



2026:AHC-LKO:12707-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

**APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION
ACT 1996 No. -5 of 2024**

Sanjay Gandhi Post Graduate Institute
of Medical Science, Lucknow through
Director

.....Appellant(s)

Versus

M/s Trishul Enterprises through Partner
Mr. Ashish Gupta

.....Respondent(s)

Counsel for Appellant(s)	:	Pritish Kumar, Shubham Tripathi
Counsel for Respondent(s)	:	Ashish Gupta (in Person)

A.F.R.

Judgment Reserved on : 21.01.2026

Judgment Delivered on : 18.02.2026

Chief Justice's Court

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.**

(Per : Justice Jaspreet Singh)

1. Under challenge is the judgment and order dated 29.11.2023 passed by the Commercial Court No.1, Lucknow in Arbitration Case No.119 of 2020 (Sanjay Gandhi Post Graduate Institute of Medical Sciences Lko. vs. M/s Trishul Enterprises) whereby a petition under Section 34 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as the Act of 1996) was dismissed, as a consequence, the award passed by the Sole Arbitrator dated 20.08.2020 has been upheld.

2. In order to appreciate the controversy involved in the instant appeal, it will be appropriate to notice relevant facts leading upto this appeal.

3. An agreement was made between the appellant and the respondent bearing No.1 of 2008-2009, dated 16.04.2008 for the purposes of maintenance of the landscape in the campus of Sanjay Gandhi Post Graduate Institute of Medical Sciences (hereinafter referred to as the SGPGI). The agreement was for a period of three years and it could be extended till the finalization of a new tender process or three months which ever was earlier. The said agreement, *inter alia*, contained an arbitration clause.

4. The respondent initially filed Writ Petition No.10358 (M/B) of 2015 wherein the respondent sought a writ in the nature of mandamus directing the appellant to appoint an Arbitrator in terms of clause 27 of the agreement dated 16.04.2008. A further writ in the nature of mandamus was sought, seeking a direction for the appellant to release the security money amounting to Rs.6,12,000/- as well as payment of Rs.10,000/- which was allegedly withheld by the appellant. Before the Division Bench of this Court, it was informed by the appellant (who was the respondent in the writ court) that Dr. C.M. Pandey had already been appointed as a Sole Arbitrator. Taking note of the aforesaid statement, the writ petition was disposed of leaving it open for the respondent to get his claims adjudicated before the Sole Arbitrator.

5. In furtherance of the order passed by the High Court dated 06.11.2025 in Writ Petition No.10358 (M/B) of 2015 the respondent filed his statement of claim before the Sole Arbitrator, namely, Dr. C.M. Pandey. Despite the appointment of the Sole Arbitrator, he did not hold any proceedings, which led the respondent to file a contempt petition

before the learned Single Judge of this Court bearing Contempt Petition No.427 (C) of 2016 and upon issuance of notice in the contempt proceedings, the Sole Arbitrator proceeded with the matter. However, the said Arbitrator could not conclude the proceedings as he retired.

6. Once again the respondent was compelled to approach the High Court and this time, it filed a petition under Section 11 of the Act of 1996 bearing number Arbitration Application No.29 of 2017 which was decided on 15.03.2019 and a fresh Arbitrator was appointed. This newly appointed Sole Arbitrator started the proceedings afresh taking it forward from the stage of exchange of pleadings. In the said arbitral proceedings, the respondent filed his statement of claim on 11.12.2015. The appellant (who was the respondent before the Arbitrator) filed its statement of defence including a counter claim dated 26.07.2019. The parties led evidence, and thereafter the Sole Arbitrator allowed the claims in part and made its award on 20.08.2020.

7. The appellant challenged the said award dated 20.08.2020 before the Commercial Court No.1 at Lucknow by filing a petition under Section 34 of the Act of 1996 which was registered as Arbitration Case No.119 of 2020.

8. The Commercial Court No.1 at Lucknow after hearing the parties did not find that there was any error in the award, hence it affirmed the award by means of its judgment dated 29.11.2023 which is under challenge in the instant appeal preferred under Section 37 of the Act of 1996.

9. Shri Pritish Kumar, learned Senior Counsel assisted by Shri Shubham Tripathi for the appellant primarily raised three grounds to attack the award passed by the Sole Arbitrator as well as the judgment passed by the Commercial Court No.1 at Lucknow:

(i) It was urged by the learned Senior Counsel that the Arbitrator committed a manifest error in allowing the claim raised by the respondent relating to refund of security money which was the subject matter of the claim and was covered by issue no.15 as framed by the Sole Arbitrator. It was submitted that the respondent in its claim petition in paragraph 15 had pleaded that after the contract period was over and even defect liability period had come to an end, yet the appellant did not release the security money of Rs.6,12,000/- and further a sum of Rs.10,000/- was illegally retained.

(ii) Learned Senior Counsel pointed out that this claim was absolutely without any basis since in terms of the contract bearing No.1 of 2008-2009, the respondent had merely submitted money security of Rs.3,35,000/- and the same had already been returned to the respondent.

(iii) It was also pointed out that in the statement of defence while replying to para-15 of the statement of claim, it was specifically pleaded that under the Contract No.1 of 2007-2008 the respondent had only given the security money of Rs.3,35,000/- which had been returned. There was no way that any security money was paid amounting to Rs.6,12,000/-. Moreover, the respondent introduced a claim for seeking recovery of security money which related to another contract bearing No.107 of 2013-2014, which was a separate contract all together and the

same was not the subject matter of the Arbitral proceedings. The respondent did not raise any claim in respect to the other contract yet by misguiding the Arbitrator the said claim relating to a different contract was introduced in the arbitration proceedings relating to contract no.1 of 2007-2008.

(iv) Learned Senior Counsel further submitted that the controversy before the Sole Arbitrator was only in respect of contract No.1 of 2007-2008 and not the later context which came into being i.e. Contract No.107 of 2013-2014. There was never any claim nor there was any request for referring any dispute emerging from the later contract for arbitration, thus, the said claim could not have been considered in the instant Arbitral proceedings. The Sole Arbitrator ,who is merely a creature of the contract, could not have extended its jurisdiction to include such a claim which was never the subject matter of reference to arbitration.

(v) Learned Senior Counsel further submitted that the Sole Arbitrator grossly over stepped its jurisdiction to include a claim for refund of security money which did not relate to the contract in question or the reference which was made to the Arbitrator. The Sole Arbitrator purposefully went ahead to grant the claim on the Sole premise that since the claim was between the same parties and there is no clear denial of the said claim, hence in the interest of justice the amount was awarded. This was clearly a patent illegality. Accordingly, the award on the aforesaid ground suffered from excess of jurisdiction and a manifest error which vitiated the award.

10. Learned Senior Counsel for the appellant has further submitted that the Sole Arbitrator committed a grave error in allowing the claim of the respondent relating to the contribution towards provident fund of the employees, which was covered by issues No.5 and 12 as framed by the Sole Arbitrator.

(i) It was submitted that the instant contract was never a labour contract nor the appellant was required to reimburse any Employee Provident Fund Contribution and such liability was the Sole responsibility of the respondent. Neither the appellant was the principal employer nor there was any clause in the agreement between the parties by which the liability of the respondent under the Employee Provident Fund could have been extended to the appellant.

(ii) The Sole Arbitrator completely misread the terms of the contract and rather by granting the aforesaid claim relating to Employee Provident Fund contribution, it has re-written the contract which was neither in the domain of the Sole Arbitrator nor it could be countenanced in law.

11. Learned Senior Counsel has further urged that the Sole Arbitrator exceeded its jurisdiction in awarding a sum of Rs.57,521/- which was alleged to have been deducted by the appellant by imposing a penalty. It was urged that the agreement clearly vested power with the appellant to make any deduction and impose any penalty on the respondent in case of any loss occasioned to the appellant on account of any fault in the working of the respondent. In these circumstances, allowing the claim by treating imposing of penalty and deducting the penalty amount from

the bills of the respondent, as being bad in law was not justified. Hence, the award on this count too was erroneous and deserved to be set aside.

12. Learned Senior Counsel also urged that the aforesaid illegality which went to the root of the matter and affected the jurisdiction of the Sole Arbitrator rendering the award patently illegal was demonstrated before the Commercial Court No.1 at Lucknow. However, the said Court took a dim view of the matter and in a cursory manner without considering the material brought to the notice of the Court dismissed the petition under Section 34 of the Act of 1996 which itself was an erroneous exercise of jurisdiction. Hence, the judgment passed by the Commercial Court No.1, Lucknow dismissing the petition under Section 34 of the Act of 1996 dated 29.11.2023 deserves to be set aside as also the award dated 20.08.2020 after allowing this appeal.

13. In support of his submissions, the learned Senior Counsel for the appellant has relied upon the decision of the Apex Court in **State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275** and **PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and others, AIR 2021 SC 4661**. He has also relied on a decision of Delhi High Court in **Group 4 Securities Guarding Ltd. v. Employees Provident Fund Appellate Tribunal and others, 2011 Lawsuit (Del) 3837**.

14. Shri Ashish Gupta, who is a partner of the respondent firm appeared in person and submitted that the award passed by the Sole Arbitrator does not suffer from any manifest error nor the judgment

passed by the Commercial Court No.1, Lucknow can be said to be erroneous and does not require any interference of this Court.

(i). Shri Gupta submitted that right from the inception the respondent had made his claim regarding the security money and at no point of time it was ever denied by the appellant nor an objection was taken that it did not relate to the Contract No.1 of 2007-2008.

(ii). Shri Gupta pointed out that when he filed his first writ petition bearing No.10358 (M/B) of 2015 the respondent had clearly sought a relief relating to the refund of the security money of Rs.6,12,000/-. Even before the writ court, it was never alleged by the appellant that the said security money did not relate to the contract in question.

(iii) It has further been submitted by Shri Gupta that it was the appellant who informed the writ court that it had appointed Dr. C.M. Pandey as an Arbitrator. Since, as per the contract the appellant was required to appoint the Arbitrator if the appellant thought fit it could have appointed the said Arbitrator for both the contracts together. However, at this stage, it cannot be said that the Sole Arbitrator has exceeded his jurisdiction in granting the claim for refund of security money relating to the other contract No.107 of 2013-2014.

(iv) Shri Gupta has further urged that in terms of Order 2 Rule 2 CPC, it was open for the respondent to club all his claims together and therefore since the security money was outstanding even though relating to a later contract and had not been refunded, hence the respondent was justified in making his claim in this regard. On the contrary, if the respondent had failed to raise all his claims then he would have been

prevented from making his claim in view of the bar contained in Order 2 Rule 2 CPC.

(v) He further submitted that there is no denial of the fact that the said amount was outstanding and was required to be refunded. In this view of the matter, the Sole Arbitrator was justified in allowing the claim, which cannot be said to be bad. Moreover, once on the basis of the 'no denial' an award has been made which is based on evidence on record then such a finding cannot be assailed before the Court under Section 34 of the Act of 1996 and it is for the said reason, the Court rejected the petition of the appellant under Section 34 of the Act of 1996. Apparently, the jurisdiction of this Court to interfere under Section 37 of the Act of 1996 is narrower than scope of interference under Section 34, thus it will not entitle this Court to interfere with the award.

15. Shri Gupta taking his submissions forward urged that while submitting his bid for the contract, he had enclosed two letters dated 01.10.2007 and 30.10.2007 which were part of his bid and it was made part of the contract in terms of clause 23 of the contract. On a meaningful reading of the two letters, which were part of the contract, it would be clear that the respondent quoted his rates for the contract inclusive only of income tax. Any other new tax or duty if imposed was to be paid by the appellant institute over and above the quoted rates.

(i) Relying upon the aforesaid clause 23 and the two letters dated 01.10.2007 and 30.10.2007, it was submitted that the respondent had made his contribution to the Employee Provident Fund and the appellant was required to contribute its share. Since, it was not done hence the

respondent had raised his claim which has been allowed by the Arbitrator and upheld by the Court while rejecting the petition under Section 34 of the Act of 1996. A view taken by the Sole Arbitrator which is plausible cannot be interfered with in a petition under Section 34 of the Act of 1996 and certainly not in appeal under Section 37 of the Act of 1996. Thus, the said award does not suffer from any error which may require interference from this Court.

16. Shri Gupta also pointed out that the appellant institute was not justified in imposing a penalty and deducting the same from the bills of the respondent especially without putting the respondent to any notice.

(i) In this regard, the respondent had raised his claim and the appellant could not bring any evidence on record which could justify the imposition of penalty and deduction from the bill of the respondent, hence, the claim raised by the respondent was allowed.

(ii) It was stated that there is no palpable error either in the award or in the order passed by the Commercial Court No.1, Lucknow, hence the submission of the learned Senior Counsel for the appellant deserves to be turned down. The award as upheld by the order passed by the Commercial Court No.1, Lucknow requires no interference and the appeal being devoid of merit deserves to be dismissed.

17. Shri Gupta has relied upon the decision of the Apex Court in **B.R. Patil v. Tulsa Y. Sawkar, 2022 SCC OnLine SC 240.**

18. This Court has heard the learned Senior Counsel for the appellant and Shri Ashish Gupta in person for the respondent and also meticulously perused the record.

19. This Court had the occasion to consider the scope of an appeal under Section 37 of the Act 1996 in **UCM Coal Co. Ltd. v. Adani Enterprises Ltd., 2025 SCC OnLine All 7608** and in **M/s. Regenvo Mobile Private Limited Lucknow v. M/s. Siyogi Enterprises and others; 2026(1) ADJ 250 (DB)(LB)**. Keeping the parameters as noticed in the aforesaid two decisions, this Court has proceeded to examine the contention of the respective parties.

20. At the outset, it may be noticed that it is not disputed that two separate contracts were entered between the parties. It is also not disputed that the first contract dated 16.04.2008 bearing Contract No.1 of 2007-2008 was for a period of three years which came to an end in the year 2011. It is also not disputed that the second Contract bearing No.107 of 2013-2014 was entered after the first contract had come to an end in the year 2011. It is also not disputed that under the first contract, Contract No.1 of 2007-2008, the respondent had furnished the money security for a sum of Rs.3,35,000/-. It is also not disputed that the security money under the first contract was released by the appellant and received by the respondent . It is also not disputed that the sum of Rs.6,12,000/- was the security money given by the respondent in context with the second Contract No.107 of 2013-2014.

21. In this backdrop, it would be relevant to notice that in the first writ petition filed by the respondent bearing No.10358 (M/B) of 2015 the respondent had primarily sought a relief of mandamus commanding the appellant institute to appoint a Sole Arbitrator. This is evident from the copy of the writ petition, which is on record. A Co-ordinate Bench of this

Court on 06.11.2015 disposed of the said writ petition with a direction to the respondent herein to submit his claims before the Arbitrator concerned who was required to take a look into the matter and take a decision accordingly. The relevant portion of the order dated 06.11.2025 is being reproduced hereinafter for ease of reference:-

"The petitioner entered into an agreement between himself and Sanjai Gandhi Post Graduate Institute of Medical Science, Lucknow on 16.4.2008 and wants to settle his dispute outside the Court by way of recourse as is provided under Clause-27 of the agreement.

Mr. Rajnish Kumar Advocate, holding brief of Sri I.P.Singh, learned Counsel for Sanjai Gandhi Post Graduate Institute of Medical Science, Lucknow, has submitted that for settlement of dispute Dr. C.M.Pandey, Head of Department, Biostatistics and Health Informatics, Sanjai Gandhi Post Graduate Institute of Medical Science, Lucknow, has already been appointed as Arbitrator to settle the dispute.

In view of the aforesaid submission, we hereby direct the petitioner to address his claim before the Arbitrator concerned, who shall look into the matter and take decision accordingly.

Accordingly, this petition is disposed of."

22. From the perusal of the aforesaid order, it would indicate that it specifically referred to the agreement entered between the parties dated 16.04.2008. It will also be relevant to mention that even in the entire writ petition the respondent had not raised any reference relating to the subsequent Contract No.107 of 2013-2014. Thus, the only inference which can be drawn from the order passed by the Division Bench dated 06.11.2015 is that the liberty was granted to the respondent to get his claims adjudicated by the Sole Arbitrator.

23. In this regard, if the statement of claim filed by the respondent is perused, it would reveal that it also relates to Contract No.1 of 2007-

2008 and it does not make any reference to the subsequent Contract No.107 of 2013-2014. At this stage, it will also be relevant to notice that in paragraph-15 of the statement of defence containing counter claim filed by the appellant herein a specific plea was taken denying the claim raised by the respondent herein for the security money. For the ease of reference, para-15 of the statement of defence is being reproduced hereinafter:-

"That Claim No.15 as raised in paragraph 15 of the statement of claim pertains to withholding of security deposit of the petitioner of Rs.6,12,000/-. A perusal of the contract in the instant case in Clause 24 would reveal that as far as the present contract is concerned, the security deposit made by the claimant (contractor) was of Rs.3,35,000/- and not Rs.6,12,000/-. Even the security deposit of Rs.3,35,000/- has been released to the claimant (contractor). However, the petitioner has mixed up another contract relating to development of horticulture in the present claim petition, which is not permissible and beyond the scope of instant Arbitrator. The said contract, which bears Contract No.107 of 2013, is not the subject matter of arbitration before this Hon'ble Arbitral Tribunal and, therefore, any claim relating to the said separate contract No.107 of 2013-14 cannot be sustained or maintained by the claimant (contractor) and as such the same deserves to be rejected by this Hon'ble Arbitral Tribunal."

24. From the perusal of the aforesaid paragraph, it would reveal that it was clearly stated that Contract No.107 of 2013-2014 was not the subject matter of the arbitration proceedings and the Arbitral Tribunal could not consider the claim of a different contract in the instant proceedings.

25. The respondent could not dispute the fact that while the evidence was led before the Arbitral Tribunal, no plea relating to the separate Contract No.107 of 2013-2014 was raised nor it was made the subject

matter. Despite the clear plea taken by the appellant, no evidence was led by the respondent in this regard to substantiate that in the scope of reference relating to Contract No.1 of 2007-2008, the claim relating to Contract No.107 of 2013-2014 could be introduced in the very same Arbitral proceedings. It also could not be established that the respondent had raised the disputes in respect of both the contracts, rather the record reflects that the disputes which had been raised were particularly in respect of contract bearing No.1 of 2007-2008. There were no pleadings nor evidence brought on record which could give any indication that claims of the subsequent contract was also raised or included.

26. The respondent could not dispute the fact that the Sole Arbitrator which was appointed, whether it be Dr. C. M. Pandey or the Arbitrator appointed vide order dated 22.02.2019, both entered into reference relating to the disputes arising out of Contract No.1 of 2007-2008 and no dispute was referred to the Arbitral Tribunal relating to Contract No.107 of 2013-2014. In this view of the matter, the Arbitral Tribunal was constituted in terms of the Arbitration Clause No.27 emanating from Contract No.1 of 2007-2008 for adjudicating the disputes only in relation to the Contract No.1 of 2007-2008.

27. It is now too well settled to be disputed that the Arbitrator is a creature of the contract and it can only adjudicate such disputes which are referred to it by the parties. It is not open for the Sole Arbitrator to travel beyond the terms of the contract or terms of the reference.

28. This aspect of the matter was considered by this Court in **M/s. Regenvo Mobile (supra)** wherein in paragraph 38 and 40 it was noticed as under:-

"38. It will be relevant to examine how an arbitration clause is to be interpreted. Whether it requires strict or liberal interpretation so as to expand the scope of arbitral disputes, even though they may not have been explicitly provided in the clause/agreement, was considered by the Apex Court in (i) **Harsha Constructions v. Union of India**, (2014) 9 SCC 246, (ii) **United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd.**, (2018) 17 SCC 607, (iii) **Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd.**, (2018) 6 SCC 534. The aforesaid judgments were relied upon by the Apex Court in its later judgment in **Indian Oil Corpn. Ltd. v. NCC Ltd.**, (2023) 2 SCC 539 and **Emaar (India) Ltd. v. Tarun Aggarwal Projects LLP**, (2023) 13 SCC 661. To avoid duplicacy, the relevant paragraphs of Emaar (supra) is being reproduced hereinafter :

"14. In **Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd.** [Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd., (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484], it is observed and held by this Court that the parties are bound by the clauses enumerated in the policy and the Court does not transplant any equity to the same by rewriting a clause. It is further observed and held that an arbitration clause is required to be strictly construed. Any expression in the clause must unequivocally express the intent of arbitration. It can also lay the postulate in which situations the arbitration clause cannot be given effect to. It is further observed that if a clause stipulates that under certain circumstances there can be no arbitration and they are demonstrably clear then the controversy pertaining to appointment of Arbitrator has to be put to rest (paras 10-23).

15. In **Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.** [Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153], it is observed and held by this Court that a party cannot claim anything more than what is covered by the terms of the contract, for the reason that

the contract is a transaction between two parties and has been entered into with open eyes and by understanding the nature of contract. It is further observed that thus the contract being a creature of an agreement between two or more parties has to be interpreted giving literal meanings unless there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the Court to make a new contract, however reasonable, if the parties have not made it themselves. It is further observed that the terms of the contract have to be construed strictly without altering the nature of a contract as it may affect the interest of either of the parties adversely (para 23).

16. In **Harsha Constructions v. Union of India** [**Harsha Constructions v. Union of India, (2014) 9 SCC 246 : (2014) 4 SCC (Civ) 803**], it is observed and held by this Court in paras 18 and 19 as under : (SCC p. 251)

"18. Arbitration arises from a contract and unless there is a specific written contract, a contract with regard to arbitration cannot be presumed. Section 7(3) of the Act clearly specifies that the contract with regard to arbitration must be in writing. Thus, so far as the disputes which have been referred to in Clause 39 of the contract are concerned, it was not open to the Arbitrator to arbitrate upon the said disputes as there was a specific clause whereby the said disputes had been "excepted". Moreover, when the law specifically makes a provision with regard to formation of a contract in a particular manner, there cannot be any presumption with regard to a contract if the contract is not entered into by the mode prescribed under the Act.

19. If a non-arbitrable dispute is referred to an Arbitrator and even if an issue is framed by the Arbitrator in relation to such a dispute, in our opinion, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to the Arbitrator. In the instant case, the respondent authorities had raised an objection relating to the arbitrability of the aforesaid issue before the Arbitrator and yet the Arbitrator had rendered his decision on the said "excepted" dispute. In our opinion, the Arbitrator could not have decided the said "excepted" dispute. We, therefore, hold that it was not open to the Arbitrator to decide the issues which

were not arbitrable and the award, so far as it relates to disputes regarding non-arbitrable disputes is concerned, is bad in law and is hereby quashed."

* * * * *

19. On the question, who decides on non-arbitrability of the dispute, after referring to and considering the earlier decisions on the point, more particularly, the decisions in **Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd.** [Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd., (2019) 9 SCC 209 : (2019) 4 SCC (Civ) 324], **United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd.** [United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd., (2018) 17 SCC 607 : (2019) 2 SCC (Civ) 530] and **Narbheram Power & Steel [Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd., (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484]**, it is observed and held in **Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549]** that the question of non-arbitrability relating to the inquiry, whether the dispute was governed by the arbitration clause, can be examined by the Courts at the reference stage itself and may not be left unanswered, to be examined and decided by the Arbitral Tribunal. Thereafter, in para 153, it is observed and held that the expression, "existence of arbitration agreement" in Section 11 of the Arbitration Act, would include aspect of validity of an arbitration agreement, albeit the Court at the reference stage would apply the prima facie test. It is further observed that in cases of debatable and disputable facts and, good reasonably arguable case, etc. the Court would force the parties to abide by the arbitration agreement as the Arbitral Tribunal has the primary jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability.'

* * *

40. The Apex Court in in **Pam Development Private Limited v. State of West Bengal, (2024) 10 SCC 715**, had the occasion to consider the effect of excepted/prohibitory clauses in an agreement and in this regard it held as under :

"12. This submission is persuasive, but the contract clauses speak for themselves. In fact, the High Court did what the Arbitrator should have done. Examine what the

contract provides. This is not even a matter of interpretation. It is the duty of every Arbitral Tribunal and Court alike and without exception, for contract is the foundation of the legal relationship. Having considered the aboveresferred clauses in the contract the High Court came to the conclusion that awarding any amount towards idle, machinery, etc. is prohibited under the "Special Terms and Conditions" of the contract. The Arbitrator did not even refer to the contractual provisions and the District Court dismissed the objections under Section 34 with a standard phrase as extracted hereinabove. The High Court exercising jurisdiction under Section 37 did its duty and we are of the opinion that the conclusions of the High Court are correct and cannot be interfered with."

29. In light of the aforesaid undisputed facts, it is clear that the Sole Arbitrator had no jurisdiction to enter into an unchartered territory which was occupied by the subsequent Contract No.107 of 2013-2014 which was never made the subject matter of reference. Hence, if any disputes which emerged from the subsequent contract it could not have been entertained or adjudicated upon by the Sole Arbitrator. Thus, the attempt of the Sole Arbitrator to take cognizance of such a claim was beyond its jurisdiction.

30. In this regard, the observations of the Apex Court in **Sal Udyog Private Limited (supra)** are relevant and in paragraph 26, it held as under:-

26. To sum up, existence of Clause 6(b) in the agreement governing the parties, has not been disputed, nor has the application of the Circular dated 27-7-1987 issued by the Government of Madhya Pradesh regarding imposition of 10% supervision charges and adding the same to cost of the Sal seeds, after deducting the actual expenditure been questioned by the respondent Company. We are, therefore, of the view that failure on the part of the learned Sole Arbitrator to decide in accordance with the terms of the contract governing the

parties, would certainly attract the “patent illegality ground”, as the said oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins the Arbitral Tribunal to take into account the terms of the contract while making an award. The said “patent illegality” is not only apparent on the face of the award, it goes to the very root of the matter and deserves interference. Accordingly, the present appeal is partly allowed and the impugned award, insofar as it has permitted deduction of “supervision charges” recovered from the respondent Company by the appellant State as a part of the expenditure incurred by it while calculating the price of the Sal seeds, is quashed and set aside, being in direct conflict with the terms of the contract governing the parties and the relevant circular. The impugned judgment dated 21-10-2009 is modified to the aforesaid extent."

Similar observations were made by the Apex Court in **PSA SICAL Terminals Pvt. Ltd. (supra)**.

31. Thus, as far as the first contention of the learned Senior Counsel for the appellant relating to the grant of claim of refund of security money of Rs.6,12,000/- is concerned, has substance and it finds favour with this Court.

32. It would also be relevant to notice at this stage, that the Commercial Court No.1, Lucknow should have considered this aspect of the matter. However, it has abdicated its duties in exercising its powers under Section 34 of the Act of 1996. The Commercial Court No.1, Lucknow merely relying upon certain decisions of the Apex Court has refused to interfere with the award without even noticing whether the Arbitrator could have granted or allowed the claim in respect of a separate contract for which no reference was made. It appears that the Commercial Court No.1, Lucknow did not apply its judicial mind and

dismissed the petition in a mechanical exercise of jurisdiction which cannot be appreciated, rather reflects poorly of it.

33. The second limb of the submission of the learned Senior Counsel for the appellant relating to the Employee Provident Fund Contribution, if examined, it would reveal that the agreement entered between the parties, a copy of which is on record would indicate that the contract was given by the appellant institute for the purpose of landscape maintenance of the institute. Clause 3 and 4 of the agreement reads as under:-

"3. The workers of the CONTRACTOR shall not be treated as employees of the Institute in any case of CONTRACTOR will be Solely responsible for their affairs and will be under obligation to comply with the statutory obligations. These workers will have no claim whatsoever, to be treated as employees of the Institute.

4. The CONTRACTOR will have to abide by the Minimum Wages Act and the other statutory labour laws, rules and regulations as applicable in the State of Uttar Pradesh. Any liability arising on the Institute as principal employer shall be deducted from the bills of the CONTRACTOR and the full amount shall be recovered from the security money and subsequent monthly bills of the CONTRACTOR."

34. The clauses clearly indicate that the workers of the contractor (referring to the respondent herein) shall not be treated as employees of the institute and in any case the contractor would be solely responsible for his own affairs. He was under an obligation to comply with the statutory compliances. The workers could not have any claim whatsoever to be treated as employees of the institute. Similarly, clause 4 of the agreement directed the contractor to abide by the Minimum Wages Act and others statutory Labour Laws as applicable in the State of U.P..

35. The contract further indicated that the appellant was only liable to make the payment to the respondent as per the rates mentioned in clause 42 of the agreement. For better appreciation, Clause 39 to 41 of the contract are being reproduced:-

"39. PAYMENT SCHEDULE;- MAINTENANCE WORK

Normally the payment will be on month basis of Horticulture maintenance works only on submission of the bill after verification and measurement of work by Nodal Officer in every month against work order issued by Horticulture Officer.

40. The CONTRACTOR must ensure that the payment of minimum wages shall be made to his labour in the presence of the Institute representative nominated by the Director of Institute.

41. Payment will be released by the Institute after submission of payment voucher alongwith EPF deposit receipt by the CONTRACTOR RATE."

36. The aforesaid clauses reproduced above, if read together, would indicate that they were incorporated to work as a deterrent for the respondent and was to ensure compliance of necessary labour welfare laws. It did not in any manner, create any relationship between the workers of the respondent and the appellant as an employer or principal employer.

37. In the same vein, the letters dated 01.10.2007 and 30.10.2007 which have been made part of the contract in terms of clause 23 would indicate that it relates only to taxes and duties and cannot be extended to any other labour law compliances. It is not disputed that the Employee Provident Fund Contribution cannot be treated as tax or any duty.

38. The appellant had not given any labour contract that is to say that the respondent was to act as an outsourcing agency to provide the workers to the appellant, rather the entire tenor and texture of the contract dated 16.04.2008 was to give landscaping maintenance agreement to the respondent who exclusively, was to execute the same by himself and through his own workers.

39. In such circumstances, if the respondent had made any Employee Provident Fund Contribution, it was a matter between the respondent and his workers. The agreement did not envisage creating any relationship of employer and employee between the workers of the respondent and the appellant. Thus, in such circumstances, any claim for Employee Provident Fund Contribution could not have been allowed by the Sole Arbitrator.

40. Considering the findings given by the Sole Arbitrator while considering issue nos.5 and 12, it would reveal that the Arbitrator has entirely misconstrued the agreement and has gone beyond the terms of the contract rendering the award susceptible to judicial interference. At the very same time the Commercial Court No.1, Lucknow also fell in the same error and it failed to consider the terms of the contract and the manner in which it was construed by the Sole Arbitrator. The manner in which the Commercial Court no.1, Lucknow decided the petition under Section 34 of the Act of 1996 by merely considering the respective contention, noticing certain decisions of the Apex Court and without appreciating its applicability to the given set of facts and circumstances of the case at hand and it dismissed the petition under Section 34 of the

Act of 1996, cannot be appreciated in law. Thus the claim relating to Employee Provident Fund Contribution granted by the Sole Arbitrator and upheld by the Commercial Court no.1, Lucknow is unsustainable in law and is liable to be set aside.

41. The learned Senior Counsel for the appellant though had made submissions regarding the claim relating to the deduction made by the appellant referable to the penalty imposed but could not substantiate the same and candidly made a statement that he does not wish to press his third submission. Hence this Court does not propose to delve any further into it and suffice to state that the said ground shall stand rejected as not pressed.

42. This Court in light of the detailed discussions as noticed hereinabove finds that two of the claims awarded could not have been allowed. Now, as a concomitant whether the entire award is required to be set aside or the award dated 20.08.2020 can be modified, by severing the offending part of the award and preserving the remaining part.

43. In order to overcome the said dilemma, this Court first deems appropriate to examine what claims have been allowed and for the ease of reference, the concluding portion of the award is being reproduced hereinafter:-

"Claimant has claimed in his original claim Rs.31,04,533/- and security money with expenses.

It shows claimant is uncertain and confuse for the amount of claim.

(i) None supply of diesel lawn mover @ 48,0000/- per year and for three years Rs.1,44,000/- and 18% interest thereon.

(ii) Claimant is also entitled regarding EPF reimbursement Rs.6,17,629/- and also 18% interest thereon.

(iii) Claimant is also entitled Rs.57,521/- illegal fine which was imposed by opposite party and deducted from his bill with 18% interest thereon.

(iv) Claimant is also entitled refund of security money Rs.6,12,000/- and bill Rs.9,456/- with 18% interest thereon.

(v) Claimant is also entitled 5% increase in 3rd year of bill of Rs.1,74,996.- with 18% interest thereon.

(vi) Claimant is also entitled his advocate fees and other expenses Rs.5,15,000/-

So, total amount which claimant is entitled Rs.21,30,602/-."

44. Having considered the nature of the claim and the way they have been separately considered by the Sole Arbitrator and the claims have been awarded under distinct heads, this can permit this Court to examine whether the entire award needs to be set aside or only the offending part is capable of being severed and the award can be modified to the aforesaid extent.

45. From the bare reading of Section 34 of the Act 1996, it would indicate the language used in Section 34 of the Act of 1996 is "application for setting aside Arbitral awards". Whether the Courts in terms of Section 34 of the Act of 1996 has the power to modify the award. This specific question was referred to a Constitution Bench of the Supreme Court in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1**. The Apex Court after considering the provisions of the Act and the law held that the Courts do possess limited powers under the Act of 1996 to modify the award by applying the doctrine of severability in limited circumstances. What would be the limited scope and circumstances was explained in the majority judgment in **Gayatri**

Balasamy (supra). The propositions and guidelines laid down by the Apex Court can be summarized as under:-

(i) Only severable awards are amenable to modification.

A composite or indivisible arbitral award cannot be modified. Modification is permissible only where the claims, or parts of the award, are legally and pragmatically severable from the valid portion. In such cases, the court may sever the invalid part while preserving the remainder of the award. This constitutes one of the essential guardrails laid down by the Supreme Court for the exercise of the limited power to modify an arbitral award.

(ii) The error sought to be corrected must be patent and apparent on the face of the record.

The Supreme Court has clarified that modification is confined to the correction of obvious and self-evident errors, such as clerical, computational, or typographical mistakes. Modification is permissible only where the court has no uncertainty or doubt as to the correction; if the alleged error is debatable or not apparent on the face of the record, the court lacks jurisdiction to modify the award.

(iii) Modification is permissible for correcting or adjusting post-award interest.

Courts may modify an arbitral award where such modification is confined to the correction or adjustment of post-award interest, without disturbing the substantive findings of the Arbitral Tribunal.

(iv) Where modification is impermissible, the matter must be remanded.

In cases where the error cannot be corrected within the aforesaid guardrails and if it would require a review on merits or re-adjudication, the court must refrain from modifying the award and where permissible in law, remand the matter to the Arbitral Tribunal.

46. This Court applying the above mentioned principles finds that it is a fit case where certain claims which could not have been granted can be severed from the award and preserve the remaining part rather than setting aside the entire award. Accordingly, the claims under the head of Employee Provident Fund Contribution reimbursement of Rs.6,17,629/- alongwith interest at the rate of 18% per annum (which is at serial no.2 of paragraph 43 above) and the claim relating to the refund of security money of Rs.6,12,000/- and bill of Rs.9456/- with 18% interest per annum (which is at serial no.4 of paragraph 43 above) are disallowed and shall stand rejected. The rest of the claims as awarded and mentioned in paragraph 43 above shall remain intact and preserved. Accordingly, the award dated 20.08.2020 shall stand modified to the above extent.

47. It will be open for the respondent to raise his claims relating to the return of security money and any other outstanding bill of claims pertaining to contract no.107 of 2013-2014, if the law so permits, before the appropriate forum/court. It is made clear that this Court has not made any observation on merits relating to any claim of the respondent which may be relatable to Contract No.107 of 2013-2014 and if the respondent raises his claims in respect of the said contract, needless to say, it shall be considered on its own merits.

48. Subject to the modification made in the award dated 20.08.2020, as aforesaid, the appeal is **partly allowed**. In the facts and circumstances, there shall be no order as to costs.

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)

February 18, 2026

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