



2026:CGHC:14187-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBA No.40 of 2020

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
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20.02.2026	25.03.2026	--	25.03.2026

1 - State Of Chhattisgarh Through The Chief Executive Officer ,
Chhattisgarh Rural Road Development Agency Vikas Bhawan, Civil
Lines, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

2 - The Secretary Department Of Panchayat And Rural Development ,
Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh., District :
Raipur, Chhattisgarh

Appellants (s)

versus

1 - Gilcon Project Service Ltd. J.V. Scapes Associates , Thacker Tower,
Plot No. 86 , Sector 17, 1, Vashi Navi Mumbai Maharashtra., District :
Mumbai, Maharashtra

Respondent(s)

ARBA No.36 of 2020

1 - State Of Chhattisgarh Through - The Chief Executive Officer, (C.G.
Rural Road Development Agency), Vikas Bhawan, Civil Lines, Raipur
Chhattisgarh., District : Raipur, Chhattisgarh



2 - The Secretary, Department Of Panchayat And Rural Development,
Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh.

Appellant (s)

Versus

1 - Gilcon Project Service Ltd. J.V. Scapes Associates, Thacker Tower,
Plot No. 86, Sector 17, 1 Vashi, Navi Mumbai (Maharashtra), District :
Mumbai, Maharashtra

Respondent(s)

ARBA No.39 of 2020

1 - State Of Chhattisgarh Through - The Chief Executive Officer, (C.G.
Rural Road Development Agency), Vikas Bhawan, Civil Lines, Raipur
Chhattisgarh., District : Raipur, Chhattisgarh

2 - The Secretary, Department Of Panchayat And Rural Development,
Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh.

Appellant (s)

Versus

1 - Gilcon Project Service Ltd. J.V. Scapes Associates, Thacker Tower,
Plot No. 86, Sector 17, 1 Vashi, Navi Mumbai (Maharashtra), District :
Mumbai, Maharashtra

Respondent(s)

ARBA No.42 of 2020

1 - Gilcon Project Service Ltd. J.V. Scapes Associates, Thacker Tower,
Plot No. 86, Sector-17, 1 Vashi, Navi Mumbai (Maharashtra)

Petitioner(s)

Versus

1 - Chief Executive Officer (Cg Rural Road Development Agency),
Vikas Bhawan, Civil Lines, Raipur, Chhattisgarh

2 - Secretary Department Of Panchayat And Rural Development,
Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, Chhattisgarh

Respondent(s)



ARBA No. 37 of 2020

1 - State Of Chhattisgarh Through The Chief Executive Officer, (C.G. Rural Road Development Agency), Vikas Bhawan, Civil Lines, Raipur (Chhattisgarh), District : Raipur, Chhattisgarh

2 - The Secretary Department Of Panchayat And Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)

Petitioner(s)

Versus

1 - Gilcon Project Service Ltd. J.V. Scapes Associates, Thacker Tower, Plot No. 86, Sector 17, 1 Vashi, Navi Mumbai (Maharashtra), District : Mumbai, Maharashtra

Respondent(s)

ARBA No.41 of 2020

1 - Gilcon Project Service Ltd. J.V. Scapes Associates, Thacker Tower, Plot No. 86, Sector 17, 1 Vashi, Navi Mumbai Maharashtra., District : Mumbai, Maharashtra

Appellant (s)

Versus

1 - Chief Executive Officer Chhattisgarh Rural Road Development Agency, Vikas Bhawan, Civil Lines , Raipur Chhattisgarh., District : Raipur, Chhattisgarh

2 - Secretary Department Of Panchayat And Rural Development, Mantralaya , Mahanadi Bhawan, Atal Nagar , Nawa Raipur Chhattisgarh., District : Raipur, Chhattisgarh

Respondent(s)

For State	:	Mr. Avinash Singh, GA
For Gilcon Project Service Ltd	:	Mr. Ankit Pandey, Advocate

Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Radhakishan Agrawal

**CAV Judgment****Per Rajani Dubey. J.**

1. The present batch of arbitration appeals arise out of common order passed by the learned Commercial Court as well as the learned Arbitrator, as such the same have been clubbed together, heard together and are being disposed of by a common order.
2. The arbitration appeals i.e. ARBA Nos.36, 37, 39 & 40 of 2020 have been preferred by the State seeking setting aside the common order dated 29.02.2020 passed by the learned Commercial Court as well as the common arbitral award dated 31.08.2018 passed by the learned sole Arbitrator, whereas ARBA Nos.41 & 42 of 2020 have been preferred by the Gilcon Project Service Ltd against the common order dated 29.02.2020 passed by the learned Commercial Court seeking interest on the amount claimed before it.
3. Brief facts of the case are that two contract agreements, firstly contract agreement bearing No.24/RC-4/CGRRDA dated 23.10.2007 and secondly contract agreement bearing No.25-RC/4/CGRRDA dated 23.10.2007 were executed between the parties. The dispute arose between the parties in relation to both these agreements. Both the matters were referred for adjudication to learned sole Arbitrator pursuant to order of this Court. The dispute arising out of agreement No.24/RC-4/CGRRDA was registered as Arbitration Application



No.7/2014 and the dispute arising out of agreement No.25/RC-4/CGRRDA was registered as Arbitration Application No.6/2014 before the learned sole Arbitrator. The learned sole Arbitrator adjudicated both the matters and passed the common arbitral award dated 31.08.2018. The learned sole Arbitrator treated the Arbitration Application No.6/2014 as the leading case and referred to the pleadings and documents filed in Arbitration Application No.6/14 in the common award. Against the award dated 31.08.2018, both the parties filed petitions under Section 34 of the Arbitration and Conciliation Act before the learned Commercial Court and the learned Commercial Court registered MJC No.40/2018 and MJC No.43/2018 with regard to award related to contract agreement No.25-R-C/4/CGRRDA which is registered as Arbitration Application No.6/14 before the learned sole Arbitrator and MJC No.41/18 and 42/2018 were registered before the learned Commercial Court pertaining to the contract agreement No.24-RC-4/CGRRDA, which is registered as Arbitration Application No.7/14 in MJC No.40/2018. The learned Commercial Court passed a separate order on 29.02.2020, against which 4 appeals have been filed by the State, whereas 2 appeals have been filed by Gilcon Project. For ready reference, the details are described as under:-

Sr. No.	Arbitration Appeal No.	MJC No.	Arbitration Application
1.	ARBA No.39/2020	40 & 43 of 2018	6/14
2.	ARBA No.40/2020	40 & 43 of 2018	6/14



3.	ARBA No.36/2020	41 & 42 of 2018	7/14
4.	ARBA No.37/2020	41 & 42 of 2018	7/14
5.	ARBA No.41/2020	41 & 42 of 2018	7/14
6.	ARBA No.42/2020	40 & 43 of 2018	6/14

4. Learned counsel for the appellant/State submits that there is error apparent on the face of the award and therefore the same is against the public policy because learned Sole Arbitrator as well as the learned Commercial Court travelling beyond the pleadings as well as the documents had recorded a perverse finding in the entire arbitral award. The learned Sole Arbitrator as well as the learned Commercial Court have failed to appreciate and consider the presence of a clear cut provision of Clause 6.5 of General Conditions of Contract. The contract was never foreclosed between the parties and the same was still alive the claimant Gilcon was required to full the conditions of the contract. The Arbitrator, being a creature of contract and has a duty to act within the four corners of the terms and conditions specifically agreed between the parties to the contract, but it has miserably failed to appreciate the intent and purport of the contractual stipulations particularly Clause 6.5 of the General Conditions of Contract and the learned Commercial Court has also not considered the same. This clause specifically empowers the State to recover the excess paid amount to the claimant Gilcon. The Award is also liable to be set aside because the learned Sole Arbitrator has not given any findings on the issues framed by him and also failed to discuss the same while passing the award



hence gave an award based on alien procedure of adjudication under the Law of the Land. Hence the same is liable to be set aside. The learned Commercial Court has also not considered the same and wrongly dismissed the arbitration applications of the State. The Award is in conflict with the public policy of India and hence for this reason also, it deserves to be quashed. The learned Arbitrator as well as the learned Commercial Court have misinterpreted and mis-appreciated the documents and misconducted the proceedings and misdirected which led to the passing of erroneous and utterly illegal Award as well as order which are liable to be quashed.

5. Learned counsel for Gilcon Project strongly opposes the submission made by the State counsel and submits that the learned Trial Court have failed to appreciate that the respondents have illegally, without authority of law and in irrational manner has not allowed interest ante-lite and pendent-lite interest on the aforesaid awarded sum. The learned Commercial Court erred in law by not allowing the interest on the aforesaid awarded sum and only allowing the claims of the appellant. The learned Commercial Court erred by not allowing the ante-lite, pendent-lite and post-lite interest as the same are mandatory in nature as the awarded sum is knowingly and illegally withheld by the State. The learned Commercial Court erred in not considering the fact of award of interest while allowing the admitted and other claims. The learned Commercial Court erred in not considering the fact



that Gilcon Project is entitled to the interest as the State has illegally, arbitrary and wrongfully withheld the payment of the claimant Gilcon. Therefore, the appeals of the Gilcon Project deserve to be allowed. Reliance has been placed on the judgments rendered by the Hon'ble Supreme Court in the matters of **Gayatri Balasamy vs ISG Novasoft Technologies Limited**, reported in (2025) 7 SCC1, **Haryana Tourism Limited vs Kandhari Beverages Limited**, reported in (2022) 3 SCC 237, **C & C Constructions Limited vs Ircon International Limited**, reported in (2025) 4 SCC 234, **Punjab State Civil Supplies Corporation Limited and another vs Ramesh Kumar and Company and others**, reported in (2021) 16 SCC 138, **Delhi Airport Metro Express Private Limited vs Delhi Metro Rail Corporation Limited**, reported in (2022) 1 SCC 131 and this Court's order dated 01.10.2020 passed in ABA No.29/2018 in **between Bhilai Steel Plant Steel Authority of India Limited and another vs International Commerce Limited**.

6. Heard learned counsel for the parties and perused the material available on record.
7. It is clear from the record of the learned Commercial Court that two contract agreements, firstly contract agreement bearing No.24/RC-4/CGRRDA dated 23.10.2007 and secondly contract agreement bearing No.25-RC/4/CGRRDA dated 23.10.2007 were executed between the parties. The dispute arose between



the parties in relation to both these agreements. Both the matters were referred for adjudication to learned sole Arbitrator pursuant to order of this Court High Court. The dispute arising out of agreement No.24/RC-4/CGRRDA was registered as Arbitration Application No.7/2014 and the dispute arising out of agreement No.25/RC-4/CGRRDA was registered as Arbitration Application No.6/2014 before the learned sole Arbitrator. The learned sole Arbitrator adjudicated both the matters and passed the common arbitral award dated 31.08.2018. The learned sole Arbitrator treated the Arbitration Application No.6/2014 as the leading case and referred to the pleadings and documents filed in Arbitration Application No.6/14 in the common award. Against the award dated 31.08.2018, both the parties filed petitions under Section 34 of the Arbitration and Conciliation Act before the learned Commercial Court and the learned Commercial Court registered MJC No.40/2018 and MJC No.43/2018 with regard to award related to contract agreement No.25-R-C/4/CGRRDA which is registered as Arbitration Application No.6/14 before the learned sole Arbitrator and MJC No.41/18 and 42/2018 were registered before the learned Commercial Court pertaining to the contract agreement No.24-RC-4/CGRRDA, which is registered as Arbitration Application No.7/14 in MJC No.40/2018. The learned Commercial Court passed the common order dated 29.02.2020, whereby, allowed the arbitration applications filed by the Gilcon Project to the extent of rejection of claim No.1, which pertains to



claim of Rs.44.06 and 64,99,051/- in ARBA No.41/2020 and Rs.4,08,441/- in ARBA No.42/2020. The learned Commercial Court set aside the finding recorded by the learned Arbitrator in this regard but has not directed the State to pay the said amount to Gilcon Project however granted liberty to the parties that they are free to begin arbitration again, if they so desire. The arbitration applications filed by the State have been dismissed, against which 4 appeals have been filed by State, however the Gilcon Project has also filed two appeals but it is only seeking interest on the aforesaid amount and has not made any prayer that the aforesaid amount be directed to be paid to it by the State.

8. We have perused the award and order passed by the learned Arbitrator and the learned Commercial Court. The learned sole Arbitrator framed 5 issues which are as under:-

“1. Whether Demand Notice of Annexure-3 dated 01.08.2013 Issued by respondents for recovery of Rs. 1,83,34,640/- (Rupees one crore eighty three lacs thirty four thousand six hundred and forty only) is illegal, arbitrary, contrary to terms of contract and also barred by limitation?

2. Whether the claimant is entitled for a total sum of Rs.61,82,587/- (Rupees sixty one lacs eighty two thousand five hundred and eighty seven only) as described in summary of the statement of claims?

3. Whether the mode of calculation followed by the 3. respondents for payment to the claimant towards escalation, is just & proper and in accordance with the terms & conditions of contract?

4. Whether the claimant's claim for a total sum of Rs.61,82,587/- (Rupees sixty one lacs eighty two



thousand five hundred and eighty seven only) is barred by limitation?

5. Reliefs & cost?"

9. A close scrutiny of the award passed by the learned Arbitrator shows that the learned Arbitrator has elaborately dealt with factual matrix culminating in dispute between the parties. The award broadly deals with the interpretation of the various clauses and rights and obligations of the parties. It has also dealt with all documentary evidence on record. The learned Arbitrator has also dealt with Issue No.4 which is related to limitation of claim of Rs.61,82,587/-. The learned Arbitrator after appreciating the evidence available on record decided the issue No.1 in favour of the claimant Gilcon Project however the learned Arbitrator decided Issue Nos.2 & 4 against the claimant and in favour of State, against which the parties approached the learned Commercial Court. The learned Commercial Court after appreciating the evidence available on record partly allowed the arbitration applications filed by Gilcon Project and set aside the finding of the learned Arbitrator pertaining to rejection of admitted amount of Rs.44.06 Lakhs and Rs.64,99,051/- in MJC Nos.41/2018 & 42/2018 and amount of Rs.4,08,441/- in MJC Nos.40/2018 & 43/2018.
10. This Court in **Bhilai Steel Plant Steel Authority of India Limited** (supra) discussed the scope of Section 34 of the Act in para 25, which is as under:-



“25. Before adverting to the Award, which was challenged by the appellant by filing an application under Section 34 of the Act of 1996, it is necessary to state the legal position with regard to scope of interference by the Courts against an award passed by the Arbitrator chosen by the parties, in the light of statutory scheme engrafted under the Act of 1996.

It needs no authority to state the well settled legal position that while entertaining challenge to the legality and validity of Award passed by the Arbitrator, the Court entertaining application under Section 34 of the Act of 1996 does not act as a Court of appeal much less Court of appeal on facts. The scope of interference against an Award is expressly limited by the provisions contained under the Act of 1996. The approach of the Court would not be to undertake an independent assessment of the oral or documentary evidence led by the parties to dispute before the Arbitrator, to arrive its own independent conclusion and finding on facts. The law is settled that while entertaining an application under Section 34 of the Act of 1996, the Court is required to see whether the Award suffers from those defects which have been specifically enumerated as ground of challenge to Award. The grounds, on which, the Award can be challenged have been exhaustively enumerated in Section 34 itself. If any of such grounds or more than one grounds are made out, it would be permissible for the Court to interfere with the award. However, in a case where none of the grounds as mentioned in Section 34 are made out, then the hands of the Court are tied and no interference against the award would be permissible, even if there is an error of fact or even mere error of law.”

11. Section 34 of the Act, 1996 reads as under:-

“34. Application for setting aside arbitral awards.

(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 ¹[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.

¹[*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.]”

12. The Hon’ble Apex Court in **Haryana Tourism Limited** (supra)

held in paras 9 & 10 as under:-

“9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to: (a) fundamental policy of Indian law, or (b) the interest of India; or (c) justice or morality, or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order¹ passed by the High Court is hence not sustainable.

10. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order¹ passed by the High Court is hereby quashed and set aside. The award passed by the arbitrator and the order passed by the Additional District Judge under Section 34 of the Arbitration Act overruling the objections are hereby restored.”

13. The Hon’ble Apex Court in **Punjab State Civil Supplies**

Corporation Limited (supra) held in para 10 as under:-

“10. While considering a petition under [Section 34](#) of the 1996 Act, it is well-settled that the court does not act as an appellate forum. The grounds on which interference with an arbitral award is contemplated are structured by the provisions of Section 34. The District Judge had correctly come to the conclusion that there was no warrant for interference with the arbitral award under [Section 34](#). The High Court seems to have proceeded as if it was exercising jurisdiction in a



regular first appeal from a decree in a civil suit. The jurisdiction in a first appeal arising out of a decree in a civil suit is distinct from the jurisdiction of the High Court under [Section 37](#) of the 1996 Act arising from the disposal of a petition challenging an arbitral award under [Section 34](#) of the 1996 Act.”

14. The Hon’ble Apex Court in **Delhi Airport Metro Express Private**

Limited (supra) held in paras 28, 29 & 30 as under:-

“28. This Court has in several other judgments interpreted [Section 34](#) of the 1996 Act to stress on the restraint to be shown by courts while examining the validity of the arbitral awards. The limited grounds available to courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression ‘patent illegality’. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression ‘patent illegality’. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic



award under [Section 34\(2-A\)](#) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'.

30. [Section 34 \(2\) \(b\)](#) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression 'public policy of India' and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of [Section 75](#) or [Section 81](#) of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice."

15. The Hon'ble Apex Court in **C&C Constructions Limited** (supra)

held in paras 34 & 35 as under:-

"34. As far as scope of interference in an appeal under Section 37 of the Arbitration Act is concerned, the law is well settled. In *Larsen Air Conditioning & Refrigeration Co. v. Union of India* in para 15, this Court held thus: (SCC p. 478)

"15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that 'illegality must go to the root of the matter and cannot be of a trivial nature', and that the Tribunal 'must decide in



accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground' [ref: Associate Builders. SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. (emphasis in original and supplied).

35. In *Konkan Railway Corpn. Ltd. v. Chenab Bridge Project* in para 18, this Court held thus: (SCC p. 93)

"18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in *MMTC Ltd. v. Vedanta Ltd.* 9, is akin to the jurisdiction of the court under Section 34 of the Act. 10 Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act."

16. The Hon'ble Apex Court in **Gayatri Balasamy** (supra) held in paras 47, 60, 61, 62, 87, 87.1, 87.2 & 87.3 as as under:-

"47. Section 33 of the 1996 Act (Annexure A) empowers an arbitrator, upon request, to correct and/or re-interpret the arbitral award, on limited grounds. This includes the correction of computational, clerical or typographical errors, as well as giving interpretation on a specific point or a part of the award, when mutually agreed upon by the parties. Section 33(3) enables the Tribunal to suo motu correct any errors within thirty days of delivering the award. Section 33(4) grants wider powers. It permits the Arbitral Tribunal, upon compliance with specified manner of request, to make an additional award on claims presented before the arbitral proceedings but omitted from the arbitral award.

60. While exercising this power, the Court must also remain mindful that the Arbitral Tribunal has already rendered its decision. If the award suffers from serious acts of omission, commission, substantial injustice, or patent illegality, the same may not be remedied through an order of remand. Clearly, there cannot be a lack of confidence in the Tribunals' ability



to come to a fair and balanced decision when an order of remit is passed.

61. Thus, an order of remand should not be passed when such order would place the Arbitral Tribunal in an invidious or embarrassing position. Additionally, remand may be inappropriate when it does not serve the interests of the parties, particularly in time-sensitive matters or where it would lead to undue costs and inefficiencies. Once an order of remand is granted, the Arbitral Tribunal has the authority to vary, correct, review, add to, or modify the award. Notably, under Section 34(4), the Tribunal's powers, though confined, remain nonetheless substantial. This stands in contrast to the Court's narrow role under the rest of Section 34.

62. This Court in *Kinnari Mullick v. Ghanshyam Das Damani*, referred to and laid down the preconditions for exercising the power of remand under Section 34(4). It held that the Court cannot exercise the power of remand suo motu in the absence of a written request by one of the parties. Secondly, once an application under Section 34(1) has been decided and the award set aside, the Court becomes functus officio and cannot thereafter remand the matter to the Arbitral Tribunal. Consequently, the power under Section 34(4) cannot be invoked after the Court has disposed of the Section 34(1) application.

87. Accordingly, the questions of law referred to by Gayatri Balasamy are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

87.1. When the award is severable, by severing the "invalid" portion from the "valid" portion of the award, as held in Part II of our Analysis;

87.2. By correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in Parts IV and V of our Analysis;

87.3. Post-award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or

87.4. Article 142 of the Constitution applies, albeit, the power must be exercised with great care and



caution and within the limits of the constitutional power as outlined in Part XII of our Analysis.”

17. In light of above in the present case, we found that the appellant State has failed to raise any ground enumerated under Section 37 of the Act. The learned Commercial Court minutely appreciated all grounds of application filed by the State and Gilcon Project and rightly passed the order and rightly rejected the applications of the State *sans merit* and rightly allowed the claim No.1 of the Gilcon Project, which is in respect of admitted amount withheld by the State. Thus, we do not find any illegality or irregularity in the order passed by the learned Commercial Court.
18. In so far as the appeals filed by the Gilcon Project is concerned, it is clear from the order of the learned Commercial Court that the learned Commercial Court allowed the claim No.1 of the Gilcon Project in both the appeals, which is an admitted amount of Rs.44.06 Lakhs and Rs.64,99,051/- in ARBA No.41/2020 with respect to MJC Nos.41/2018 & 42/2018 and amount of Rs.4,08,441/- in ARBA No.42/2020 with respect to MJC Nos.40/2018 & 43/2018.
19. The learned Commercial Court in its order dated 29.02.2020 in MJC Nos.41/2018 & MJC No.42/2018 held in relevant para 46 as under:-

“Further, the application u/s 34 of the Arbitration and Conciliation Act, 1996 filed by the Gilcon Ltd (MJC 41/18) is to be allowed to the extent of rejection of



admitted amount of Rs.44.06 lacs which was withheld by the CGRRDA toward final bill of Gilcon Ltd and the amount of Rs.64,99,051 /- (Rupees Sixty Four Lakhs Ninety Nine Thousand Fifty One) the amount of escalation bill not paid by the CGRRDA. Therefore, this Court set aside the impugned Arbitral Award to the said extent.”

20. The learned Commercial Court in its order dated 29.02.2020 in MJC Nos.40/2018 & MJC No.43/2018 held in relevant para 42 as under:-

“Further, the application u/s 34 of the Arbitration and Conciliation Act, 1996 filed by the Gilcon Ltd (MJC 40/18) is to be allowed to the extent of rejection of admitted amount of Rs.4,08,441/- (Rupees Four Lakhs Eight Thousand Four Hundred Forty One) which was withheld by the CGRRDA toward final bill of Gilcon Ltd. Therefore, this Court set aside the impugned Arbitral Award to the said extent.”

21. It is clear that both the orders passed by the learned Commercial Court are silent on interest part, thus it would be expedient in the interest of justice to award interest on the aforesaid sum in favour of Gilcon Project Limited. Accordingly, interest @ 6% is awarded on the aforesaid sum, which will be payable from the date of completion of contract to its actual realization.
22. In the result, the appeals filed by the State i.e. ARBA Nos.36, 37, 39 & 40 of 2020 are dismissed. However, the appeals filed by the Gilcon Project Service Ltd. i.e. ARBA Nos.41 & 42 of 2020 are allowed to the extent indicated herein above.

Sd/-

Rajani Dubey
Judge

Sd/-

Radhakishan Agrawal
Judge