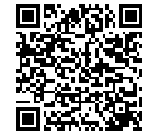


$~P-1 and 2

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

% ***Decided on: 06.03.2025***

\+ O.M.P. (COMM) 372/2017 & I.A. 12098/2017
RATTAN INDIA POWER LTD. .....Petitioner

versus

BHARAT HEAVY ELECTRICALS LTD. .....Respondent

\+ OMP (ENF.) (COMM.) 149/2017, EX.APPL.(OS) 99/2022, EX.APPL.(OS) 1683/2023, EX.APPL.(OS) 1046/2024, I.A. 13749/2017 & I.A. 13750/2017
BHARAT HEAVY ELECTRICALS LTD. .....Decree Holder

versus

RATTAN INDIA POWER LTD. .....Judgement Debtor

Appearance:

Mr. Tanmaya Mehta, Mr. Divyansh Rathi, Ms. Sumedha Rathi, Mr. Yash Gaur, Advocates for petitioner in item No. 1.
Mr. Jayant Mehta, Sr. Advocate with Mr. Rameezuddin Raja, Mr. Namit Suri, Ms. Tanya Sharma, Advocates for BHEL.
Mr. Rajat Navet and Mr. Kushagra Pandit, Advocates for judgment debtor in item No. 2.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

O.M.P. (COMM) 372/2017

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner assails an interim award dated 27.07.2017, by which a three-member Arbitral Tribunal has

awarded Rs. 115 crores in favour of the respondent, on an application filed by the respondent under Section 31(6) of the Act. The interim award was passed on the ground that the petitioner had admitted the respondent's claim to this extent.

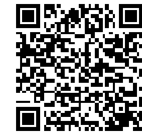
A. *Factual Background*

2. The arbitral proceedings arose from a Letter of Award ["LoA"] dated 11.10.2010, by which the respondent was entrusted with the task of design, engineering, manufacturing, inspection, testing, etc. of a Boiler Turbine Generator ["BTG"] for the petitioner's 5x270 MW Thermal Power Plant at Amravati, Maharashtra.[1]

3. Pursuant to the LoA, a supply contract and a services contract were signed by the parties on 26.05.2011, which provided for the supply of material and scope of services respectively. In terms of the said contracts, the petitioner paid an advance amount of Rs. 142.5 crores to the respondent, secured by an advance bank guarantee of the respondent. The amount paid by way of advance was to be adjusted against supplies.

4. Disputes arose between the parties because the respondent claimed that the petitioner had failed to discharge its payment obligations for plant, machinery, equipment and services supplied by the respondent, and became apprehensive of the petitioner's financial position. By a communication dated 14.02.2013, the petitioner unilaterally suspended supplies, which was not accepted by the respondent. Ultimately, the

[1] It may be noted that, at the time of the contract, the petitioner was known as "Indiabulls Power Ltd.". In the documents referred to in this judgment, the petitioner has thus been referred to as "Indiabulls" or "IPL".

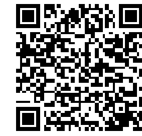


contract was terminated by a communication of the respondent dated 27.11.2015.

5. The petitioner's principal defence on merits, as recorded by the Tribunal and urged before this Court, was that the respondent had breached the terms of the contract by failing to make supply of plant and equipment sequentially. The petitioner characterises such non-sequential supply as "*dumping*", and therefore contended that the respondent was not entitled to payment.

6. The matter went to arbitration, in which the respondent filed a claim under the following heads:

S.NO.	CLAIM	AMOUNT
Claim I	Outstanding payments due for the supplies and services under the contracts	INR 390,73,76,841 + USD 26,90,102 + Euro 78,75,927/-
Claim II	Inventory Blockage and Inventory carrying costs.	Rs. 3,47,86,67,524
Claim III	Taxes and Duties	Rs. 26,00,96,171
Claim IV	Claims of sub-contractors and sub-vendors	INR 12,28,61,620/- and Euro 6,88,880/-
Claim V	Loss of profit suffered by the claimant due to non-performance and abandonment of the contracts by the respondent	INR 171,72,93,137 + USD 84,24,569 + EURO 1,15,81,360 [Total Claim for loss of profit after adjustment of advance]
Claim VI	Bank guarantees charges	Rs. 3,45,71,922/-
Claim VII	Insurance charges	Rs. 4,66,34,883/-



Claim VIII	Site establishment and maintenance charges	Rs. 18,72,62,641
Claim IX	Engineering charges	INR 21,82,71,333/- and Euro 1,53,480/-
Claim X	Headquarters expenses and management costs	INR 62,94,19,958/- + USO 18,05,265/- + EURO 24,81,720/-

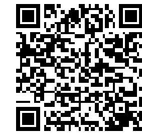
7. The petitioner also made a counterclaim, for a declaration that the contracts had been unlawfully terminated.

8. The impugned interim award arises out of applications filed by both parties for interim awards, on the basis of alleged admissions made by the other.

9. The respondent relied on minutes of meetings between the parties on 21.11.2012, 09.04.2013, 06.09.2013 and 15.01.2014, to submit that its dues of Rs.115 crores in respect of the Amravati project, and Rs.63 crores in respect of another project at Nashik, were admitted by the petitioner herein[2].

10. In the impugned award, as far as the respondent's application is concerned, the Tribunal has referred to the aforesaid minutes of meetings between the parties, and come to the conclusion that they record admissions by the petitioner, of having received goods and invoices from the respondent to the tune of Rs. 115 crores and Rs. 63 crores for the

[2] In the impugned award, the Tribunal has noted that the petitioner was in the process of developing two thermal power plants, Phase-II of its plant at Amravati (5x270MW) and a plant at Nashik (5x270MW). The present proceedings concern Amravati Phase-II, but separate proceedings are in progress in respect of the Nashik plant also. Both were being heard analogously before the same Tribunal.



Amravati and Nashik projects respectively. The Tribunal rejected the petitioner's submission that the minutes do not constitute unequivocal admission of liability. The Tribunal also relied upon the issuance of C-forms by the petitioner, to fortify its conclusion that the goods had, in fact, been received and accepted by the petitioner. The Tribunal therefore allowed the respondent's application for award upon admission. The impugned award is for a sum of Rs. 115 crores, as the present proceedings only concerns Phase-II of the Amravati project.

11. By the same interim award, the Tribunal also dismissed an application filed by the petitioner herein under Section 31(6) of the Act, for an award upon admission against the respondent. Although this aspect of the impugned decision has also been challenged in the petition, Mr. Tanmaya Mehta, learned counsel for the petitioner, was ultimately instructed not to press the challenge on this ground, as the arbitral proceedings were by then at a final stage. This is recorded in the order of this Court dated 06.12.2024. This judgment, therefore, deals only with the challenge to the interim award against the petitioner.

B. *Is the impugned decision an award?*

12. Before adverting to the detailed facts of the case, a preliminary issue may be dealt with, which concerns the characterisation of the impugned decision as an "*award*". As noted above, the decision deals with applications filed by both parties. After enumerating the factual background and the nature of the dispute, the Tribunal first dealt with the application of the respondent herein. The application was disposed of in in the following terms:

> "47. *For the foregoing reasons we are of the opinion that **the Claimant is entitled to an interim award for an amount of Rs. 115 crores for Amravati Phase-II** and Rs. 63 crores for Nashik Phase-II. **There shall be an interim award for the above said amount in favour of the Claimant against the Respondent in the two matters. On this amount the Claimant shall be entitled to interest calculated @18% per annum** w.e.f. 30 days from the date of this Award within which time the Respondent may pay the awarded amount to the Claimant.*
> *48. Interest for the period up to the date of this award and with effect from which date shall it be payable, are the issues which are left to be adjudicated upon while passing the final award.*
> *49. The costs of these proceedings shall be costs in the main cause.*"[3]

13. The next part of the decision is under the heading: "*On respondent's application dated 05.12.2016 u/s 31(6) of the A&C Act, 1996*"[4], with numbered paragraphs, again commencing with paragraph 1. The petitioner's application was ultimately dismissed.

14. The impugned decision closes with three paragraphs under the heading "Incidental", which read as follows:

> *"**Incidental***
> *34. Before parting we would like to clarify by way of abundant caution that **whatever has been stated hereinabove in this order, has been so stated only for the purpose of passing the interim award and that too on perusal of pleadings and undisputed documents. Any observation made herein above, wittingly or unwittingly, shall not bind the tribunal at the stage of final hearing after the evidence has been recorded.***
> *35. Costs incurred in these proceedings shall form costs in the main cause.*
> *36. **The Claimant shall supply and attach with this award the requisite amount of stamp duty and having done so, inform the Respondent and members of the Tribunal**."*[5]

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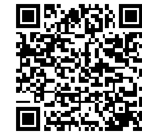
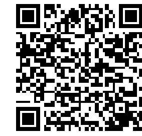
[3] Emphasis supplied.
[4] It may be mentioned therein that the petitioner and the respondent herein were respectively referred to as the "respondent" and the "claimant" before the Tribunal.
[5] Emphasis supplied.



15. It was submitted at the outset by Mr. Tanmaya Mehta, that paragraph 34 of the impugned decision itself leads ambiguity to the finality of the decision, and therefore, to its effect as an "*award*". He submitted that, in paragraphs 47 and 48 of the first section (quoted above), the Tribunal had made an interim award on admission, but reopened the same in paragraph 34, under the heading "Incidental".

16. Mr. Jayant Mehta, learned Senior Counsel for the respondent, on the other hand, disputed such a reading. The impugned decision, according to him, is in two parts, one allowing the respondent's application for award on admissions, and the other dismissing the petitioner's application. To the extent that the petitioner's application for an interim award had been dismissed, paragraph 34 was clarificatory to the extent, that the petitioner's right to agitate the same claims at final hearing was reserved. This was not intended to apply to the decision on the respondent's application, which was "final", in the sense that the Tribunal had passed an interim award, which decided that part of the respondent's claim finally. To support this point, Mr. Jayant Mehta referred to paragraph 36 of the decision, which required the award to be stamped by the respondent herein. Such a requirement would not have arisen if the part of the decision in the respondent's favour, was tentative or *prima facie,* or in any other way indefinite.

17. On this preliminary point, upon a holistic reading of the decision, I am of the view that the respondent's contention must prevail. The manner in which the decision has been structured does raise some ambiguity as suggested by Mr. Tanmaya Mehta, but the ambiguity is resolved when



one reads the decision as a whole. The first part of the award deals with the respondent's application, and categorically makes an "*interim award*" in its favour. Interest has also been awarded upon the said amount and, in the very last paragraph (in the "Incidental" section), provision has been made for stamping. These aspects admit of little doubt as to the finality of the award, to the extent the Tribunal found the respondent's claims to be admitted. The rest of the decision concerns the petitioner's claim for an award on admissions, which was declined. Having declined the interim award, the Tribunal clarified that those observations would not be binding at final hearing. On a proper interpretation, therefore, I am of the view that the interim award does constitute an award, within the meaning of the Act.

18. It may be mentioned that at the time of hearing of this petition, final arguments were in progress before the Arbitral Tribunal, which had since been reconstituted due to the unfortunate demise of two of the arbitrators who had passed the impugned interim award. Unfortunately, learned counsel for the parties were not unanimous as to whether the claims awarded in favour of the respondent had been reopened for arguments at the final hearing. I have therefore proceeded on a reading of the documents and decisions, as placed on record.

C. *The alleged admissions*

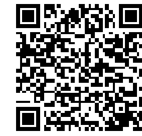
19. Minutes of four meetings held between the parties have been referred to in the impugned award. Relevant portions of the minutes are reproduced hereinbelow:

i. Minutes of meeting dated 21.11.2012:

*"Futher to BHEL letter dated 17th November 2012 & Indiabulls letter dated 19th November 2012, **the outstanding payment** of Amravati Ph-I, Nashik Ph-I, Amravati Ph-II & Nashik Ph-II and LC available as on 21st November 2012 were discussed. The reconciled statement is as follows:*

Project	*LC Available*		*BoEs with Bank*		*BoEs with Indiabulls*		***Bills with BHEL pending Submission (*)***		*Total Payable (**)*	
	BHEL	*India bulls*	*BHEL*	*India bulls*	*BHEL*	*India bulls*	***BHEL***	***India bulls***	*BHEL*	*India bulls*
Amravati Ph-I	*27*	*27*	*19*	*19*	*123*	*105*	***35***	**-**	*177*	*124*
Nashik Ph-I Unit 1, 2 and 3 (upto HT & ESP Insulation	*43*	*45*	*5*	*3*	*24*	*11*	***14***	**-**	*43*	*14*
Nashik Ph-I Unit 3 (excl. HT & ESP Insulation), 4 & 5	*0*	*0*	*0*	*0*	*71*	*57*	***79***	**-**	*150*	*57*
Amravati Ph-II	*0*	*0*	*0*	*0*	-	-	***187***	***115*** *(***)*	*187*	*115*
Nashik Ph-II	*0*	*0*	*0*	*0*	-	-	***106***	***63*** *(***)*	*106*	*63*
Total	*73*	*72*	*24*	*22*	*218*	*173*	***421***	***178***	*663*	*373*

(*) – The invoices lying with BHEL pending for opening of LCs and hence BoEs are not generated. The same was not discussed by Indiabulls.
(**) – the difference is on account of BoEs not received by Indiabulls.
(***) – Value of invoices received at Indiabulls.



It is also agreed that the difference in the values in the above table will be further reconciled by 3rd December 2012."[6]

ii. Minutes of meeting dated 09.04.2013:

"*The following were discussed in the meeting:*
1. Indiabulls informed that the financial closure of Amravati Ph-II & Nashik Ph-II projects have been completed. However, they are waiting for FSA & PPA for Amravati Ph-II & Nashik Ph-II and detailed status of both projects would be presented in the next meeting.
2. ***The outstanding for Amravati Ph-II & Nashik Ph-II, as per BHEL is Rs. 304 Crs and as per Indiabulls is Rs. 178 Crs. Both the parties have agreed for reconciliation of outstanding and material lying at sites.***
3. ***BHEL requested Indiabulls for the following****:*

- ***Issuance for Form "C' for material dispatched for Amravati Ph-II Project*** *& issuance of Form "I" for material dispatched for Nashik Ph-II Project.*
- *Return of bank guarantees submitted towards advance & performance for Amravati Ph-II & Nashik Ph-II projects.*
- *Insurance Policy taken by BHEL for Amravati Ph-II & Nashik Ph-II projects is for total contract period. However, as the projects are under hold, Indiabulls is requested to review this issue.*
- *Preservation of the material lying at Amravati Ph-II & Nashik Ph-II sites.*
- ***Indiabulls agreed to review & revert on above issues***.

4. BHEL intimated that consequent to issue of Hold on the projects, BHEL is having a huge inventory at their works. It was agreed that the inventory as on 31st March 2013 will be worked out by BHEL.
5. For Amravati Phase – II, Indiabulls requested BHEL to provide copies of tax invoices & a certificate from BHEL Trichy unit on its vendors on duty drawback issue. Indiabulls shall furnish draft of the certificate."[7]

iii. Minutes of meeting dated 06.09.2013:

*"1****. BHEL furnished copy of invoices amounting to Rs. 116.17 Cr. (Nashik Ph-II) & RS.207.28 Cr. (Amravati Ph-II) and requested Indiabulls to verify the same at their end it was***

[6] Emphasis supplied.
[7] Emphasis supplied.

agreed that any discrepancy in the material at Amravati/Nashik (Ph-II) shall be reconciled jointly by Indiabulls & BHEL at mutually, convenient dates.
2. Indiabulls requested BHEL to furnish the procedure of preservation of material lying at Amravati Ph-II & Nashik Ph-II sites. BHEL informed that they will depute their quality experts shortly. However, necessary manpower, T&P and other arrangements shall be made by Indiabulls at their own cost.
3. In line with point no.4 of record Notes of Meeting dated 9th April 2013, BHEL has furnished the details of inventory as on 31st March 2013 amounting to Rs.367.46 Cr for Nashik Ph-II & Rs.340.89 Cr for Amravati Ph-II. As item details had not been furnished, BHEL clarified that it was practically not feasible to list the items. Indiabulls, however, requested BHEL to furnish atleast some details to identify the items.
4. ***BHEL requested Indiabulls to Issue Form "C" for material dispatched to Amravati Ph-II project. Indiabulls assured to do the needful on priority.***
5. BHEL requested Indiabulls to return THE BANK GUARANTEES SUBMITTED TOWARDS-CONTRACT PERFORMANCE FOR Amravati Ph-II & Nashik Ph-II projects as the projects are presently under hold and assured that the same will be re-submitted on revival of the projects. Indiabulls shall revert."[8]

iv. Minutes of meeting dated 15.01.2014:

"5. ***The issue of reconciliation of outstanding was deliberated. According to BHEL, the total outstanding work out to the tune of Rs. 322.00 Crores IPL informed that reconciliation exercise is in advanced stage but there are certain discrepancies which need to be resolved.*** *BHEL was accordingly requested to depute the representatives from their respective Units to both sites,* ***BHEL agreed to the same and requested IPL to release payment of Rs.178 Crs (agreed outstanding as per MoM DATED 21.11.12) as first step of payment to reduce its debt burden and balance may be paid once reconciliation is complete. IPL informed that they are seized of BHEL's concern and will revert on the matter shortly.***
6. IPL reminded BHEL to depute their quality expert for advising action required for preservation of material lying at Amravati &

[8] Emphasis supplied.

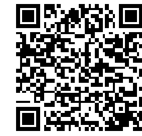
Nashik site. BHEL agreed to arrange their quality engineer from Trichy Unit shortly."[9]

D. ***Decision of the Tribunal***

20. The analysis of the alleged admissions in the impugned award is as follows[10]:

"*40. During the course of hearing, the submission on behalf of the Respondent has been that the Minutes of Meeting relied on by the Claimant do not record an unequivocal admission of liability on the part of the Respondent. We cannot agree. We have extracted and reproduced the relevant excerpts from the MoMs.* ***Not only the MoMs clearly and explicitly record admission of the liability, the subsequent correspondence entered into between the parties re-enforces the claim of the Claimant. We do not find any ambiguity or qualification in the admission made by the Respondent.***
41. Ld. Counsel for the Claimant has submitted that not only there are clear unequivocal admissions of the Respondent, but these admissions cannot now be disowned by the Respondent as the Claimant has acted upon the said admissions, and therefore, the admissions would operate estoppels on the Respondent preventing it from resiling therefrom.
42. Another weighty factor in favour of the Claimant is that the Respondent has admitted the supplies made by the Claimant and issued the necessary C-forms, which also go to show that the parties have treated the goods supplied by the Claimant as goods sold. ***The Respondent has admitted issuing the C-form. The only explanation given by the Respondent is that it was so done only with a view to help the Claimant in tax matters. Such an explanation is merely a moon-shine or an eye-wash explanation.***
43. In Uttamsingh Duggal's Case, which we have referred to in, para 25 above the judgment was sought to be given on admissions contained in (i) Balance Sheet of the defendant, (ii) Minutes of the Meeting, and (iii) a Letter communicating the resolution of the minutes of the meeting. The submissions made on behalf of the Respondent were that Order XII Rule 6 comes under the heading "Admissions" and a judgment on admission could be given only after due opportunity to the other side to explain the admission, if any, is given; that such admission should have been made only in the course of the pleadings or else the other side will not have an opportunity to explain such

[9] Emphasis supplied.
[10] As noted above, the petitioner and the respondent herein are referred to in the impugned award as "respondent" and "claimant" respectively.



admission; that even though the provision reads that the court may at any stage of the suit make such order as it thinks fit, the effect of admission, if any, can be considered only at the time of trial; that the admission even in pleadings will have to be read along with Order VIII Rule 5(1) CPC and the court need not necessarily proceed to pass an order or judgment on the basis of such admission but call upon the party relying upon such admission to prove its case independently; that during pendency of other suits and the nature of contentions raised in the case, it would not be permissible at all to grant the relief before trial as has been done in the present case; that the expression "admissions" made in the course of the pleadings or otherwise will have to be read together and the expression "otherwise" will have to be interpreted ejusdem generis.

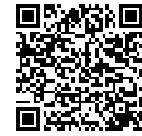
43.1 None of the contentions prevailed.

43.2 Their Lordships further held that the statement made in the proceedings of the Board of Directors' meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made in dispute, and the court had a duty to decide the same and grant a decree, we think this approach is unexceptionable.

44. Here we may refer to a decision in Chemical Systems Technologies (India) Pvt. Ltd. v. Simbhanaoli Sugar Mills Ltd.[CS (OS) 1480/2009 and CC No. 27/2006, decided on February 1, 2013] cited by Ld. Counsel for the Claimant. The High Court of Delhi was dealing with the case of a Defendant who admitted delivery of goods, successful erection, issuance of C-forms of the price of goods and did not reject the goods but still denied the liability. On an application for judgment on admissions, the High Court observed that such defendant incurs the risk of deemed admission of liability. If such defendant had not considered itself liable to pay the balance price of the goods, it would not have issued the C-forms with respect thereto. The issuance of the 'C' forms is an acknowledgement of the defendant having informed its taxation authorities of having purchased goods of the value thereof, on payment of concessional rate of tax. The defendant cannot be permitted to have conflicting stands before its taxation authorities and vis-a-vis plaintiff.

45. The Supreme Court in Phool Chand Gupta v. State of A.P. (1997)2 SCC 591 and Shree Digvijay Cement Co. Ltd. v. State of Rajasthan (2000) 1 SCC 688 has held that issuance of 'C' Form is a proof of the sale of the goods having been effected and the goods having been accepted without any demur.

*46. **<u>There is overwhelming evidence of unimpeachable credence available on record which goes to show that the Claimant has made supplies to the Respondent; that the goods supplied have been</u>***



> ***<u>retained and certainly not returned by the Respondent to the Claimant; that there was some dispute about verification of the details and quantum of the goods supplied for which reconciliation process was undertaken by the parties; that during this reconciliation, the Respondent has in writing by way of Minutes of Meetings unequivocally admitted the dues of the Claimant to the extent of Rs. 115 crores for Amravati Phase-II (as against Rs. 187 crores claimed by the Claimant)</u>*** *and Rs. 63 crores for Nashik Phase-11 (as against Rs. 106 crores claimed by the Claimant). The Respondent has issued 'C' forms to the Claimant whereby the sale of goods is admitted by the Respondent to the Claimant as also represented so to the tax authorities of the State. The Respondent cannot disown the liability so committed.*"[11]

E. <u>*Submissions of learned counsel for the petitioner*</u>

21. Mr. Tanmaya Mehta, learned counsel for the petitioner, assailed the award, both on factual and legal grounds. He submitted that the minutes of the meeting had been wrongly read to constitute unequivocal admissions. According to him, in the meetings, at best, the petitioner accepted that the goods had been delivered and that invoices had been received, but this could not be construed as admissions of liability on the part of the petitioner. The petitioner's contention, that the supplies had been made non-sequentially, in a manner which rendered the goods unusable at the time they were supplied, was raised in contemporaneous correspondence, which had been placed before the Tribunal in some detail, but overlooked.[12] He argued that the dispute as to the respondent's entitlement for payment is also evident from these letters. He also drew

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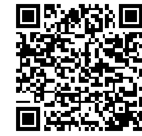
[11] Emphasis supplied.

[12] Mr. Tanmaya Mehta referred to the petitioner's letters dated 04.07.2011, 26.08.2011, 15.09.2011, 25.11.2011, 07.02.2012, 17.07.2012, 19.11.2012, 10.12.2012, 23.03.2012 and 26.07.2011stating that petitioner permitted dispatch only of limited material for Amravati Phase-II.



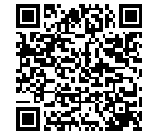
my attention to a letter dated 10.12.2012, in which the petitioner denied a communication of the respondent dated 06.12.2012, which in turn, referred to a meeting between the Chairmen of the companies, and contended that the parties had agreed to revise price and commissioning schedule, including liquidation of outstanding payments.

22. Referring to the minutes dated 21.12.2012, Mr. Tanmaya Mehta pointed that the minutes referred *inter alia* to the petitioner's letter dated 19.11.2012, wherein it had specifically referred to the fact that supply was being made by respondent on its own, the value of supply being Rs. 178.22 crores. It was in the context of this correspondence that the table in the minutes must be read. While endorsing that Rs. 115 crores of bills were pending submission, even according to the petitioner, it has specifically been clarified by a footnote that this is the value of invoices received by the petitioner. Mr. Tanmaya Mehta submitted that admission of receipt of invoices, has been confused with admission of liability for payment.

23. Turning to the minutes dated 09.04.2013, Mr. Tanmaya Mehta submitted that no admission ought to have been inferred, when reconciliation of outstandings and materials was still pending.

24. Mr. Tanmaya Mehta assailed the Tribunal's emphasis on issuance of C-forms, with particular reference to the petitioner's letter dated 18.01.2014, which expressly stated that the issuance of C-forms was not to be taken as an admission of liability.

25. As the matter of law, Mr. Tanmaya Mehta submitted that an award passed on the basis of such alleged admissions, which were evidentiary at

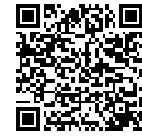


best and not admissions in pleadings, was unsafe and inappropriate. It was his contention that evidentiary admissions cannot form the basis of a final award, unless they have been put to the concerned party in cross-examination. This is because such admissions can always be clarified and explained, or even demonstrated to have been made in error. He pointed out that the issues framed in the arbitral proceedings included these very aspects, which have been prematurely decided in the impugned award. He argued that the Tribunal had thus committed a manifest error in ignoring evidence on record which sought to explain the alleged admissions.

F. *Submissions of learned Senior Counsel for the respondent*

26. Mr. Jayant Mehta, learned Senior Counsel for the respondent, on the other hand, opened his argument by reminding the Court of the limited jurisdiction available under Section 34 of the Act. He submitted that the impugned decision was based on an interpretation of the pleadings and evidence placed by the parties. The material had been fully considered by the Tribunal, and exercise of jurisdiction at this stage would be tantamount to invoking an appellate jurisdiction, which the setting aside Court does not possess.

27. Without prejudice to this submission, Mr. Jayant Mehta submitted that the goods were admittedly supplied by the respondent, delivered and accepted. Invoices were therefore raised in terms of the supplies made, which ought to have been honoured. He argued that the petitioner's insistence upon "*sequential supply*" is not a *bonafide* defence, but a moonshine, which ought not to absolve it of its liability to pay for the goods supplied, received and accepted.



28. On a reading of the minutes in question, Mr. Jayant Mehta supported the Tribunal's conclusion that the documents contained unequivocal and unambiguous admissions, and were sufficient to justify an award. He pointed out that the alleged defence was not with regard to receipt of the plant or equipment, nor was it contended that the sale thereof was incomplete. Even in the minutes, no specific mention has been made of the dispute regarding alleged non-sequential supply, so as to justify an argument at this stage, that the supplies did not attract liability on this ground. The petitioner has also not raised a claim or counterclaim for damages.

29. Mr. Jayant Mehta submitted that the aforesaid minutes dated 21.11.2012 and 09.04.2013 referred to reconciliation of "*outstandings*", which is in turn referable to the difference in the outstanding figures claimed by the respondent, as compared to the figures acknowledged by the petitioner. The letter dated 19.11.2012, according to learned Senior Counsel, also supports the respondent's case that the petitioner was unable to pay, which was the root cause for suspension of the contract by the respondent. The minutes do record acknowledgment of debts, and have not been categorically contested in later correspondence, such as letters dated 10.12.2012 and 14.02.2013 addressed by the petitioner to the respondent. At the very least, Mr. Jayant Mehta submitted that the conclusions drawn by the Tribunal were not fanciful or arbitrary.

30. Mr. Jayant Mehta submitted that minutes of subsequent meetings held on 06.09.2013 and 15.01.2014 also support the Tribunal's interpretation. The minutes dated 06.09.2013 contemplated reconciliation

of invoices with materials, without reference to the alleged requirement of sequential supply. In fact, as far as material which was not currently useable was concerned, the petitioner requested the respondent to furnish the procedure for preservation of material with the help of their quality experts. Similarly in the meeting dated 15.01.2014, the amount of Rs. 178 crores were referred to as "*agreed outstanding as per minutes of meeting dated 21.11.2012*". The petitioner promised to revert on the issue, but did not contest to the fact that the amount was admitted.

31. Learned counsel on both sides also referred to several judgments to which I shall refer at the appropriate stage.

G. ***Analysis***

a. **Principles governing Section 34 of the Act**

32. Before addressing the specifics of this particular case, the following well settled principles, with regard to the scope of interference under Section 34 of the Act, must be borne in mind[13]:

(a) Appreciation of pleadings and assessment of evidence, including interpretation of documents, lie within the domain of the arbitral tribunal. It is for the tribunal to assess the weight to be given to any piece of evidence, and to adjudicate upon the sufficiency of evidence.

(b) The Court exercising this jurisdiction, does not sit as an appellate Court, but only reviews an award on limited parameters provided

[13] Reference, in this connection, may be made to the recent decisions of the Supreme Court in *OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.* [(2025) 2 SCC 417] - paragraph 74 and 75, *Reliance Infrastructure Ltd. v. State of Goa* [(2024) 1 SCC 479] - paragraph 76 and 77, *Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd.* [(2024) 2 SCC 375] - paragraphs 43 to 45 and *Konkan Railway Corpn. Ltd v. Chenab Bridge Project* [(2023) 9 SCC 85] - paragraphs 19 to 21.

under the Act, such as grounds of procedural fairness, statutory compliance, bona fides. Interference with the factual findings of an arbitral tribunal is justified only if it is based on no evidence at all, or if material evidence has not been adverted to, or the conclusions arrived at are manifestly unreasonable and arbitrary, in the sense that no reasonable tribunal could have reached the same conclusion.

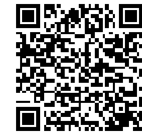
(c) As the Court does not exercise appellate jurisdiction, it will not set aside an award, even if it perceives that a different view was possible, on a reading of the pleadings, appreciation of the evidence, or even in understanding of the relevant legal position.

b. <u>Principles governing judgments/awards on admission</u>

33. Learned counsel for the parties cited several decisions on the power to grant judgments or awards on admissions. In civil suits, such power is exercised under Order XII Rule 6 of the Code of Civil Procedure 1908, which reads as follows:

> *"**6. Judgment on admissions.**—(1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question-between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*
> *(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."*

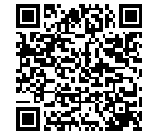
34. In this context, learned counsel on both sides referred to the judgment of the Supreme Court in *Uttam Singh Duggal & Co. Ltd. v.*



United Bank of India[14], in which the principles of Order XII Rule 6 of the CPC have been explained thus:

> "*11.* ***Learned counsel for the appellant contended that Order 12 Rule 6 comes under the heading "Admissions" and a judgment on admission could be given only after due opportunity to the other side to explain the admission, if any, is given; that such admission should have been made only in the course of the pleadings or else the other side will not have an opportunity to explain such admission, that even though the provision reads that the court may at any stage of the suit make such order as it thinks fit, the effect of admission, if any, can be considered only at the time of trial****; that the admission even in pleadings will have to be read along with Order 8 Rule 5(1) CPC and the court need not necessarily proceed to pass an order or a judgment on the basis of such admission but call upon the party relying upon such admission to prove its case independently; that during pendency of other suits and the nature of contentions raised in the case, it would not be permissible at all to grant the relief before trial as has been done in the present case;* ***that the expression "admissions" made in the course of the pleadings or otherwise will have to be read together and the expression "otherwise" will have to be interpreted ejusdem generis****.*
>
> *12. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim.* ***The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment.*** *Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.*
>
> *13. The next contention canvassed is that the resolutions or minutes of the meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent Bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise.* ***When a statement is made to a party and such statement is brought before the court showing admission of liability by an application filed under***

[14] (2000) 7 SCC 120 [hereinafter, "*Uttam Singh Duggal*"].



Order 12 Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the court, we do not think the trial court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors' meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made in dispute, and the court had a duty to decide the same and grant a decree, we think this approach is unexceptionable."[15]

35. In *Karam Kapahi Vs. Lal Chand Public Charitable Trust*[16], the Supreme Court, after considering *Uttam Singh Duggal*, reiterated that the scope of Order 12 Rule 6 of CPC is not limited to admissions contained in pleadings. The Supreme Court held as follows:

"**40.** *If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6,* ***it becomes clear that the provision of Order 12 Rule 6 is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by "pleading or otherwise in writing" but in Order 12 Rule 6 the expression "or otherwise" is much wider in view of the words used therein, namely:"admission of fact … either in the pleading or otherwise, whether orally or in writing".***

41. *Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see Charanjit Lal Mehra v. Kamal Saroj Mahajan [(2005) 11 SCC 279] , SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see Mullas's Commentary on the Code, 16th Edn., Vol. II, p. 2177).*

xxx xxx xxx

47. *Therefore,* ***in the instant case even though statement made by the Club in its petition under Section 114 of the Transfer of Property Act does not come within the definition of the word "pleading" under Order 6 Rule 1 of the Code, but in Order 12 Rule 6 of the Code, the word "pleading" has been suffixed by the expression "or otherwise". Therefore, a wider interpretation of the word "pleading" is warranted in understanding the implication of this Rule.*** *Thus the stand of the*

[15] Emphasis supplied.
[16] (2010) 4 SCC 753 [hereinafter "*Karam Kapahi*"].

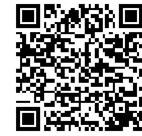
Club in its petition under Section 114 of the Transfer of Property Act can be considered by the Court in pronouncing the judgment on admission under Order 12 Rule 6 in view of clear words "pleading or otherwise" used therein especially when that petition was in the suit filed by the Trust."[17]

36. The following judgments, cited by Mr. Jayant Mehta, follow similar principles in the context of arbitral awards. These decisions are also clear in indicating that challenges to awards upon admission, must be adjudicated on the same narrow principles which govern Section 34 of the Act.

(a) In *Nimbus Communications Ltd. v. Prasar B. Harati*[18]*,* a Division Bench of this Court considered an interim award on admission, the admission arising out of a claim for set off and adjustment. The Division Bench followed *Uttam Singh Duggal,* holding that the scope of Order XII Rule 6 of the CPC should not be narrowed down.[19]

(b) In *NDMC v. N.S. Associates (P) Ltd.*[20], an interim award on admissions was challenged on the ground that the admissions were not clear or unequivocal. The Court, however, rejected the challenge, citing the judgment of this Court in *BHEL v. Zillion Infraprojects (P) Ltd.*[21], which holds that an arbitral tribunal has the power to pass such an interim award, under Section 31(6) of the Act.

[17] Emphasis supplied.
[18] 2016 SCC OnLine Del 6886 [hereinafter, "*Nimbus Communications*"].
[19] It may be noted that by an order dated 07.10.2016 in SLP(C) No. 19499/2016, the Supreme Court declined special leave to appeal against the judgment of this Court in *Nimbus Communications*.
[20] 2024 SCC OnLine Del 4289.
[21] (2023) 1 HCC (Del) 635.



(c) *Shutham Electric Ltd. v. Vaibhav Raheja*[22] was also concerned with a petition under Section 34 of the Act, against an award upon admission. The admissions were not contained in pleadings, but in correspondence between the parties. The Court upheld the award, which found the denials of liability to be vague and bald, and the award on admissions to be justified. The Court expressly adopted the narrow principles of scrutiny that are available under Section 34.

(d) Also under Section 34 of the Act, the judgment of the Bombay High Court in *Deccan Chronicle Holdings Ltd. v. Tata Capital Financial Services Ltd.*[23], upheld an award upon admissions, finding that the view of the arbitrator was not perverse and would, therefore, not attract jurisdiction under Section 34 of the Act. As in the present case, the award was based on admissions, founded upon acknowledgements of liability in various documents. The award debtor submitted that it ought to have been given an opportunity to explain the alleged admission in oral evidence. The Bombay High Court noticed that the said party had not disputed the content of the documents, and rejected the contention that oral evidence was required to be adduced.

37. Mr. Jayant Mehta cited three further judgments on the principles of Order XII Rule 6 of the CPC, rendered in civil suits. In view of the authorities already cited, it is not necessary to discuss them in detail.

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[22] 2024 SCC OnLine Del 4226 [hereinafter, "*Shutham Electrics*"].
[23] 2016 SCC OnLine Bom 5319.

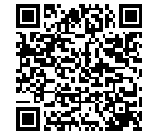
Suffice it to note that, in *Vijaya Myne v. Satya Bhushan Kaura*[24], this Court emphasized the purpose of Order XII Rule 6 of CPC, to provide expeditious judgment in admitted claims, rather than compel the parties to undergo protracted trials. The judgment of the Supreme Court in *Badat and Co. v. East India Trading Co.*[25], holds that evasive denial in pleadings is tantamount to an admission, which obviates the need for further proof[26]. In *A.N. Kaul v. Neerja Kaul*[27], the District Court had declined judgment upon admission on the ground that there was no express admission of liability. This Court however reversed the said view, holding that raising a bogey of a defense would not avoid a decree.

38. Mr. Tanmaya Mehta placed several judgments in support of his contention that a judgment upon admission cannot be passed on the basis of admissions in evidence, as such alleged admissions have to be tested at trial:

(a) The judgment of the Supreme Court in *Nagindas Ramdas v. Dalpatram Ichharam*[28], was directed against proceedings for eviction under the Bombay Rent Control Act, 1947. The Court drew a distinction between "*judicial admissions*" and "*evidentiary admissions*" in the following terms:-

> "*27 .... Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary*

[24] 2007 SCC OnLine Del 828.
[25] 1963 SCC OnLine SC 9.
[26] *Ibid*, paragraph 11.
[27] 2018 SCC OnLine Del 9597.
[28] (1974) 1 SCC 242 [hereinafter, "*Nagindas Ramdas*"].



admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

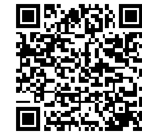
(b) The judgment of the Supreme Court in *Sita Ram Bhau Patil v. Ramchandra Nago Patil*[29], was in the context of the Bombay Tenancy and Agricultural Lands Act. The alleged admission was in a deposition found to be irrelevant to the case in which the deposition was recorded. In the context of Section 145 of the Indian Evidence Act, the Court held that the statement ought to have been put to the person in cross-examination.

(c) *Raveen Kumar v. State of H.P.*[30], was a criminal appeal before the Supreme Court, in which the Court mandated caution in reliance upon evidence with which the witness has not been confronted, despite opportunity.

(d) The judgment in *Ram Niranjan Kajaria v. Sheo Prakash Kajaria*[31] arose out of an application for an amendment of a written statement in a partition suit. The Court held, relying upon *Nagindas Ramdas,* that a categorical admission in the pleadings cannot be withdrawn, but can be clarified or explained by way of an amendment.

(e) In *Avadh Kishore Das v. Ram Gopal*[32], the Court held that evidentiary admissions are not conclusive proof of the facts admitted, and may be explained or shown to be wrong, but shift the

[29] (1977) 2 SCC 49 [hereinafter, "*Sita Ram Bhau Patil*"].
[30] (2021) 12 SCC 557 [hereinafter, "*Raveen Kumar*"].
[31] (2015) 10 SCC 203 [hereinafter, "*Ram Niranjan Kajaria*"].



evidentiary burden upon the person making the admission, which in that case, had not been discharged.

(f) In a case of admissions arising out of accounting entries, the Division Bench of this Court, in *Durga Builders (P) Ltd. v. Motor and General Finance Ltd.*[33], framed the question thus: "*the question is not whether [the person] making the admission has an unimpeachable case but whether there is some room to doubt that liability is established*".

c. Application to the facts of this case

39. Taking Mr. Tanmaya Mehta's legal submission first, he submitted that an evidentiary admission - as opposed to an admission in the pleadings - is incapable of forming the foundation of a judgement upon admission. This contention is, in my view, repelled by reference to the text of Order XII Rule 6 of CPC, the judgement in *Uttam Singh Duggal* and several judgements, which follow the same line. In Order XII Rule 6 of CPC, reference is made to admissions in "*pleadings or otherwise*", including orally. Power is conferred upon the civil court to enter judgement at any stage of the suit, if faced with satisfactory admissions. Mr. Tanmaya Mehta's submission amounts to narrowing the scope of the provision, a course which the Supreme Court, in *Uttam Singh Duggal* and *Karam Kapahi,* specifically rejects. Indeed, the arguments advanced on behalf of the petitioner mirror many of the arguments, which were considered and rejected in *Uttam Singh Duggal* - that opportunity has to be given to explain the admission, that its effect must be considered at the

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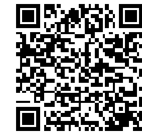
[32] (1979) 4 SCC 790 [hereinafter, "*Avadh Kishore Das*"].



time of trial, and that Order XII Rule 6 of CPC must be confined to admissions in pleadings or other similar situations, reading the provision *ejusdem generis*. The Supreme Court has made it clear that the width of Order XII Rule 6 of CPC is wide, and intended to curb unnecessarily protracted litigation.

40. As noted above, the same principles have been applied even while adjudicating petitions for setting aside of arbitral awards. Indeed, it would be incongruous to adopt a narrower view in the context of arbitral awards. The objective of Order XII Rule 6 of CPC, to the extent that it shortens unnecessary litigation, aligns with the objective of arbitral adjudication, to provide expeditious and efficient resolution of disputes.

41. The judgements in *Nagindas Ramdas*, *Sita Ram Bhau Patil*, and *Raveen Kumar*, cited by Mr Tanmaya Mehta are all in different contexts: under the Bombay Rent Control Act, 1947, the Bombay Tenancy and Agricultural Lands Act, and in a criminal appeal. The judgment in *Uttam Singh Duggal, Karam Kapahi*, and the High Court judgments referred to in paragraph 36 above, on the other hand, deal directly with judgements and awards upon admission in civil cases. The present case falls in that line of cases, and those are the judgements which, in my view, would govern the decision in the present case. That being said, I do not read the judgement in *Nagindas Ramdas* to hold that an evidentiary admission can *never* be the basis of a decree or award, without leading evidence. Admissions in pleadings are placed on a higher footing, to the extent that they may require nothing more for a decree to follow, whereas admissions

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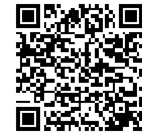
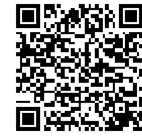
[33] 2013 SCC OnLine Del 5165.



outside of pleadings, must be considered contextually. To hold that there is a bar on granting an award of admissions in the case of evidentiary admissions, would be inconsistent with the text of Order XII Rule 6 of the CPC, and the judgements cited above. Similarly, the judgement in *Ram Niranjan Kajaria* and *Avadh Kishore Das* also dealt with different stages of proceedings - *Ram Niranjan Kajaria,* with an application for amendment, and *Avadh Kishore Das*, with a post-trial decision on the basis of admission. Neither judgement, in my view, goes as far as the petitioner suggests.

42. Mr. Tanmaya Mehta sought to distinguish the judgement in *Uttam Singh Duggal,* on the ground that the Court had recorded a specific finding that there was no explanation for the admission in question. He submitted that, in the present case, in contrast, the petitioner had offered a plausible explanation. Learned counsel disputed the respondent's characterisation of the petitioner's defence as a moonshine, and contended that the defence had been founded in contemporaneous correspondence, which ought not to have been overlooked.

43. Once the point of principle is settled against the petitioner, I am of the view that these considerations stretch the jurisdiction available under Section 34 of the Act beyond permissible limits. The Arbitral Tribunal has considered the minutes of the meetings, and found that they record express admissions of liability, fortified by subsequent correspondence between the parties. It has negated the petitioner's contentions with regard to ambiguity or qualification in the admissions, and thus come to the conclusion that the admissions are of unimpeachable credence. As

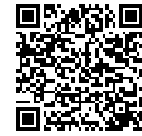


noted above, the quantity and quality of evidence, and the weight to be attached to any particular piece of evidence, are matters well within the province of the arbitral tribunal. The arguments advanced by Mr. Tanmaya Mehta, in my view, call for a reassessment of that evidence, which is not open to the Court.

44. The only ground upon which interference would nevertheless have been justified, is if the Court found the factual assessment to be entirely bereft of evidentiary support or perverse, in the sense that no reasonable tribunal could have reached the same conclusion. Having perused the minutes and the correspondence in question, I am unable to return a finding of such a nature. The minutes of the meetings referred to "*outstandings*"/"*outstanding payment*" and reconciliation thereof. The Tribunal's view that the goods had admittedly been received by the petitioner, and the invoices had also been received by the petitioner, is based upon those minutes. While Mr. Tanmaya Mehta sought to suggest that the admissions were with regard to receipt of invoices alone, that was a matter upon which the petitioner was required to satisfy the arbitrators, which it failed to do. There is no perversity in the understanding, that the reconciliation required was with regard to the difference in the amounts claimed by the respondent, as opposed to the amounts admitted by the petitioner. None of the minutes contained any specific express reference to the dispute regarding sequential supply, which forms the sheet anchor of the petitioner's defence. In such circumstances, the view of the Tribunal cannot be interdicted in Section 34 proceedings.

45. The only remaining question is with regard to whether the Tribunal has erred in treating the C-forms issued by the petitioner as admissions. Mr. Tanmaya Mehta relied upon the judgement in *Taipack Ltd. v. Ram Kishore Nagar Mal*[34], which was also rendered under Section 34 of the Act. The question before the Court was whether C-forms constitute acknowledgement of debt, so as to give rise to a fresh period of limitation. The Court observed that the issuance of C-forms could not serve to extend limitation as they do not constitute acknowledgement of a present and subsisting liability, but of receipt of goods and the price to be paid for them. The issuance of C-forms does not reveal whether the payments have already been made or whether a jural relationship of debtor and creditor arises. Thus, the essential require requirements, for the purpose of extension of limitation, were held to be missing. Mr. Jayant Mehta, however, relied upon a later judgement of this Court in *Chemical Systems Technologies (India) Pvt. Ltd. v. Simbhaoli Sugar Mills Ltd*[35]*,* also cited in the impugned decision of the Tribunal, which was rendered on an application under Order XII Rule 6 of the CPC. This Court held that issuance of C-forms is an acknowledgement to the taxation authorities, that the person issuing them has purchased the goods in question and the value thereof. Coupled with other circumstances, the Court held that although the C-forms may not be an acknowledgement of liability, along with other factors, they can be relied upon to take a view of whether there is an implied admission.

[34] 2007 SCC OnLine Del 804.
[35] 2013 SCC OnLine Del 416 [hereinafter, "*Chemical Systems*"].



46. In the present case, I am of the view that the Tribunal's decision, relying upon *Chemical Systems,* is not liable for interference. The issuance of C-forms were only one of the factors which weighed with the Tribunal, as in *Chemical Systems*.

47. For the reasons aforesaid, I am of the view that the petitioner has failed to make out a case for interference, as provided under Section 34 of the Act.

H. *Conclusion*

The petition is accordingly dismissed, but without any orders as to costs.

OMP (ENF.) (COMM.) 149/2017

In view of the dismissal of O.M.P. (COMM) 372/2017, the proceedings for enforcement of the impugned award dated 27.07.2017 be listed before the Roster Bench on 25.03.2025, subject to orders of Hon'ble the Judge In-Charge (Original Side).

PRATEEK JALAN, J

MARCH 06, 2025

Bhupi/PV/SS/Ainesh/SD/