IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 7 OF 2015

M/s ACE Pipeline Contracts Pvt. Ltd. ...Petitioner

Versus

M/s Bharat Petroleum Corporation Ltd. ...Respondent

Mr. Vishal Kanade *a/w Aneesha Munshi, Garvita Joshi, i/b Divya Shah & Associates, for the Petitioner.*

Mr. Pankaj Sawant, *Senior Advocate a/w S. R. Page, Ms. Archana Joglekar, for the Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: JUNE 8, 2026

Judgement

Context and Factual Background:

1. The challenge in this Petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***"), is to an Arbitral Award dated August 20, 2014 ("***Impugned Award***"), in connection with disputes and differences between the Petitioner, ACE Pipeline Contracts Pvt. Ltd. ("***ACE***") and the Respondent, Bharat Petroleum Corporation Ltd. ("***BPCL***").

2. BPCL invited offers to be submitted for the work of "hydro testing" of a pipeline that conveys Aviation Turbine Fuel ("***ATF***"), from BPCL's refinery to LBS Road. The length of the pipeline that needed to be tested was broken into two segments, one of six kilometres and another of three kilometres. Pipeline laying work to repair any leakage ("***Repair Work***"), was also to be bid for on a running metre basis, pursuant to the BPCL's tender.

3. ACE's offer was accepted and led to a Letter of Intent dated September 6, 2011, which provided for carrying out testing work on the six-kilometre pipeline for Rs. 18 Lakhs and on the three-kilometre length for Rs. 9 Lakhs, less 3% discount on both rates. The Repair Work was bid for on a running metre basis with a fixed rate for every metre of pipeline or part of it that was repaired and replaced. Disputes and differences arose between the parties.

4. It is common ground that while carrying out the hydro test in the first segment, the leakage in the underground pipeline could not be located by finding any surface area where moistening or sweating of the earth was visible. The water pressure was raised and pits were dug to examine if any moistening or sweating along the pipeline was identifiable and such process led to pits being dug at six locations, with the water pressure being increased every time a pit was dug. After no leakage in the ATF pipeline was identifiable, the parties resorted to the usage of compressed air, which led to the discovery of a

leakage in the pipe underneath a *nallah*. After locating the leaking point in the ATF pipeline, the parties decided to isolate the pipe by disconnecting that portion from the rest of the pipe and hydro testing was resumed in two parts of one section.

5. According to ACE, such detailed activity of testing for the leakage was never envisaged either by BPCL or by ACE and therefore, it would be appropriate to treat the project as having entailed additional work not originally envisaged, necessitating additional compensation.

6. The quantity of pipeline installed under the Repair Work measured 8.055 metres. On this count, ACE contended that the assumption was that a straight pipe or a bend was to be replaced if found leaking. In the instant case, a bend was also installed along with the portion of straight pipe and such work was necessary to connect the existing section of the pipeline lying at approximately 1.5 metres depth to the newly installed pipe underneath the *nallah,* and this changed the entire nature of the work which was not contemplated to have been incurred and quoted for.

7. Therefore, ACE contended, the rates quoted were no longer valid and the nature of the work envisaged had undergone a total change. The hydro testing, after the repair too, according to ACE, should be treated as a separate

activity unforeseen when the project was envisaged. For such additional hydro testing too, additional compensation was claimed by ACE.

8. In the arbitration proceedings, ACE raised one more contention, namely that the unit of measurement set out in the tender document was originally "each" and was changed to "kilometre" as an afterthought resulting in a misrepresentation by BPCL. If the measurement were to be in running in kilometres of the section tested, there would have been no need to separate the pipeline into two parts and mention separate descriptions, and therefore, ACE contended, the quote on a per kilometre basis should merely be treated as an estimation. Since the leakage was located by means of air pressure under the *nallah* and not in the pipeline under the land portion through hydro testing, the entire scope of work as envisaged originally, according to ACE, had changed. ACE claimed that for such extra work, it would be appropriate to pay four times the original price because three months were spent by ACE instead of the three weeks envisaged earlier. Therefore, a claim was made for Rs.~1.02 Crores, after deducting the amount of Rs.~26.60 lakhs already paid by BPCL. Interest at the rate of 1.5% per month with monthly rests was also claimed.

9. In sharp contrast, BPCL would contend that ACE was awarded the work as the lowest bidder and had consciously quoted the price after due inspection of the work to be done; being satisfied with the activity to be carried out; and

assessing the value for such activity. BPCL would submit that the unit of measurement for hydro testing applied was clearly on a per kilometre basis as is seen from the addendum to the original tender and ACE's own confirmation, by a letter dated September 3, 2011, confirming that the unit of measurement would be "kilometre" and not "each". ACE has even given a discount of 3% on the quoted rates. ACE bagged the contract by offering a revised price of Rs. 2.91 Lakhs per kilometre in place of Rs. 3 Lakhs per kilometre quoted earlier. BPCL would contend that after successfully bagging the contract, it was not open to ACE to re-negotiate the contract and claim a higher price.

10. The hydro testing procedure was well explained in the tender terms and this necessitated the activity that had been carried out in the course of the work done. The hydro testing and finding of the leakage points in the ATF pipeline were well within the scope of the work and in fact, the tender provided that if leakage was observed, ACE was to carry out the rectification job i.e. Repair Work in the third segment of the contract. The price payable for the Repair Work was on the basis of the pipeline length replaced for every metre or part thereof. Likewise, the tender conditions specifically provided that after such repair and replacement, retest by way of hydro testing would need to be done under the first two segments, and that the price to be quoted was meant to subsume in it an assumption of a post repair hydro testing.

11. Therefore, BPCL would contend that the methodology for identifying the leakage; the obligation to carry out the rectification; the terms on which the rectification would be carried out; and the re-testing after rectification, were all an integral part of the tender terms. ACE had consciously presented its quote and could not resile from the same. BPCL also defended the charging of liquidated damages for a net delay of eight weeks at 5% towards which, an amount of Rs. 1.28 Lakhs had been deducted by BPCL, pointing out that while the work was to be completed by September 27, 2011, extension of time was in fact granted because of the time taken for detection of the leak, and yet, the work to be completed in the areas available other than the leakage location, had also not been completed in time. Eventually, a net delay of only eight weeks was attributed to ACE for computation of the liquidated damages.

Analysis and Findings:

12. I have heard Mr. Vishal Kanade, Learned Advocate on behalf of ACE, and Mr. Pankaj Sawant, Learned Senior Advocate, on behalf of BPCL, at length and with their assistance, I have examined the material on record.

13. It is apparent that the parties had agreed not to lead evidence through any witnesses and committed to address the Learned Arbitral Tribunal on interpretation of the tender conditions. Evidently, the Learned Arbitral Tribunal was manned by an expert, although a Senior Official of BPCL,

conducting arbitration before the law on independence and impartiality was declared by the Supreme Court and before explicit amendments to the Act in this regard were made in 2015. The Learned Arbitral Tribunal examined Clause 10 of the tender conditions. It is clear that the work was meant to be carried out in two separate sections, but simultaneously, so that the time frame envisaged would be met. The means of examining the pipeline was also set out in the tender conditions. That included hydro testing, air cleaning, foam pigging, flushing etc. Clause 10 of the Tender Conditions makes it quite clear that the quotes were to be provided on the premise that any of the processes envisaged in the tender would need to be brought to bear. Likewise, if leakage was observed, the winning bidder was to carry out the rectification job which would be compensated on a running metre basis for every metre or part thereof. Re-testing post-rectification is also clearly envisaged in the Tender Conditions. It is abundantly clear that no separate payment would be made on account of re-hydro testing as a separate head and the bidder was meant to factor in such expenses as well.

14. The excavation of pits for installing and carrying out repairs and coating and backfilling was also meant to be factored in while bidding for the project. It is also clear that the pipeline connection between the sections would be paid for in terms of the actual length measurement. It is also abundantly clear from the material on record that the contention about unit of measurement on

a per kilometre basis is quite clear both in terms of communication by BPCL to the bidders and the bid made by ACE in response to the tender. ACE has clearly confirmed in the letter dated September 3, 2011, that it is clearly understood that the unit of measurement would be "kilometre" and the contract was not a lump sum price contract regardless of the length involved in the work carried out.

15. The Learned Arbitral Tribunal also did not find any merit in the contention that there was a variation in the scope of work, with particular regard to the description of the work to be done as set out in Clause 10 of the tender conditions. The activity carried out was very much in conformity with the activity envisaged in the tender document, which entailed the work of hydro testing, finding of leakage points, repairing and retesting after repair, all of which were well within the scope of work. Therefore, the Learned Arbitral Tribunal took the view that no additional work had been carried out by ACE and the claim for Rs.~1.02 crores was not justified, and there was no entitlement for any further amount from BPCL.

16. Upon examining the submissions made by Mr. Kanade, both in oral arguments as well as in a written note of submissions, I do not find any reason to interfere with the eminently plausible and reasonable conclusions drawn by the Learned Arbitral Tribunal. Mr. Sawant is right in his contention that even

the claim for additional compensation is vague and without any empirical support of specific evidence in the form of additional costs incurred.

17. At the Section 34 stage, the grounds of challenge are very limited. The essential ground canvassed by Mr. Kanade is that by a letter dated October 13, 2012, BPCL had proposed to pay a sum of Rs. 59,754.83 towards extra work. This would show that admittedly extra work had been undertaken. Therefore, the contention is that the parties having agreed that extra work was carried out, and the dispute being about the scale of compensation for the extra work, the Impugned Award completely ignores the said letter while rejecting all the claims and holding that no extra work had been carried out. In my opinion, this contention does not turn the needle in favour of ACE because ACE ought to have pleaded specifically not only what extra work it had carried out and how such work is additional work but also how it was raising a claim, objectively attributing the amounts claimed to the additional heads of work actually purported to have been carried out. This is sorely missing. In addition, it was agreed not to lead evidence through witnesses to be able to test the claim. Virtually, the parties left it to interpretation of the contract and the correspondence. Therefore, just the existence of a letter indicating a small offer of just about Rs. ~59,000 could never be the basis of justifying a claim for Rs. ~1.02 crores. Moreover, the very same letter of BPCL clearly

disclaimed liability and made the suggestion subject to approval by internal committees of BPCL. It can reasonably be read as a without-prejudice offer.

18. Likewise, it is also contended in the Petition that the Learned Arbitral Tribunal erred by not considering Clause 8.3 of the Tender Conditions which provides that in the event of leaks or failures resulting from faulty material furnished by BPCL, ACE should be entitled to compensation for labour, equipment and material costs. This is contended as not having been considered by the Learned Arbitral Tribunal. However, this clause provides for attribution of liability if faulty material is provided by BPCL. According to ACE, since the fault was on BPCL's part with the faulty pipeline being discovered during the testing, ACE was entitled to reimbursement of costs and compensation in reliance upon Clause 8.3 of the tender document. There is nothing to indicate what faulty material was provided by BPCL. The fault found was the leakage in the pipe under the *nallah*, which was the subject of the contract. Clause 8.3 has no relevance to the dispute in hand.

19. As regards the obligation for conduct of re-testing, ACE would contend that only if the leakages were visible and located, would the contractor be deemed to have included such costs and therefore, the Learned Arbitral Tribunal wrongly applied the contents of Clause 10 to hold that retesting was subsumed in the price quoted. This too is an incoherent contention. A bare

reading of the tender terms shows that re-testing after rectification is clearly covered by the agreed price. The very contract was to conduct tests to identify any leakage, repair the leakage found, and test the pipeline after the repair. This being the scope, it is simply untenable to contend that the Learned Arbitral Tribunal was wrong in rejecting additional costs for resting after rectification.

20. The conduct of the air pressure test is also contended to have never been part of the scope of work in the contract. It was meant to be hydro testing and since hydro testing did not lead to discovery of the leakage, the conduct of air pressure testing should be considered as additional work. This too is difficult to accept since the bidders were meant to inspect the entire pipeline length and ACE would have noticed that some portion of the pipeline was not underground and was underneath the *nallah*. Therefore, when one considers that disputes have to be adjudicated in arbitration guided by the contract and custom and usage, it would be reasonable to expect that there could have been some leakage in a portion that was not under the ground but under a *nallah*, necessitating a compressed air test.

21. Mr. Sawant is right in his contention that the claim is founded on the basis that it would be "*quite appropriate*" to pay four times the original price for the three months spent by ACE instead of the three weeks originally

envisaged. Indeed, there is no pleading or any evidence to demonstrate what additional costs, damage and expenses had been incurred in order to make a claim in the arbitration. Equally, there is no oral or documentary evidence to demonstrate that the work carried out was outside the scope of work covered by the contract.

22. I have already set out above how the contention about unit of measurement is incoherent and untenable. I have given my anxious consideration to the contention by ACE that at one stage BPCL had offered to pay a sum of Rs. 59,754.83 towards "extra work". Indeed, there is no reference to this in the Impugned Award. Equally, the Learned Arbitral Tribunal cannot be faulted because there is nothing in the statement of claim, taking up a plea on the basis of the offer of Rs. 59,754.83 towards extra work. At best, Mr. Kanade's submission could be categorized as the said communication confirming that some extra work had taken place, thereby undermining the objectivity of the Arbitrator's finding that no extra work had been undertaken.

23. Therefore, I have examined the specific letters dated May 15, 2012, June 2, 2012 and October 13, 2012. Indeed, it is not disputed that there is no pleading in the Statement of Claim placing reliance upon these letters. When the arbitration was conducted without leading evidence with witnesses, the pleadings become vital and important to enable a fair framework for

adjudication. However, in view of the declared law on implicit reasons in arbitral awards to be respected, I have examined these letters. Even these letters make it clear that there was no agreement between the parties on the point. The letters can be regarded as a without-prejudice offer from BPCL to deal with the grievance raised by ACE. In any case, the offer is for a sum of mere tens of thousands of rupees as opposed to the claim of Rs.~1.02 Crores. The very same letters, in fact, equally assert that no additional claim is admitted and that it would be subject to approvals.

24. At the arbitral meeting held on October 29, 2013, clearly, the parties agreed that they did not propose to call any witness. By consent of parties, the issue framed was whether any additional work has been done which is beyond the scope of work stated in the agreement, and whether if such work has been done, a claim of Rs.~1.02 crore would be justifiable. Since the issues have been framed on the basis of the pleadings by the parties, one would necessarily need to ask the question as to whether the Statement of Claim could be silent about the basis on which additional work is claimed to have been made. On the other hand, when the pleadings sought a multiplier of four times as an appropriate claim, without objectivity in it, the issue that would arise is how the Learned Arbitral Tribunal which has adjudicated the disputes should be judged; and whether the Learned Arbitral Tribunal has made the Impugned Award in any perverse or patently illegal manner. I find it difficult to hold that vital

evidence was ignored. The law on both appreciation of evidence and provision of reasons is very clear – the standard to which a judicially trained forum is held is not the standard to which a technical expert forum is to be held. If reasons are implicit and the outcome is fair, the arbitral award should not be lightly interfered with. The alleged perversity must be of a degree that cuts to the root of the matter. I find that letters on an amount of a little over Rs. 50,000, which are not even the basis of any pleadings, cannot tilt the scales in an arbitral award where the parties consented to not lead evidence through any witness.

25. The contention on behalf of ACE is that it is only the quantum that is in dispute (whether it is Rs.~59,000 or Rs.~1.02 crore) but there can be no dispute that additional work was done. However, for such a contention to be of normative value and then of evidentiary value for an adjudication, what actual additional work was done and what material would support a finding on the value attributable to the additional work would need to form an integral part of the Statement of Claim and the pleadings contained therein. Indeed, the Statement of Claim refers to Clause 8.3 of the Tender Conditions, and Mr. Kanade would rightly submit that a pleading has to only contain a concise statement and not set out the evidence by which it is to be proved. However, on the evidence by which the claim for compensation has to be proved, the claimant must necessarily bring to bear specific evidence to show the

components for which compensation is due, to enable an empirical and cogent analysis of such material as is sought to rely upon.

26. Mr. Kanade would attribute the compensation to the additional work claimed by ACE, namely, the air compression tests, the digging of pits, additional joints and sectionalization of the second part of the Contract and the retesting of the sub-divided second part, with a contention that none of these have been considered by the Learned Arbitral Tribunal. The contention is more that the Impugned Award does not deal with these issues and that this should suffice for the Section 34 Court to set aside the Impugned Award.

27. I am unable to agree with the aforesaid assault on the Impugned Award. To begin with, the tender terms make it quite evident that leakage is to be detected and upon detection, repair work has to be carried out and for such repair work, consideration payable would be on a running metre basis for every metre or part thereof. Likewise, that the contract is not a lumpsum contract and is based on the total pipeline length that had to be tested on a per kilometre basis is also writ large. Testing was evidently an integral part of the tender terms and there is nothing to demonstrate that during the struggle to discover the leakage, there was any protest by ACE seeking contemporaneous additional compensation for carrying out air compression tests in lieu of the leakage test. ACE has contended that it felt coerced into signing the contract

with these terms but a mere statement to that effect would not suffice. Since the leakage was under a *nallah*, it was only an air compression test that demonstrated the leakage, whereas the hydro testing did not lead to any evidence of water leakage in any part of the land under which the pipeline had been laid. On this count too, the Learned Arbitral Tribunal has indeed noted that the bidders were expected to inspect the entire length of the area where the work had to be carried out, and such inspection had been carried out by ACE and it consciously made its bid.

28. Therefore, in my opinion, even if the Learned Arbitral Tribunal has not explicitly stated so in the Impugned Award, what is evident and implicit in the reasoning is the view that that upon such inspection, ACE was bound to have noticed that a portion of the pipeline ran under a *nallah* and hydro testing would not have been adequate for detection of any leakage in such portion of the pipeline. Therefore, on an overall view of the matter, it is quite apparent that the view taken by the Learned Arbitral Tribunal, cannot be disturbed as being perverse or patently illegal.

29. Further, it is not a case where contractual provisions have been ignored in a manner that would undermine the very findings rendered in the Impugned Award. Likewise, the contention that the Learned Arbitral Tribunal has not given appropriate reasons is also untenable inasmuch as it is quite well

settled that where the reasons are implied in the Impugned Award, the Section 34 Court should not interfere, if broadly the outcome is a reasonable, logical and plausible one.

30. Towards this end, I have carefully examined Clause 8.3, which is annexed to the Petition and have already set out my views in this regard earlier in this judgement.

31. Clause 8.3 provides that the cost of repair or replacement followed by refilling and re-pressuring the land due to poor workmanship shall be borne by ACE. However, in the event of leaks or failure resulting from faulty material furnished by BPCL, it would be borne by BPCL. There is nothing on record to indicate that any material furnished by BPCL was faulty. The cost of the repair or replacement is also not being attributed to poor workmanship by BPCL necessitating the same to be borne by ACE. The clause in question is a provision apportioning liability depending on who is at fault. It is not a clause relevant to examine if the consideration contracted covered additional work.

32. There is nothing on record to evidence that a situation warranting interpretation of Clause 8.3 arose, and therefore silence on this count in the Impugned Award could well be an implicit finding that the issue was irrelevant and not worthy of being dealt with. In the context of the Section 34

jurisdiction, I am not inclined to interfere with the Impugned Award on this count.

33. The reasons supplied in the Impugned Award may not be to the liking of a party and may not be considered wholesome by that party. But if the reasons given fairly and squarely address the issues to be considered, it would follow that the Impugned Award cannot be lightly interfered with.

34. I must cite here, the following passage from ***Associate Builders***[1] when considering this challenge to the Impugned Award (*the footnote in the judgement, to the extracted paragraph is also set out below the extract*):

> *It must clearly be understood that* ***when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected****. A possible view by the arbitrator on facts has necessarily to pass muster as* ***the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award****. Thus* ***an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score***
>
> > *[Inserted Footnote – extracted below:]*
> > ***Very often an arbitrator is a lay person not necessarily trained in law****. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:*
> >
> > > *" General, you have a* ***sound head, and a good heart****; take courage and you will do very well, in your occupation, in a court of equity. My*

1 *Associate Builders v. Delhi Development Authority –* ***(2015) 3 SCC 49***

advice is, to ***make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong****".*

It is ***very important to bear this in mind when awards of lay arbitrators are challenged****.*

[Emphasis Supplied]

35. Even applying this broad principle, one must not lose sight of the fact that the Learned Arbitral Tribunal was a technical expert and when testing his judgement, one must bear the above approach in mind. Indeed, it is no license to a non-lawyer arbitrator to pass unexplained judgement without rational and logical reasons. The Learned Arbitral Tribunal has not rendered such a judgement. The contention that the Learned Arbitral Tribunal has not explicitly dealt with the letters referred to above or to Clause 8.3 of the tender conditions is not fatal to the Impugned Award because the articulated reasons set out in the Impugned Award do justice to the matter and the reasons that would weigh with any reasonable mind in relation to the foregoing issues are implicit in the outcome in the Impugned Award.

36. Should the Arbitral Tribunal return a view which would be impossible for any reasonable mind to hold in the context of a contractual provision, the Section 34 Court would be justified in setting aside the Arbitral Award.

37. For completeness, I must state that the scope of review by the Section 34 Court is also well covered in multiple judgements of the Supreme Court including ***Dyna Technologies***[2], ***Associate Builders***, ***Ssyangyong***[3], ***Konkan Railway***[4] and ***OPG Power***[5]. To avoid prolixity, I do not think it necessary to burden this judgement with quotations from these judgements. Suffice it to say (to extract from just one of the foregoing), in ***Dyna Technologies***, the Supreme Court held thus:

> *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.*
>
> *25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided*

2 *Dyna Technologies Private Limited v. Crompton Greaves Ltd* – *(2019) 20 SCC 1*
3 *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India* – *(2019) 15 SCC 131*
4 *Konkan Railways v. Chenab Bridge Project Undertaking* – *2023 INSC 742*
5 *OPG Power vs. Enoxio* – *(2025) 2 SCC 417*

in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

[Emphasis Supplied]

38. In these circumstances, in my opinion, on none of the grounds raised in the Section 34 Petition or canvassed in the course of these proceedings, is any intervention into the Impugned Award warranted. Therefore, the Petition ***is dismissed***.

39. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]