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

Reserved on: 14.02.2025
Pronounced on: 24.04.2025

\+ FAO (COMM) 48/2025

UNION OF INDIA .....Appellant
Through: Mr.Om Prakash, SPC

versus

INLAND WORLD LOGISTICS PVT. LTD .....Respondent
Through: Mr. Anil Goel, Mr.Aditya Goel, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

FAO (COMM) 48/2025 &CM APPL. 9244/2025

1. The present Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the A&C Act') read with Section 13 of the Commercial Courts Act, 2015 (for short, 'the CCA') has been preferred against the Order dated 28.09.2024 passed by the learned District Judge (Commercial-03), Patiala House Courts, New Delhi (Trial Court) in O.M.P. (COMM) No.212/2019 titled ***'Union of India v. Inland World Logistics Pvt. Ltd.'***, whereby the learned Trial Court has dismissed the petition filed by the Appellant herein under

Section 34 of the A&C Act challenging the Arbitral Award dated 14.08.2018.

BRIEF FACTS:

2. The Respondent before us is a lease holder with the Northern Railways (represented by the Union of India, being the Appellant herein), under the Lease Agreement dated 05.08.2008 (hereinafter referred to as the "Lease") as per the Comprehensive Leasing Policy formulated by the appellant. This Lease pertained to one Parcel Van that travelled between Delhi and Howrah on a round-trip basis being Train No.13039/40. The amount agreed for each of these round-trips by the parties was Rs.87,799/-. The carrying capacity of the Parcel Van was originally 25 tons, however, *vide* the FM circular No.14 of 2008 dated 24.10.2008, the same was reduced to 23 tons. Accordingly, the rate per round-trip was reduced to Rs.80,775/- with effect from 01.04.2009.

3. The Lease between the parties was valid for a period of three years, commencing from 01.12.2007 and ending on 30.11.2010.

4. As per Clause 20.1 of the Lease Agreement, the Respondent was entitled to an extension of the lease for a period of two years beyond the initial period of three years. The Respondent chose to exercise this option, and the Competent Authority of the Appellant approved such extension, subject to the Respondent furnishing an affidavit stating that if any incident of overloading in the subject Parcel Van was detected, the Respondent would be blacklisted, and

the said Lease would be cancelled. Pursuant to the said condition, the Respondent furnished an affidavit dated 02.12.2010, stating that if any instance of overloading is detected in the subject Parcel Van, he would be blacklisted for a period of five years and the Lease would stand cancelled. On the basis of the said affidavit submitted by the Respondent, *vide* the letter dated 15.12.2010, the lease was extended for a period of two years, and the agreed round-trip rate was raised to Rs.1,09,365/- + 2% TDC.

5. Thereafter, the Appellant received a report from the Vigilance Department, Northern Railway, on 21.01.2011, wherein it was stated that an excess weight of 10120 Kilograms was found in the subject Parcel Van on 17.01.2011. In view of the excess weight, a penalty of Rs.2,41,202/- was collected from the Respondent *vide* MR No.300079 dated 19.01.2011. Further, in terms of the instructions issued by the Headquarters of the Appellant *vide* the letter dated 11.10.2011, the subject Lease of the Respondent was terminated *vide* the letter dated 27.10.2011, and the registration of the Respondent was also cancelled.

6. The Respondent herein filed an O.M.P. No. 967 of 2011 titled ***Inland Road Transport Pvt Ltd v. Union of India & Anr***. before this Court, challenging the aforementioned termination Order dated 27.10.2011. This Court, *vide* its Order dated 18.01.2012, disposed of the petition by directing the Appellant to conduct a proper inquiry with regard to the incident dated 17.01.2011 and ordered a re-weighment, while providing the Respondent herein an opportunity to defend itself. The Competent Authority of the Appellant was to take a

decision within two weeks of completion of the said inquiry and the decision was to be communicated to the Respondent within a period of two days thereafter. It was also decided that in case the action of termination is not warranted, the Respondent will be permitted to immediately resume the lease, subject to the fulfilment of all other conditions.

7. In terms of the Order dated 27.10.2011 of this Court, the Senior Divisional Operations Manager, Planning, New Delhi was nominated to conduct the inquiry, however, the same was conducted by the Divisional Operations Manager, Planning, New Delhi as the post of Senior Divisional Operations Manager was vacant at the said time. The said inquiry was carried out and, on its completion, a report dated 11.02.2012 was made, wherein it was stated that at the time of detection of overloading on 17.01.2011, the reading of the in-motion weigh bridge was incorrect as even after removing the excess weight, the re-weighment results showed negative weight. Consequently, it was recommended that the order of termination and that of debarring the Respondent be revoked, and the Respondent be allowed to operate his Lease Contract. It was also recommended that the penalty amount deposited by the Respondent be refunded and the compensation for the intervening period may be decided by the Competent Authority at the Headquarters of the Appellant.

8. On the basis of the said inquiry report and the instructions issued by the Headquarters *vide* the letter dated 02.03.2012, the Lease

was restored and the Respondent was allowed to operate the Lease *vide* the letter dated 19.03.2012.

9. The Respondent, before the completion of the extended period of two years, filed a Writ Petition, being WP(C) No.7174/2012, titled ***Inland Road Transport Pvt Ltd v. Union of India & Ors***. ,before this Court, praying that the Appellant herein pays to the Respondent compensation for the intervening period of 134 days, for which the Lease was suspended by the Appellant, and refund the penalty amount of Rs.2,41,202/-.

10. This Court *vide* its Order dated 16.11.2012, disposed of the said Writ Petition by directing the Appellant herein to consider the case of the Respondent herein and convey its decision on or before 26.11.2012.

11. In view thereof, the Headquarters office of the Appellant, *vide* the letter dated 26.11.2012, informed the Respondent that the case of the Respondent was considered by the Competent Authority in detail, and concluded that the mandate of the inquiry was not intended to decide issues like the refund of the penalty and the compensation awardable.

12. The Respondent, thereafter, filed another Writ Petition, being WP(C) No.7413/2012 titled ***Inland Road Transport Pvt Ltd v. Union of India & Ors***. before this Court, with a similar prayer as the one made in WP(C) No.7174/2012. This Court, *vide* its Order dated 30.11.2012, ordered that a *status quo* in respect of the Lease be maintained. The matter was then next listed for 07.12.2012, and on the

said date, this Court directed the Respondents to refund the said penalty amount within two weeks, failing which the amount would carry a rate of interest at 6% per annum. Further, even though the Respondent was not allowed to operate the lease for the intervening period of 134 days, however, he was relegated to avail of the civil remedy to seek compensation for those 134 days.

13. In compliance with the Order of this Court, the amount of Rs.2,41,202/-, along with an interest of Rs.29,145/- was refunded to the Respondent on 12.12.2014.

14. The Respondents thereafter appealed the Order dated 07.12.2012 passed by this Court in WP(C) No.7413/2012, *vide* the LPA No.27/2013. The Court disposed of the said Appeal *vide* its Order dated 07.01.2013 and observed therein that the prayer of the Respondent for the refund of the penalty amount was already granted and if the Respondent was aggrieved by the premature termination of the Lease, the only remedy available to him was to sue the Appellant herein for damages.

15. Thereafter, *vide* the letter dated 11.02.2013, the Respondent chose to invoke arbitration claiming damages from the Appellant on account of the termination of the Lease. The Respondent also filed ARB.P. 422 / 2014 titled ***Inland Road Transport Pvt Ltd v. Union of India & Anr***. seeking appointment of an Arbitrator. This Court appointed Sh. Umesh Sharma as the Sole Arbitrator *vide* its Order dated 20.01.2015.

16. The Respondent filed its claim petition before the learned Sole Arbitrator and claimed a compensation of Rs.76,20,000/- on account of non-operation of the Lease for a period of 123 days due to its termination. The Appellant, before the learned Sole Arbitrator, contended that the Respondent has claimed a compensation of 123 days before the learned Sole Arbitrator, however, in the proposal sent to the Headquarters for the settlement of compensation, it is for a period of 127 days. It was further contended that since the train was cancelled for a period of 62 days due to the foggy season, the total operational days would only be 61.

17. The learned Sole Arbitrator passed the Impugned Award dated 14.08.2018, wherein it was stated that the claimant/Respondent herein is entitled for a compensation of Rs.76,20,000/- for denial of the opportunity to operate the parcel services for 123 days.

18. Aggrieved by the said Award, the Appellant challenged the same before the learned Trial Court by way of an Objection Petition under Section 34 of the A&C Act. The said Objection Petition came to be dismissed by the Impugned Order on 28.09.2024 on the ground that the Appellant has failed to make out any case establishing any error of law apparent on the face of record, leading to the filing of the present Appeal.

SUBMISSIONS OF THE PARTIES

19. The learned counsel for the Appellant submitted that the Impugned Order passed by the learned Trial Court is erroneous insofar

as it merely reiterates the findings given by the learned Sole Arbitrator. He submitted that despite the learned Sole Arbitrator having recorded that the Respondent has not placed on record any documentary evidence to show that it had suffered losses for the said period in form of bookings, etc., the Award has been passed in favour of the Respondent. He placed reliance on the decision of the Supreme Court in ***Unibros v. All India Radio***, 2023 SCC OnLine SC 1366.

20. The learned counsel submitted that both the learned Sole Arbitrator as well as the learned Trial Court have completely ignored the fact that the train was not operational for a period of 62 days due to the foggy season and therefore, the Respondent would, at best, only be entitled to compensation for a period of 61 days.

21. To the contrary, the learned counsel for the Respondent, in support of the Impugned Order, submitted that the plea taken by the Appellant regarding the non-function of the train in question due to the foggy season, is a new ground taken by the Appellant and no evidence has been led regarding the said fact. Furthermore, in the petition filed by the Appellant under Section 34 of the A&C Act, no such ground has been taken.

22. He further submits that the petition filed by the Appellant under Section 34 of the A&C Act is time barred as the Award was passed by the learned Sole Arbitrator on 14.08.2018 and the said petition only came to be filed on 29.11.2019, that is, after a gap of 1 year and 3 months.

ANALYSIS & FINDINGS

23. Having heard the arguments advanced by the learned counsels before us and after examining the record, the questions that falls for the consideration of this Court is whether the Appellant can be exempted from compensating the Respondent due to the alleged 62 days of the foggy season; and whether such a plea can be re-appreciated by this Court in its jurisdiction under Section 37 of the A&C Act.

24. We may first state that the parties are *ad idem* on the fact that the Respondent did not carry out business for a period of 123 days due to the termination of the Lease by the Appellant. The learned counsel for the Appellant has strenuously contended that due to the foggy season, the train in question was not operational and therefore, the Appellant cannot be required to compensate the Respondent for the said 62 days.

25. We may, at this stage, note that the scope of interference under Section 37 of the A&C Act, is limited and is primarily focused on ensuring that the arbitral process is fair and just. The Appellate Court's power is restricted to determining whether the Court deciding the objections has exercised its jurisdiction appropriately and within the confines of Section 34 of the A&C Act. The Appellate Court cannot re-appreciate evidence or interfere with the Arbitral Tribunal's reasonable findings. The scope of review under Section 37 of the A&C Act is even narrower, if the Arbitral Award has already been upheld under Section 34 of the A&C Act. Interference is permissible

only in cases of patent illegality or denial of natural justice. The scope of interference in terms of an Appeal under Sections 34 and 37 of the A&C Act has been highlighted by the Apex Court in ***Larsen Air Conditioning and Refrigeration Company v. Union of India & Ors.***, (2023) 15 SCC 472. The same reads as under:

> *"**15.** The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the Tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground" [ref : Associate Builders [para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."*

26. In ***Konkan Railway Corporation Limited vs Chenab Bridge Project Undertaking***, (2023) 9 SCC 85, the Supreme Court reiterated the principle of law as under:

> *"**18.** At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd. [MMTC*

Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , is akin to the jurisdiction of the court under Section 34 of the Act. [Id, SCC p. 167, para 14:"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision."] Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.

19. *Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. [UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116, para 15 : (2022) 2 SCC (Civ) 401. See also : Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 24, 25.] It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not*

entitle courts to reverse the findings of the Arbitral Tribunal. [Ibid; SsangyongEngg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213; ParsaKente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236, para 11.1 : (2019) 3 SCC (Civ) 552] In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , this Court held: (Dyna Technologies case [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , SCC p. 12, paras 24-25)

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

27. We may now proceed to decide the present Appeal keeping in mind the limited scope of interference under Section 37 of the A&C Act. The Appellant had challenged the Impugned Arbitral Award on the following grounds, which are stated in paragraph 5 of the petition under Section 34 of the A&C Act. The same are reproduced as under:-

> *"5. The petitioner is, therefore, aggrieved by the impugned illegal, perverse, baseless and unsustainable*

award dated 14.08.2018, inter alia, on the following grounds:

A) On the facts and in the circumstances of the case, the impugned so-called award dt. 14.08.2018 in case Ref. No.DAC/703/02-15 passed by the Arbitral Tribunal is illegal, non-est, void ab initio, unauthorized by law and is liable to be declared nullity in all respects.

B) It is well settled that no one can take advantage of his own wrong and the claimant must prove that revocation of suspension/termination of contract was unblemished and he was entitled to damage of entire 123 days of non working due to suspension.

C) The claimant cannot justify, the false and frivolous vexatious claims made by him merely to exploit the petitioner on the period of suspension and by staging a drama with intent to get sympathy and such perverse and absurd claims cannot be justified both on facts and in law.

D) The law is well settled that the Arbitral Tribunal must function judiciously and as judicial body like a court without even bias or prejudice and the proceedings and order must be fair, objective and un biased in all respects besides being, based clearly and correctly

> *on the facts and materials on record as well as the law applicable including binding precedents which are material to be followed. In the present case only the claim is taken as the basis for awarding the so called award and all other submissions, records, documents, evidence pleas and case laws placed by the petitioner had been deliberately disregarded and hence the impugned so-called award is untenable, unauthorized by law and liable to be vacated as being non-est in addition to the same being declared a nullity in law."*

28. Section 34 of the A&C Act provides specific grounds, upon which an Arbitral Award can be challenged. It is crucial that any objections raised under this Section are both concise and fall strictly within the scope of the Act. Broadly speaking, the grounds of objection are, if a party was under some incapacity; if the Arbitration Agreement is not valid under law; if proper notice of appointment of an arbitrator or arbitration proceedings was not given; if a party was unable to present their case; if the Award deals with a dispute not contemplated by or not falling within the terms of the arbitration; if the arbitration procedure was not in accordance with the agreement of the parties or if the Arbitral Award is in conflict with the public policy of India. However, it is noticed that the objections under Section 34 of the A&C Act raised by the Appellant do not align with these

grounds nor are they clear or concise in order to be considered under Section 34 of the A&C Act.

29. Coming to the grounds taken in the present Appeal, mainly two objections are being urged by the Appellant seeking our interference in the Arbitral Award and the Impugned Order.

30. The first ground of challenge assails the approach adopted by both the learned Sole Arbitrator as well as the learned Trial Court, in having, according to the Appellant, completely disregarded a factual circumstance bearing directly on the computation of the alleged loss of profit. It is the case of the Appellant that out of the total period of 123 days which formed the subject matter of the claim, the train in question did not operate at all for a period of 62 days, owing to safety concerns arising from heavy fog, which rendered the operation of the train unviable. It is submitted that this period of 62 days, during which the train remained non-operational were liable to be excluded for the purpose of assessing compensable loss. However, both the learned Sole Arbitrator and the learned Trial Court, it is contended, proceeded on the erroneous premise that the Appellant was liable to compensate for loss of profit for the entire duration of 123 days, without adverting to or even dealing with the specific and categorical submission of the Appellant that they would only be liable for compensation for a total of 61 days.

31. The second ground of challenge pertains to the evidentiary deficiency in the Respondent's claim, which, according to the Appellant, ought to have been relevant to the quantification of

damages as awarded. The Appellant contended that the Respondent has failed to adduce any documentary evidence whatsoever to substantiate its assertion that the handling charges allegedly incurred by it stood at a margin of ₹1.35/Kg. Furthermore, the Respondent claims that the cost of transportation from Delhi to Calcutta was ₹3.00/Kg, thereby aggregating the total logistical cost to ₹4.35/Kg. The Appellant contended that these figures, which form the very foundation of the computation of the alleged loss of profit, rest solely on the oral assertions of the Respondent and are unaccompanied by any documentary evidence. The Appellant submitted that the learned Sole Arbitrator, as well as the learned Trial Court, while affirming the award, have proceeded to accept these figures at face value, without subjecting them to the scrutiny which they warranted.

32. As is evident from the above, the Appellant did not urge the same in the grounds taken in the objections preferred under Section 34 of the A&C Act. While the Appellant cannot raise these grounds for the first time in an Appeal under Section 37 of the A&C Act, *albeit*, a new ground may be raised by a party if it is a purely legal issue, for which no additional enquiry or proof is required, and it can be said that the Award is illegal on its face. The caveat to this is that such an illegality must go to the root of the matter and not merely amount to an erroneous application of law. An Award cannot be set aside on the ground of patent illegality, solely due to a contravention of a statute not linked to public policy or public interest. Additionally, the Courts are prohibited from re-appreciating evidence to conclude that the

Award suffers from patent illegality, as courts do not sit in appeal against the Arbitral Award.

33. Furthermore, the nature of the objections is such that requires re-appreciation of evidence. The issue which is being raised by the Appellant is whether there was enough evidence placed by the Appellant before the Arbitral Tribunal, so as to enable the learned Sole Arbitrator or us to come to the conclusion that due to safety issues arising out of heavy fog for 62 days out of 123 days, the train was not in operation and secondly, that the Appellant had challenged the statement of the Respondent that it imposes handling charge at a margin of Rs. 1.35/kg. Further, the DW-1, Mr. Dalbir Singh, witness of the Appellant, had stated that he has no knowledge of the fact that the subject train was cancelled during the said period.

34. Needless to say, we find that except this bald assertion made by the Appellant, there is nothing on record to substantiate the same. On examination of the Arbitral Award, it is noticed that the learned Sole Arbitrator has given a finding regarding the same, which is as under:

> *"The answering respondent has also tried to raise a new ground of its defense in its reply by saying that the present claimant was carrying on the parcel services of the train which remained canceled for more than 62 days during the period when his contract was terminated. The aforesaid objection is a new objection and clearly an afterthought as once the contract of the claimant is canceled and he is prevented from operating the parcel*

services, the cancellation of the train is meaningless."

35. A plain reading of the extract makes it abundantly clear that the ground now sought to be urged forms no part of the original case as presented before the learned Sole Arbitrator. It is evident that this contention has been raised for the first time in Appeal, and is, therefore, liable to be characterized as an afterthought. Courts have repeatedly held that grounds which do not find place in the original pleadings and are sought to be introduced at a belated stage, without cogent explanation, carry little persuasive value and merit no consideration. The Appellant cannot be permitted to improve upon its case in appeal by raising new grounds which were neither urged nor pressed at the inception of the dispute.

36. In effect, what the Appellant seeks is a re-appreciation and re-evaluation of the evidence on record, which this Court, sitting in appellate jurisdiction cannot undertake. The scope of interference with orders passed by the learned Sole Arbitrator and learned Trial Court are confined to the identification of perversity, illegality, or manifest unreasonableness. Mere dissatisfaction with the outcome or a speculative reinterpretation of facts does not suffice to invoke the appellate jurisdiction of this Court. There is nothing in the Impugned Order that even remotely suggests any infirmity, legal or factual, that would warrant the exercise of appellate interference. The findings recorded therein are supported by cogent reasoning and evidence on

record, and do not suffer from any illegality that would render them unsustainable in law.

37. Accordingly, the appeal, being devoid of merit and bereft of any substantive grounds warranting interference, along with the pending application, is dismissed.

SHALINDER KAUR, J

NAVIN CHAWLA, J

APRIL 24, 2025/FRK