

Buyer Cannot Reject Goods After Putting Them To Use: Bombay High Court

Authors: **Vasanth Rajasekaran*** and **Harshvardhan Korada****

Introduction

In *Godrej And Boyce Manufacturing Company Limited v. Remi Sales and Engineering Limited* (2025:BHC-OS:26730), the High Court of Bombay addressed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("**the Act**") challenging an arbitral award directing payment of INR 4,25,44,680/- along with interest at 10% per annum in favour of the respondent-supplier of stainless steel seamless tubes.

The High Court dismissed the petition, holding that the Arbitral Tribunal's findings of fact were supported by evidence on record and did not suffer from perversity or patent illegality. The judgment reaffirms the well-settled principle that a Court exercising jurisdiction under Section 34 of the Act cannot re-appreciate evidence or substitute its own interpretation of contractual terms for that of the Tribunal.

Facts

The petitioner, Godrej And Boyce Manufacturing Company Limited ("**Godrej**"), is a company engaged in the manufacture of engineering and capital goods. The respondent, Remi Sales and Engineering Limited ("**Remi**"), is engaged in trading and marketing of various goods.

On 24 August 2016, Godrej issued a purchase order to Remi for supply of 8,339 stainless steel seamless tubes ("**tubes**"). The purchase order was revised on 7 December 2016, with a final value of INR 5,01,20,732.16. The tubes were required to conform to SA 213 TP 316/316L specifications, manufactured using pierced mother hollows, and were intended for use in heat exchangers at an oil and gas refinery in Oman. The purchase order designated TUV-SUD South Asia Pvt. Ltd. as the third party inspection agency ("**TPIA**").

Remi supplied the tubes in 14 consignments between February and March 2017. Godrej accepted delivery and inserted the tubes in the heat exchangers. In April 2017, Godrej reported pitting and rusting in some tubes. Following meetings between the parties, Remi proposed cleaning the affected tubes. With Godrej's approval, 965 tubes were sent for cleaning through a standard ASTM A-380 procedure. After cleaning, the tubes were re-inserted in the heat exchangers. Despite having accepted the cleaned tubes, Godrej subsequently decided to reject the entire lot, alleging persistent defects. When Remi demanded payment, Godrej disputed the demand. Remi invoked the arbitration clause in December 2017, and the Bombay High Court constituted the Arbitral Tribunal in April 2018.

The Arbitral Tribunal, after considering the evidence of eight witnesses and extensive documentary material, rendered its award on 8 February 2023 substantially in favour of Remi, awarding INR 4,25,44,680/- (after deducting counterclaims of INR 22,13,626/- allowed in Godrej's favour) together with interest at 10% per annum.

Arguments before the High Court

Godrej contended that the award suffered from patent illegalities and perverse findings. Its principal arguments were as follows:

- (i) The Arbitral Tribunal erroneously applied Section 42 of the Sale of Goods Act, 1930 ("**Sale of Goods Act**") to hold that Godrej was deemed to have accepted the goods by inserting the tubes in the heat exchangers. Godrej relied on Clause 6(b) of the purchase order, which reserved the right to reject defective material even after acceptance, and submitted that Sections 13 and 62 of the Sale of Goods Act permitted parties to contractually vary such statutory provisions.
- (ii) The Arbitral Tribunal disregarded Clause 12 of the purchase order, which stipulated that any indulgence or accommodation granted by Godrej would not constitute a waiver of its rights.
- (iii) The Tribunal ignored multiple admissions by Remi's officials regarding rusting and pitting in the tubes and perversely held that the tubes were not defective. Reliance was placed on ***South East Asia Marine Engineering and Construction Ltd. v. Oil India Ltd.*** [(2020) 5 SCC 164], ***PSA Sical Terminals Pvt. Ltd. v. Board of Trustees VOCPT*** [(2023) 15 SCC 781], and ***IRCTC v. Brandava Food Products*** [2025 SCC OnLine SC 2369].
- (iv) Remi opposed the petition, submitting that the Tribunal had conducted a thorough factual inquiry, relied on multiple independent test reports including those of the TPIA appointed at Godrej's behest, and recorded cogent findings. Remi argued that re-appreciation of evidence was impermissible under Section 34 of the Act, relying on ***McDermott International INC. v. Burn Standard Co. Ltd.*** [(2006) 11 SCC 181], ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.*** [(2022) 1 SCC 131], and ***Reliance Infrastructure Ltd. v. State of Goa*** [(2024) 1 SCC 479]. Remi further relied on ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Limited*** [(2019) 20 SCC 1] to submit that even gaps in reasoning would not warrant setting aside an award.

Decision of the High Court

The High Court dismissed the petition and upheld the arbitral award, arriving at the following key conclusions:

First, the High Court upheld the Tribunal's finding that the tubes conformed to the prescribed specifications. The Court noted that the Tribunal had relied on quality certificates issued by the raw material manufacturer, inspection reports, mill test certificates conducted with the TPIA's participation, IGC test reports, and the TPIA's own inspection reports confirming compliance. Godrej's own witness had confirmed that no discrepancy was found in the chemical composition of the tubes upon conducting a PMI test. The Court held that some stray admissions about non-examination of mother hollows or absence of an inspection engineer during certain tests could not render the Tribunal's finding perverse, observing that what Godrej sought was impermissible re-appreciation of evidence.

Secondly, the High Court conducted a detailed analysis of Section 42 of the Sale of Goods Act, which creates a deeming fiction of acceptance when the buyer does any act in relation to goods that is inconsistent with the ownership of the seller. The Court held that Godrej's insertion of the tubes in the heat exchangers constituted such an inconsistent act, thereby giving rise to deemed acceptance. Regarding Clause 6(b) of the purchase order, the Court distinguished between the concepts of "*passing of title*" and "*acceptance of goods*," and held that the clause did not cover the situation of consumption or use of goods. Relying on the Gujarat High Court's decision in ***Shah Mohanlal Manilal v. Firm Tunning*** [1961 1 SCC OnLine Gujarat 43], the Court held that a buyer who uses or consumes goods cannot subsequently reject them.

Thirdly, the Court upheld the Tribunal's finding that there was no material defect in the tubes. The minutes of meetings relied upon by Godrej did not contain unequivocal admissions of defect by Remi. The Court noted that Godrej had approved the cleaning procedure, accepted the cleaned tubes, and re-inserted them – yet failed to produce boroscopy reports that it claimed to have conducted. The existence of an ASTM A-380 standard cleaning procedure for the relevant grade of steel itself indicated that some degree of surface contamination was a known possibility, not necessarily evidence of a manufacturing defect.

Fourthly, the High Court applied the doctrine of election, relying on ***Bhagwat Sharan v. Purshottam*** [(2020) 6 SCC 387], to hold that Godrej could not approbate and reprobate at the same time. Having elected to accept the cleaning remedy, approved the process, sent 965 tubes for cleaning, accepted the cleaned tubes, and re-inserted them in the heat exchangers, Godrej could not subsequently rely on the original defects to justify rejection. The Court characterised Godrej's reversal of position as a *volte-face* aimed at avoiding payment.

Finally, the Court held that any defect discovered after use of the goods could only give rise to a warranty claim, not a right of rejection. Since Godrej had not raised any counterclaim towards warranty, and the Tribunal's findings were supported by the evidence on record, no case for interference under Section 34 of the Act was made out.

Key Takeaways

The decision of the Bombay High Court in ***Godrej And Boyce (supra)*** is particularly relevant as it reinforces the following principles:

- (i) The scope of judicial interference under Section 34 of the Act is confined to cases of perversity or patent illegality. A Court exercising such jurisdiction is not an appellate court and cannot re-appreciate or re-evaluate evidence merely because another view is possible.
- (ii) Under Section 42 of the Sale of Goods Act, a buyer who uses or consumes goods is deemed to have accepted them and cannot subsequently reject them. A contractual clause reserving the right to reject defective material does not, without more, override this statutory deeming fiction where the buyer has already put the goods to use.

- (iii) The doctrine of election precludes a party from adopting inconsistent positions. A buyer who accepts a remedial measure proposed by the seller (such as cleaning of goods) and uses the remedied goods cannot subsequently reject the entire consignment on the basis of the very same defects that were addressed by the remedy.
- (iv) Admissions recorded in minutes of meetings are not conclusive proof and must be appreciated in the proper context. Where an admission is qualified or followed by a remedial course of action accepted by both parties, it cannot be treated as an absolute admission constituting waiver of proof.

Where a buyer discovers defects in goods after deemed acceptance, the proper remedy is a claim for breach of warranty, not rejection of goods.

***Vasanth Rajasekaran** is the Founder and Head of Trinity Chambers, Delhi.

**** Harshvardhan Korada** is a Counsel at Trinity Chambers, Delhi.

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Authors



Vasanth Rajasekaran
Founder & Head
vasanth@trinitychambers.in



Harshvardhan Korada
Counsel
harshvardhan@trinitychambers.in