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

% **Judgment reserved on: 26.02.2026**
Judgment pronounced on: 11.03.2026

\+ O.M.P. (COMM) 463/2023

GALAXY INFRA AND ENGINEERING PVT LTD. .....Petitioner

Through: Ms. Minakshi Jyoti, Mr. Anmol Jain, Ms. Shakshi Raj & Ms. Shruti Jain, Advs.

versus

PRAVIN ELECTRICALS PVT LTD .....Respondent

Through: Mr. Gaurav Mitra, Mr. Saswat Pattnaik, Ms. Lavanya Pathak & Mr. Akshay Sinha, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') against the award dated 07.08.2023.

Brief Facts

2. The petitioner is in the business of providing consultancy services for promotion of electrical supplies and installation, electric design and build, electrical testing and commissioning, power transfer and distribution project, EPC and turnkey projects. The respondent operates in key industrial, commercial and retail sectors. On 26.05.2014, an online tender was invited by the Chief Engineer, South Bihar Power Distribution Company Ltd. (for short 'SBPD') for appointment of implementing agency for execution of R-APDRP

(Part-B) Scheme on turnkey basis, for strengthening, improvement and augmentation of distribution system capacity of 20 towns in Patna. The last date for online submission of tender was extended to 08.07.2014.

2.1 The case pleaded is that the respondent approached the petitioner in June 2014 for availing consultancy services for submitting the bid. After availing consultancy services, the respondent submitted technical and financial bid and the tender was awarded. The parties agreed that the project was to be executed by M/s Process Construction & Technical Services Pvt. Ltd. (for short 'PCTS'). Due to non-payment of final invoice dated 01.07.2017 the dispute arose between the parties to the *lis*. The petitioner on 26.04.2018 issued notice under Section 21 of the Act seeking appointment of an arbitrator in terms of consultancy agreement dated 07.07.2014 (for short 'CA'). The petition filed by the petitioner under Section 11(6) of the Act was allowed on 12.05.2020. The decision of this court was challenged by the respondent. The Supreme Court in **Civil Appeal No. 825 of 2021** decided on 08.03.2021, upheld the appointment of the arbitrator but set aside the judgment to the extent it conclusively recorded finding that an arbitration agreement existed between the parties. The concluding paragraph is as follows:-

> "27. The facts of this case remind one of ***Alice in Wonderland***. In Chapter II of Lewis Caroll's classic, after little Alice had gone down the Rabbit hole, she exclaims "Curiouser and curiouser!" and Lewis Caroll states "(she was so much surprised, that for the moment she quite forgot how to speak good English)". This is a case which eminently cries for the truth to out

between the parties through documentary evidence and cross-examination. Large pieces of the jigsaw puzzle that forms the documentary evidence between the parties in this case remained unfilled. The emails dated 22nd July, 2014 and 25th July, 2014 produced here for the first time as well as certain correspondence between SBPDCL and the Respondent do show that there is some dealing between the Appellant and the Respondent qua a tender floated by SBPDCL, but that is not sufficient to conclude that there is a concluded contract between the parties, which contains an arbitration clause. Given the inconclusive nature of the finding by CFSL together with the signing of the agreement in Haryana by parties whose registered offices are at Bombay and Bihar qua works to be executed in Bihar; given the fact that the Notary who signed the agreement was not authorised to do so and various other conundrums that arise on the facts of this case, it is unsafe to conclude, one way or the other, that an arbitration agreement exists between the parties. The prima facie review spoken of in **Vidya Dhrolia** (supra) can lead to only one conclusion on the facts of this case - that a deeper consideration of whether an arbitration agreement exists between the parties must be left to an Arbitrator who is to examine the documentary evidence produced before him in detail after witnesses are cross-examined on the same. For all these reasons, we set aside the impugned judgment of the Delhi High Court in so far as it conclusively finds that there is an Arbitration Agreement between the parties. However, we uphold the ultimate order appointing Justice G.S. Sistani, a retired Delhi High Court Judge as a Sole Arbitrator. The learned Judge will first determine as a preliminary issue as to whether an Arbitration Agreement exists between the parties, and go on to decide the merits of the case only if it is first found that such an agreement exists. It is clarified that all issues will be decided without being influenced

> by the observations made by this court which are only *prima facie* in nature. The appeal is allowed in the aforesaid terms."
>
> (Emphasis supplied)

2.2 The arbitrator decided the preliminary issue "whether an arbitration agreement exists between the parties ?". It was held that the petitioner failed to prove execution of the CA and the signatures on behalf of the respondent on CA were forged. The second plea of the petitioner that pursuant to correspondence exchanged subsequent to 07.07.2014 there was a concluded arbitration agreement between the parties was held to be inconsistent with the main plea. The arbitrator after holding that the alternative plea was inconsistent and not maintainable dealt with it on merits. The conclusion was that the correspondence showed no concluded agreement between the parties. Hence, the present petition.

Submissions of the Petitioner

3. Learned counsel for the petitioner submits that filing of the CA *prima facie* proves execution of the agreement between the parties. The submission is that the finding recorded by the arbitrator that the signatures of Mr. M.G. Stephen on the agreement were forged, is not backed by evidence and the onus to prove forgery is upon the respondent. Reliance is placed on the cross examination of Mr. M.G. Stephen (RW-1) to contend that there was an admission that the CA was executed. The grievance is that while deciding the alternative plea the arbitrator confused the issue of execution of the CA with whether the correspondence between the parties after 07.07.2014 proved a

concluded independent agreement and the directions of the Supreme Court were violated by the arbitrator.

3.1 It is canvassed that the correspondence between the parties dated 15.07.2014, 22.07.2014 and 25.07.2014 proved that the CA was executed between the parties and the arbitrator ignored the relevant evidence. The contention is that the invoices dated 27.09.2014 and 24.04.2016 were raised on PCTS on instructions of the respondent and the arbitrator erred in ignoring that the parties had agreed that the invoices shall be raised against sub contractor PCTS.

3.2 Lastly, it is argued that the vital evidence on record and that since filing of petition under Section 11(6) of the Act the alternative argument of concluded agreement between the parties on the basis of subsequent correspondence being raised by the petitioner was not considered.

Submissions of the Respondent

4. *Per contra* the CA was not executed between the parties. The arbitrator dealt the issue in detail and recorded reasons to support the conclusion. It is submitted that the second plea before arbitrator was contrary to the first plea taken and was rightly held to be not maintainable. It is stated that the arbitration proceedings were initiated in terms of the CA and at a later stage in the same arbitration proceedings the petitioner cannot place reliance upon any other agreement. The contention that the communication between the parties subsequent to 07.07.2014 proved that there was a concluded agreement between the parties is refuted. The emphasis is that there was no correspondence between the parties indicating a concluded

agreement. Submission is that the scope of interference under Section 34 of the Act is limited and there cannot be re-appreciation of evidence.

5. Heard learned counsel for the parties in detail. No other issue than those noted above was pressed.

Analysis

6. It would be relevant to note that the Supreme Court upheld the appointment of the arbitrator by this court. However, the conclusive finding that there existed an arbitration agreement between the parties was set aside and this issue was left to be decided by the arbitrator. It was clarified that the issue of the existence of a concluded arbitration agreement between the parties shall be decided by the arbitrator without being influenced by the observations made by the Apex Court.

7. The arbitrator dealt with the preliminary issue in three parts: (i) whether the CA was executed between the parties; (ii) whether the communication exchanged between the parties proved a concluded arbitration agreement; and (iii) whether an independent agreement came into existence by correspondence exchanged between the parties subsequent to 07.07.2014.

8. The arbitrator held that the CA was not executed between the parties and signatures thereupon of Mr. M.G. Stephen were forged. It was considered that: (a) the parties to the agreement belonged to Bihar and Mumbai, whereas the CA was notarised in Faridabad; (b) the Managing Director of the petitioner while deposing as CW-1 admitted that none of the parties had business place in Faridabad and no

negotiation took place there; (c) the CA was notarised by Mr. Vinay Kumbta who as per the testimony of CW-1 was a business partner residing in Faridabad but in cross-examination it was stated that he was an employee and had only the role of accessing emails received; (d) the license of the notary notarising the CA had expired; (e) the petitioner failed to examine the witnesses to the CA or the notary; and (f) by email dated 15.07.2014 that is eight days after the date on which the petitioner claimed execution of the CA, a draft of the agreement was circulated.

9. In the absence of challenge to the finding recorded by the arbitrator, the contention of the learned counsel for the petitioner that production of the CA was a *prima facie* proof of execution of agreement deserves rejection. The petitioner failed to discharge the onus to prove the execution of the CA. The reliance on question no.65 posed to Mr. M.G. Stephen in cross-examination to substantiate an admission of execution of the CA is of no avail. There is no admission by RW-1 of the execution of the CA.

10. The submission that the respondent had failed to discharge onus and arbitrator erred in holding that the signatures of Mr. M.G. Stephen on the CA were forged, is ill-founded. The arbitrator rightly concluded that initial onus of proving execution of the CA was on the petitioner and the petitioner failed to do so. It was noted that case of both the parties was known to each other. The respondent had denied execution of the CA as well as the signatures thereon. RW-1, while deposing reiterated that the signatures were forged and the stand taken was corroborated from the fact that the parties even after 07.07.2014 were

still at negotiating stage. The report of CSFL for comparison of signatures of Mr. M.G. Stephen was inconclusive. The provisions of Order VII Rule 2 and Rule 4 CPC were considered that the requirement of the pleadings thereunder is in the case of a fraud and not of forgery.

11. The reliance of the learned counsel for the petitioner on an email dated 27.10.2014 to prove the execution of the CA and that it was signed by Mr. M.G. Stephen was rightly rejected by the arbitrator. The email calling upon the petitioner to complete the agreement cannot be construed as an admission of execution of the CA.

12. Issue no.2 that the execution of the CA was proved by the correspondence subsequent to 07.07.2014 was rejected in view of the findings recorded for issue no.1. The findings on issue no.1 have been upheld and issue no.2 need not be further dilated upon.

13. The issue no.3 that consequent to the correspondence exchanged between the parties after 07.07.2014 an independent arbitration agreement came into existence was held to be inconsistent with issue no.1 and rejected. On one hand the petitioner insisted that the CA was executed on 07.07.2014 but at the same time relied upon the correspondence between the parties revealing that till 25.07.2014 the draft of the agreement was being exchanged.

14. The challenge to this issue by the learned counsel for the petitioner is only on the ground that the arbitrator mixed two issues and violated the directions of the Supreme Court. Suffice to say that the arbitrator dealt with the second issue in detail and further bifurcated it for clarity. Moreover, the Supreme Court had only

recorded *prima facie* findings with regard to the issue of a concluded arbitration agreement between the parties. It was left for the arbitrator to determine the preliminary issue of existence of an arbitration agreement between the parties. It was clarified that the issue shall be decided without being influenced by the observations of the Supreme Court.

15. The arbitrator after holding that the second plea was inconsistent with the first plea and could not be raised, proceeded to examine the second plea on merits.

16. Learned counsel for the respondent at this stage submits that the decision of the arbitrator not permitting the petitioner to raise the second issue, rendered merits of issue redundant.

17. The contention is refuted by the learned counsel for the petitioner by stating that in spite the observation that the petitioner was not permitted to raise the issue, the arbitrator chose to go into the merits and that part of the award has not been challenged by the respondent.

18. There is merit in the contention raised by the learned counsel for the respondent that once the arbitrator held that the petitioner was not permitted to raise the second contention, the outcome on the merits of the issue was academic. This position shall not be altered by the respondent not challenging the part of the award whereby arbitrator chose to go into the merits of the issue.

19. Be that as it may since the arbitrator examined the issue on merits, it is agitated before this court and is being considered. The financial bid was submitted by the respondent on 10.07.2014 but

email between the parties to the *lis* were exchanged from 25.06.2014. After the last date of submission of bid, the respondent by email dated 15.07.2014 shared a draft agreement but the financial terms of the agreement were not accepted by the petitioner. *Albeit,* email dated 15.07.2014 referred to an agreement 'which you sent earlier' but it does not come to the rescue of the petitioner for the reasons that the draft agreements were being exchanged thereafter as well.

20. The correspondence dated 15.07.2014 and 22.07.2014 was not to the effect that the final consultancy agreement was concluded between the parties. Rather with email dated 25.07.2014, there was an attachment titled 'final consultancy agreement' but it was along with an inquiry as to whether the final consultancy agreement was in order. This inquiry dented the case of the petitioner that an independent agreement was concluded, it showed that the matter was still to be approved. The arbitrator rightly held that the parties were in negotiation on crucial aspect and there was no concluded agreement.

21. Another angle considered by the arbitrator was that the notice was served under Section 21 of the Act relying upon the CA and issuance of notice is mandatory. The arbitrator noted the legal position that wrong mentioning of provision shall not prove fatal to notice issued under Section 21 of the Act. Whereas the arbitrator was appointed in terms of arbitration clause contained in CA and the plea was not of wrong mentioning of provision but that there was a subsequent independent agreement between the parties pursuant to the correspondence exchanged after 07.07.2014. In other words, after having held that there was no arbitral agreement between the parties,

the arbitrator had to go to the extent to find that if there is some other agreement providing for dispute resolution through arbitration. The principle of *Kompetenz - Kompetenz* was to be stretched for making roving inquiries by the arbitrator to find jurisdiction to adjudicate the matter, especially when the foundation of the appointment of the arbitrator is itself eroded after holding that the CA was not executed between the parties.

22. The petitioner raised first and second invoice against PCTS and it was proved from the bank statement produced that the payments were made by PCTS. The second invoice specifically referred to an agreement between the petitioner and PCTS and there was no reference of an agreement executed between the parties to the *lis*. The final invoice dated 01.07.2007 was raised referring to the CA and this invoice was for Marketing Consultancy Fee which was not within the scope of work of the petitioner.

23. The scope of interference under Section 34 of the Act is well defined. An award cannot be interfered for every factual or legal error unless suffering from patent illegality or transversing beyond the terms of the contract or being against the public policy or the conclusion arrived at is perverse. Reference in this regard be made to the following decisions of the Supreme Court:

23.1 In **Ramesh Kumar Jain v. Bharat Aluminium Company limited (balco) 2025 INSC 1457** it was held as follows:

> "28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The

> interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited this court held that an award can be set aside under Section 34 on the following grounds: "(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

23.2 In **Consolidated Construction Consortium Limited Vs. Software Technology Parks of India (2025) 7 SCC 757** it was held as under:

> "46. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in Sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by

> the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged Under Section 34 of the Act. The court exercising powers Under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings Under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement."

23.3 In The Supreme Court in **Sepco Electric Power Construction Corporation Vs. GMR Kamalanga Energy Ltd. 2025 INSC 1171** held:

> "97……..Therefore, it appears that even if the arbitrator's legal or factual reasoning is faulty, the courts ought to ideally refrain from interfering with an award until an error of law is evident from the award itself or in a document that forms an integral component thereof."
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> (Emphasis Supplied)

24. The impugned award is not vitiated by patent illegality, perversity or being against the public policy and the conclusion arrived at is plausible. No case is made out for interference under Section 34 of the Act.

25. The petition is dismissed.

AVNEESH JHINGAN, J.

MARCH 11, 2026
Ch

Reportable:- **Yes**