the Act. The said judgment is of no help to the appellant as in the present case, we find that the majority award was signed by majority of the Arbitrators in the manner aforesaid and the arbitrator in minority had given his opinion duly signed by him.

40. In ***M/s. ISC Projects Private Limited*** (supra) upon which also the learned counsel for the appellant placed reliance, the Court found that the award was signed by only two of three Arbitrators without any explanation in the award for the omission of the signature of the third Arbitrator. So, in the said case also, the facts were different. There was violation of Section 31 (2) of the Act 1996. In the said case, the Court recorded undisputed facts of the case, (a) the signature of the Arbitrator-A did not appear on the award; (b) the impugned award therein did not disclose any reason for the fact that the signature of Arbitrator-A was missing; and (c) there was no separate dissenting award circulated by Arbitrator-A. So, in the said case, all the three Arbitrators had not signed the award and the reason for the omission of the signature of

one of the Arbitrators was not assigned and there was also no separate dissenting opinion. In the present case, the majority had signed the award and there is dissenting opinion of the third Arbitrator, which is also duly signed by him.

(B):

41. We would now proceed to consider the next submission of the learned counsel for the appellant that the learned Single Judge did not consider the argument of the claimant/appellant based on Section 31 (1) and (2) of the Act 1996 as also the judgment cited before the learned Single Judge.

42. We find from perusal of the judgment of the learned single Judge that after observing that, not signing by all arbitrators and absence of reason in the award, was not a ground raised in the application, the learned single Judge also considered the argument that the award was liable to be set aside as in the submission it was not inconsonance with Section 31 (1) & (2) of the Act 1996. The learned single Judge referred to Section 31 of the Act 1996 and also the judgments on which reliance was placed before the learned single Judge in ***Dakshin Haryana Bijli Vitran Nigam Limited*** (supra) and ***Mahanagar Telephone Nigam Ltd.*** (supra) and ***Transmission Corporation of Andhra Pradesh Ltd. (A.P.Transco), Hyderabad*** (supra) in its judgment.

43. The learned single Judge observed and held in para-17 that the Principal Arbitrator authored the majority award with reasoned award and signed on every page and dated 02.06.2017 at the end. The concurring Co-Arbitrator (Co-Arbitrator-2) passed a cryptic award that the award proposed by the Presiding Arbitrator was perused and that he agreed with the reasons and

conclusions and for passing of award as proposed. The learned single Judge further observed that it was prepared with title of the arbitral proceedings and cause title of the parties and signed by him, but undated. The minority dissenting award passed by the other Co-Arbitrator (Co-Arbitrator-1) was reasoned, but signature did not appear, but was dated 31.05.2017. Learned single Judge also recorded the submission of the learned counsel for the respondent, who had submitted before the learned single Judge that, the majority award was sent on 02.06.2017 through email to the parties. The appellant/applicant filed copy of the minority award, also. It was stated that all three were sent through email. However, the original award was not before the Court. The learned single Judge therefore observed that, sometimes Photostat or scanner may not copy writing depending on ink used and therefore it was recorded that it could not be concluded that it was not signed or signed. The majority award was found by the learned single Judge in conformity with Section 31 (1) & (2) of the Act 1996 and therefore, the learned single Judge observed that on that ground there was no need to set aside the award.

44. We reproduce para-17 of the judgment/order under challenge so as to make evident the falsity of the submission of the appellant's counsel raised to the above effect, which reads as under:-

“17.The Principal Arbitrator (Sri T.V.B. Haranath) authored the majority award with reasoned award and signed on every page and dated 02.06.2017 at the end. The concurring Co-Arbitrator (Justice NRL Nageswara Rao) passed a cryptic award that the award proposed by the Presiding Arbitrator was perused and that he agreed with the reasons and conclusions and for passing of award as proposed. It is prepared with title of the arbitral

proceedings and cause title of the parties and signed by him, but undated. The minority dissenting award passed by the other Co-Arbitrator (Justice SS Parker) is reasoned, but signature doesn't appear, but is dated 31.05.2017. The Learned Counsel for the respondent stated that the majority award was sent on 02.06.2017 through email to the parties. The applicant filed copy of the minority award also. It is stated all three were sent through email. The original award is not before this Court. Sometimes Photostat or scanner may not copy writing depending on ink used. Whatever it may be, therefore it cannot be concluded that it was not signed or signed. If there is no signature, it would have been either returned or informed to the Tribunal or raised definitely in the grounds of this application. Moreover, the applicant is aggrieved by the majority award which is in conformity with S.31 (1) & (2). For all these reasons, there is no need to set aside the award on this ground."

45. In paragraphs – 15 and 16 of the judgment of the learned single Judge, Section 31 of the Act 1996 and the judgments in ***Dakshin Haryana Bijli Vitran Nigam Limited*** (supra), ***Mahanagar Telephone Nigam Ltd.*** (supra) and ***Transmission Corporation of Andhra Pradesh Ltd. (A.P.Transco), Hyderabad*** (supra) have been referred. In view thereof, as also para-17 of the judgment, as reproduced above, the submission of the appellant's counsel that his argument based on Section 31 of the Act 1996 and the judgment cited, were not considered by the learned single Judge, has got no force. There is consideration of the above ground, argument and the cited judgments and on the said consideration, the learned single Judge recorded that the award did not deserve to be set aside.

(C):

46. We before proceeding to consider next submission of the learned counsel for the appellant, advert to an important aspect that, in the

proceedings for setting aside the award under Section 34 of the Act 1996 filed before the learned single Judge, copy of the dissenting award/opinion of Justice S.S.Parkar, Co-Arbitrator-1, was filed as Ex.A3, page-65 to 73 to the said petition under Section 34. The Photostat copy filed (A-3) did not reflect the signatures of that Arbitrator (Co-Arbitrator-1).

47. The arguments made in appeal to challenge the Order of the learned single Judge is that the learned Single Judge grossly erred in holding that the signature of the Co-Arbitrator was not reflected on the 'majority award' as sometimes Photostat or scanner may not copy writing depending on ink used. It was submitted that such was completely presumptuous and without any basis by the learned Single Judge.

48. To the above effect, the appellant has taken specific ground in the memo of appeal on Ground No.F, as follows:

“BECAUSE the Ld.Single Judge has grossly erred in holding that the signature of the Co-Arbitrator was not reflected on the 'majority award' as *“....Sometimes Photostat or scanner may not copy writing depending on ink used...”* The finding is completely presumptuous and without any basis.”

49. So, in Ground No.F it has been tried to submit that the learned single Judge observed with respect to the majority award, that the signature of the Co-Arbitrator was not reflected on the majority award.

50. We have carefully perused the Order of the learned single Judge. Para-17 of the Judgment has already been reproduced hereinabove.

51. What was observed by the learned Single Judge, as is evident with respect to the signatures or no signatures was for the minority/dissenting

award/opinion that, "the **minority** dissenting award passed by the other Co-Arbitrator (Justice S.S. Parkar) is reasoned, but signature does not appear, but is dated 31.05.2017". The learned single Judge observed that "the applicant filed copy of the minority award also. It is stated all three were sent through e-mail". The learned Single Judge observed that "the original award was not before this Court. Sometimes Photostat or scanner may not copy writing depending on ink used. Whatever it may be, it could not be concluded that it was not signed or signed."

52. In our view, it is very clear that the learned Single Judge was referring to the minority award/opinion. With respect to the majority award authored by the Presiding Arbitrator, the learned Single Judge clearly observed that it contained signatures on every page, and with respect to the concurring Co-Arbitrator, the learned Single Judge observed that, he passed a cryptic award that, the award proposed by the Presiding Arbitrator was perused etc., and was signed by him. The copy filed before the learned single Judge of the award by Co-Arbitrator consenting to the award of the Presiding Arbitrator, contained signature. So, what was observed by the learned single Judge, regarding Photostat or scanner may not copy writing depending on the ink used, was with respect to the minority award/opinion, though the learned single Judge did not conclude, that the minority award/opinion was signed or not. Such observations came to be passed because the appellant did not file the correct copy of the minority award/opinion containing the signatures of the Co-Arbitrator-1. As to why such Photostat copy of the minority award/opinion

was filed, which did not reflect the signature of that Co-Arbitrator-1? We place on record, that the same copy of the minority award/opinion of the Co-Arbitrator-1 which did not reflect his signatures was filed in this appeal, along with the appeal. Subsequently, by the Memo dated 16.04.2025 the appellant has brought on record Ex.P16 & Ex.P17, Pages 219-250, the E-mail of the Presiding Arbitrator dated 02.06.2017 to the Registrar of the Indian Council of Arbitration, enclosing one booklet containing the award of the Presiding Arbitrator, the award by the Co-Arbitrator-2 agreeing with the reasons and conclusions and for passing of the award as proposed and also the dissenting award/opinion of Co-Arbitrator-1, which reflects his signatures on the dissenting award/opinion, mentioning the reason, as mentioned in the memo dated 16.04.2025, that, due to inadvertence it could not be filed. It was for the appellant to have filed the correct Photostat copy of the minority award / opinion reflecting the signature thereon of Co-Arbitrator-1.

VI. Conclusions:

53. To sum up, we are of the considered view, for the consideration made;

- (i) that as per Section 31 (1) & (2) of the Act 1996, in the case of Arbitral Tribunal consisting of number of Arbitrators, the Award, if not signed by all, will still be valid, if it is signed by majority of Arbitrators and for the Arbitrator not signing the award, for such omission, the reasons have been assigned.

- (ii) that if there is a single award, in the sense that only one Arbitrator has passed (authored) the award, and it contained his signatures, all or the majority of the other Arbitrators can sign thereon, the same award, or they can also by their separate award signed by them, consent to or concur with the same. But, in case such concurrence by either way, is only by majority, and not by all, the reasons for omission(s) of signing by the arbitrator failing to sign, shall be recorded, to make it an award valid and binding.
- (iii) that the award signed by majority or consented to or agreed upon by the majority and there being a separate opinion signed by other Co-Arbitrator(s), would be in compliance with the statutory provisions of Section 31 (1) & (2) of the Act 1996, even if the reason for omission of the Co-Arbitrator, not signing the majority award, is not recorded as in such a case the opinion by itself would be the reason for omission to sign the majority award.
- (iv) In the present case, the Presiding Arbitrator passed his award duly signed. The Co-Arbitrator-2 vide a separate award concurred with the award of the Presiding Arbitrator. The Co-Arbitrator-1 passed his separate award/opinion and also signed his award. All these three awards were compiled by the Presiding Arbitrator and sent to the Registrar of the Indian Council of Arbitration, New Delhi, as also to the respective parties and their counsels. Consequently, the majority award

of the Presiding Arbitrator and Co-Arbitrator-2 is valid and binding and there is no violation of Section 31 (1) & (2) of the Act 1996.

(v) The learned Single Judge considered the argument based on Section 31 (1) & (2) of the Act 1996, though any such plea/objection was not taken in the petition under Section 34 of the Act 1996, and also considered the judgments cited. The argument to the contrary raised before us, by the appellant's counsel is misconceived and contrary to record. The further argument on ground 'F' in the memo of appeal is also misconceived.

(vi) The learned Single Judge has rightly recorded that the majority award was valid and did not call for interference on the aforesaid argument of Section 31 of the Act 1996.

54. The point for determination is answered as in para-53 (supra), and the appeal deserves to be dismissed.

VII. Result:

55. For the reasons recorded in this judgment and discussion made, we dismiss the appeal and for the reasons recorded in paragraphs-under 'B' and 'C' (supra), we impose a costs of Rs.1,00,000/- (Rupees one lakh only) on the appellant, to be deposited with the Andhra Pradesh High Court Legal Services Committee, Amaravathi. Let the costs be deposited within a period of one month from today, failing which, the Registrar Judicial shall take necessary steps to recover the same, in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

Date: 11.09.2025
Dsr

Note:
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