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

Judgment reserved on: 19.05.2026
Judgment pronounced on: 01.07.2026

\+ O.M.P. (COMM) 447/2024, I.A. 43035/2024 (Seeking Requisitioning /Summoning of arbitral record) & I.A. 43036/2024 (Stay)

STEEL AUTHORITY OF INDIA LTD. .....Petitioner

Through: Mr. Jayant Mehta, Senior Advocate with Ms. Sangeeta Sondhi, Mr. Amit Patra and Ms. Mansvini, Advocates.

versus

NCC LTD. .....Respondent

Through: Dr. Amit George, Mr. Rishabh Dheer, Ms. Aishwarya Singh, Ms. Rupam Jha, Mr. Prateek Srivastava and Mr. Sarthak Bhardwaj, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, filed by **Steel Authority of India**[1] under Section 34 of the **Arbitration and Conciliation Act, 1996**[2], seeks to set aside the **Arbitral Award dated 08.01.2024**[3] rendered by the **learned Sole Arbitrator, Mr. Andrew G. Moran KC**[4], in the matter titled "*NCC Ltd. and Steel Authority of India*", being ICC Case No.

[1] Petitioner
[2] A&C Act
[3] Impugned Award
[4] learned Tribunal

26600/HTG, passed in favour of **NCC Limited**[5].

2. By way of the Impugned Award, the learned Tribunal allowed the Respondent's claim and directed a refund of the amount withheld on account of the alleged shortfall in the **Minimum Guaranteed Tax Credit**[6], along with interest and costs.

FACTUAL MATRIX:

3. The dispute is stated to arise out of a **Contract Agreement dated 16.10.2007**[7] executed between the Petitioner and a Consortium comprising the Respondent and **POSCO Engineering & Construction Co. Ltd.**[8] for the execution of works relating to the **Blast Furnace Complex (Package No. 07) under the 2.5 MT New Stream Expansion Project at the IISCO Steel Plant, Burnpur, West Bengal**[9].

4. Under the Contract, the **Respondent and POSCO**[10], *i.e.*, the Consortium, were entrusted with the design, engineering, procurement, supply, construction, erection, testing and commissioning of the facilities. The total contract price was fixed in both Euro and Indian Rupee components.

5. It is the case of the Petitioner that the Contract further contemplated that the Petitioner would derive the benefit of the MGC, which included CENVAT credit, VAT credit and VAT on Works Contract credit.

6. It is stated that Article 2.1 of the Contract stipulated that MGC

[5] Respondent
[6] MGC
[7] Contract
[8] POSCO
[9] Project
[10] Consortium

to be made available to the Petitioner would be Rs. 103.85 crores. Clause 14.5.6 of the **General Conditions of Contract**[11] further provided that the Respondent would ensure the availability of the minimum guaranteed tax credit and, in the event of any shortfall, such shortfall could be recovered by the Petitioner.

7. During execution of the Contract, the parties entered into an amendment to Contract dated 17.12.2008, whereby the MGC obligation was apportioned between the Consortium members. The Respondent became responsible for providing tax credit amounting to approximately Rs. 47.29 crores, whereas POSCO became responsible for providing tax credit amounting to approximately Rs. 56.56 crores.

8. Eventually, the project was not completed within the originally contemplated completion schedule. The facilities were commissioned during the execution period and the Final Acceptance Certificate was ultimately issued on 10.05.2018. During the execution of the Contract, changes occurred in the applicable indirect tax regime.

9. During the relevant time, according to the Respondent, such changes materially affected the quantum of tax credit that could ultimately be generated and passed on to the Petitioner.

10. The Petitioner, however, maintained that the obligation undertaken under the Contract was a guaranteed obligation independent of subsequent changes in tax rates or tax structures.

11. Upon verification of the tax credit documents furnished by the Consortium, the Petitioner took the position that the MGC stipulated under the Contract had not been achieved. Consequently, Petitioner commenced withholding and adjusting amounts otherwise payable under the Contract towards the alleged shortfall in the MGC. The first

[11] GCC

such deduction was effected *vide* an invoice dated 27.07.2013.

12. The Respondent disputed the deductions and asserted that the alleged shortfall was neither contractually recoverable nor attributable to any breach on its part. According to the Respondent, the MGC figures had been premised upon the tax regime prevailing at the time of bidding and execution of the Contract, and subsequent statutory changes substantially affected the tax credit position.

13. Between 2014 and 2021, extensive correspondence was exchanged between the parties concerning the deductions effected by Petitioner. The parties also explored various modes of dispute resolution contemplated under the Contract, including amicable settlement and conciliation proceedings.

14. On 25.10.2016, Respondent and POSCO invoked the amicable settlement mechanism under the Contract. Subsequently, in January 2018 and again in May 2020, attempts were made to initiate conciliation proceedings in terms of the contractual dispute resolution framework. The dispute, however, remained unresolved.

15. The Respondent maintained that throughout this period the parties were actively engaged in discussions concerning the deductions and that the Petitioner never communicated any final or unequivocal rejection of its claim. Petitioner, on the other hand, contended that the deductions had been effected long prior thereto and that any claim seeking recovery thereof was barred by limitation.

16. On 20.10.2021, the Respondent invoked arbitration under Article 10.1 of the Contract and commenced proceedings before the International Chamber of Commerce. Although POSCO was initially impleaded as a *pro forma* party, however *vide* Order dated 23.09.2022, the learned Tribunal allowed POSCO's Application and

directed that it be struck off from the proceedings.

17. Before the learned Tribunal, the Respondent raised two claims *viz.*, Claim No. 1 seeking refund of Rs. 16,91,03,984/- withheld by the Petitioner towards the alleged shortfall in the MGC, along with interest and Claim No. 2 related to interest allegedly payable on account of delayed payment for certain additional works.

18. Insofar as Claim No. 1 was concerned, the Petitioner raised a preliminary objection that the claim was barred by limitation before the learned Arbitrator. On the merits, the Petitioner contended that the MGC obligation constituted an absolute contractual commitment and that it was contractually entitled to recover any shortfall from amounts payable to NCC.

19. The Respondent disputed both the aforesaid contentions. The Respondent contended that the claim was within limitation, having regard to the continuing negotiations and dispute resolution efforts undertaken by the parties. The Respondent, before the learned Tribunal, further contended that the deductions effected by Petitioner were contrary to the contractual scheme and that no recoverable shortfall had been established.

20. By way of the Impugned Award dated 08.01.2024, the learned Tribunal rejected the Petitioner's objection on limitation and further upheld the Respondent's claim for refund of the amount withheld towards the alleged shortfall in the MGC. The learned Tribunal consequently awarded the said amount together with interest and costs.

21. Aggrieved thereby, the Petitioner instituted the present petition under Section 34 of the A&C Act.

CONTENTIONS ON BEHALF OF THE PARTIES:

22. At the outset, learned counsel appearing on behalf of the Petitioner would submit that the Petitioner confines the challenge to the Impugned Award insofar as it relates to Claim No. 1 only and therefore does not press any challenge to the remainder of the Impugned Award.

23. Learned counsel would submit that the Impugned Award, insofar as it pertains to Claim No.1, proceeds upon a fundamentally erroneous interpretation of the contractual framework governing the parties. It would be contended that the learned Tribunal has failed to give effect to the plain language employed by the parties in the Contract and has, in the process, rewritten the bargain consciously negotiated between them.

24. Learned counsel for the Petitioner would submit that the Contract expressly contemplated an MGC of Rs. 47.29 Crores and that the said stipulation formed an integral component of the commercial understanding between the parties. It would be contended that the guarantee was neither conditional nor contingent upon the actual quantum of tax ultimately paid during execution of the Contract. According to the learned counsel for the Petitioner, the very use of the expression *"minimum guaranteed credit"* demonstrates the intention of the parties to assure the availability of a specified minimum benefit irrespective of subsequent fluctuations in the tax regime, or any other external factor whatsoever.

25. Learned counsel would further submit that the learned Tribunal fell into manifest error in treating the guaranteed credit mechanism as dependent upon the actual tax incidence suffered during execution of

the works. It would be contended that such an interpretation renders the expression *"minimum guaranteed"* wholly otiose and deprives the contractual stipulation of any independent meaning. According to the learned counsel for the Petitioner, if the entitlement were restricted only to the credit actually available, there would have been no occasion for the parties to expressly provide for a minimum guaranteed figure under the Contract.

26. Learned counsel would submit that the learned Tribunal has erroneously proceeded on the basis that a reduction in applicable tax rates during the contractual period necessarily reduced the Respondent's obligation under the Contract. It would be contended that the subsequent reduction in tax rates was a commercial contingency consciously allocated by the parties and could not be invoked to dilute the contractual assurance expressly furnished by the Respondent. According to the learned counsel for the Petitioner, the learned Tribunal has effectively permitted the Respondent to escape a contractual commitment solely on account of a supervening reduction in tax liability.

27. Learned counsel would further contend that the learned Tribunal has failed to appreciate the distinction between the concepts of actual tax incidence and guaranteed contractual credit. It would be submitted that the latter constituted an independent commercial undertaking forming part of the overall financial structure of the transaction and was not intended to fluctuate with changes in tax rates. The interpretation adopted by the learned Tribunal, according to the Petitioner, impermissibly conflates two distinct contractual concepts.

28. Learned counsel would submit that the learned Tribunal has also erred in accepting the Respondent's justification regarding non-

furnishing of the requisite tax documentation. It would be contended that the Respondent was under a contractual obligation to provide the documentation necessary to enable the Petitioner to avail the assured credit benefits and could not rely upon disputes concerning payment under the Contract as a justification for withholding the same. According to the learned counsel for the Petitioner, the Impugned Award fails to appreciate the independent nature of the Respondent's obligations in this regard.

29. Learned counsel would further submit that the findings returned by the learned Tribunal are contrary to the express terms of the Contract and therefore attract interference under Section 34 of the A&C Act. It would be contended that the Award does not merely involve a possible interpretation of the Contract but proceeds in disregard of material contractual stipulations and consequently suffers from patent illegality apparent on the face of the Award.

30. Learned counsel would contend that the learned Tribunal has adopted an interpretation which no fair-minded or reasonable person properly instructed in law could have arrived at upon a plain reading of the contractual provisions. It would be submitted that the Impugned Award effectively substitutes the contractual bargain negotiated by the parties with a different arrangement altogether and thereby exceeds the permissible limits of contractual interpretation.

31. Learned counsel would therefore submit that the findings of the learned Tribunal allowing Claim No.1 and directing refund of Rs. 16,91,03,984/- are liable to be set aside under Section 34 of the A&C Act.

32. It would accordingly be prayed that the Impugned Award, to the extent it rejects Claim No.1, be interfered with and consequently set

aside.

33. ***Per contra,*** learned counsel appearing on behalf of the Respondent would submit that the challenge raised by the Petitioner is wholly misconceived and proceeds on an impermissible attempt to seek re-appreciation of the contractual interpretation adopted by the learned Tribunal.

34. Learned counsel appearing on behalf of the Respondent would, at the outset, submit that the scope of interference under Section 34 of the A&C Act against an International Commercial Arbitral Award is extremely limited. It would be contended that the present petition seeks a re-appreciation of evidence, contractual provisions and findings of fact returned by the learned Tribunal, which is wholly impermissible in proceedings under Section 34 of the A&C Act.

35. Reliance would be placed upon the decisions of the Hon'ble Supreme Court in ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI***[12] and ***MMTC Ltd. v. Vedanta Ltd.***[13], to contend that in the case of an International Commercial Arbitration Award, interference on the ground of patent illegality is statutorily excluded and the Court is concerned only with examining whether any ground under Section 34(2) of the A&C Act is made out. It would be submitted that the Petitioner has failed to demonstrate any violation of the fundamental policy of Indian law, any conflict with the most basic notions of justice or morality, or any other ground warranting interference with the Award.

36. Learned counsel would further submit that the learned Tribunal has undertaken a detailed examination of the contractual framework,

[12] (2019) 15 SCC 131
[13] (2019) 4 SCC 163

the correspondence exchanged between the parties, the applicable tax regime and the evidence led before it, before arriving at the conclusions contained in the Impugned Award. It would be contended that the findings returned by the learned Tribunal are findings of fact and contractual interpretation which lie wholly within the domain of the learned Tribunal's jurisdiction and are therefore entitled to substantial judicial deference under Section 34 of the A&C Act.

37. Learned counsel would submit that the Petitioner's challenge proceeds on the erroneous assumption that the interpretation canvassed by it is the only possible interpretation of the Contract. It would be contended that even assuming an alternative construction of the contractual provisions were possible, the same would furnish no ground for interference under Section 34 of the A&C Act so long as the interpretation adopted by the learned Tribunal remains a plausible and reasonable one arising from the terms of the Contract.

38. Learned counsel would further submit that the learned Tribunal correctly interpreted the contractual provisions governing tax credits and the overall pricing structure of the Contract. It would be contended that the Contract never contemplated conferment of tax benefits in excess of those actually available under law. According to the learned counsel for the Respondent, the interpretation sought to be advanced by the Petitioner would result in conferring upon it a financial benefit substantially exceeding the tax credit actually generated during execution of the Contract.

39. Learned counsel would submit that the learned Tribunal correctly appreciated that the contractual provisions had to be read harmoniously and as part of a composite commercial arrangement. It would be contended that the learned Tribunal examined the relevant

clauses, specifically Article 2 of the Contract and Clause 14.5.6 of the GCC, in conjunction with one another and concluded that the MGC mechanism could not be divorced from the actual availability of tax credits under the applicable statutory tax regime.

40. Learned counsel would further submit that the interpretation advocated by the Petitioner would produce commercially absurd consequences. According to the learned counsel for the Respondent, acceptance of the Petitioner's contention would require the Respondent to provide credit benefits substantially in excess of the taxes actually suffered or available under the transaction, thereby converting a tax-credit mechanism into an unwarranted source of commercial gain. It would be contended that the learned Tribunal correctly rejected such an interpretation.

41. Learned counsel would submit that the learned Tribunal has extensively considered the effect of subsequent reductions in tax rates and has correctly concluded that the contractual provisions could not be construed in isolation from the actual tax framework applicable during execution of the works. It would be contended that the Impugned Award reflects a commercially sensible interpretation consistent with the overall structure and purpose of the Contract.

42. Learned counsel would further submit that the findings returned by the learned Tribunal regarding the furnishing of documentation and the parties' respective obligations thereunder are likewise based upon a detailed appreciation of the evidence on record. It would be contended that the Petitioner seeks nothing more than a re-appreciation of the evidentiary record, which is wholly impermissible in proceedings under Section 34 of the A&C Act.

43. Learned counsel would submit that no ground falling within the

limited contours of Section 34 of the A&C Act has been made out. It would be contended that the Award neither disregards the terms of the Contract nor arrives at a conclusion which is irrational, perverse or impossible. On the contrary, the learned Tribunal has adopted a view which is both plausible and commercially reasonable.

44. Learned counsel would therefore submit that the challenge mounted by the Petitioner is, in substance, an appeal against the merits of the Award masquerading as a petition under Section 34 of the A&C Act. Such an exercise, according to the learned counsel, is impermissible in law.

45. Learned counsel would accordingly pray that the present Petition be dismissed and the Impugned Award be upheld in its entirety, including the Award to Claim No. 1.

ANALYSIS:

46. This Court has heard the learned counsel appearing on behalf of the parties and, with their able assistance, carefully perused the material available on record.

47. At the very outset, it is necessary to note that during the course of the hearing, learned counsel appearing on behalf of the Petitioner expressly confined the present challenge to the findings returned by the learned Tribunal in respect of Claim No.1, pertaining to the amount of Rs. 16,91,03,984/- withheld by the Petitioner towards the alleged shortfall in the MGC. The findings returned by the learned Tribunal in respect of the remaining claims have not been assailed and have consequently attained finality.

48. At this juncture, it is apposite to reiterate the well-settled limitations governing the exercise of jurisdiction under Section 34 of

the A&C Act, particularly in the context of an International Commercial Arbitration. The jurisdiction of this Court in such proceedings is supervisory and not appellate in nature, and therefore does not permit a reappreciation of facts or a reconsideration of the merits of the dispute as though this Court were sitting in appeal over the arbitral award.

49. There exists a consistent and authoritative line of decisions rendered by the Hon'ble Supreme Court, which has clearly delineated the contours of judicial interference under Section 34 of the A&C Act. Such precedents repeatedly emphasise that the scope of interference with an arbitral award arising out of an International Commercial Arbitration is significantly narrower than that applicable in the case of a purely domestic award.

50. In this regard, this Court considers it apposite to refer to the decision of the Hon'ble Supreme Court in ***Ssangyong Engineering*** (*supra*), wherein the Apex Court, while examining the scope of interference with an arbitral award arising out of an International Commercial Arbitration, reiterated that, by virtue of Section 34(2A) read with Section 2(1)(f) of the A&C Act, the ground of '*patent illegality*' is not available as a basis for challenging an award rendered in an International Commercial Arbitration. The Apex Court further clarified that the additional ground introduced under Section 34(2A) of the A&C Act is confined only to domestic arbitral awards and does not extend to awards arising from International Commercial Arbitrations seated in India. The relevant extracts from the said judgment are reproduced hereunder:

> "**34.** What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of

Indian law as explained in paragraphs 18 and 27 of ***Associate Builders*** (supra), i.e., the fundamental policy of Indian law would be relegated to the "Renusagar understanding of this expression. This would necessarily mean that the ***Western Geco*** (supra) expansion has been done away with. In short, ***Western Geco*** (supra), as explained in paragraphs 28 and 29 of ***Associate Builders*** (supra), would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in paragraph 30 of ***Associate Builders*** (supra).

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36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of ***Associate Builders*** (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of ***Associate Builders*** (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that ***Western Geco*** (supra), as understood in ***Associate Builders*** (supra), and paragraphs 28 and 29 in particular, is now done away with.

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, paragraph 42.1 of ***Associate Builders*** (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of ***Associate Builders*** (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

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> **41.** What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of ***Associate Builders*** (supra), while no longer being a ground for challenge under "public policy' of India, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.
> **42.** Given the fact that the amended Act will now apply, and that the "patent illegality" ground for setting aside arbitral awards in international commercial arbitrations will not apply."
>
> ***(emphasis supplied)***

51. In view of the aforesaid settled principles governing the limited scope of judicial interference under Section 34 of the A&C Act in matters arising out of International Commercial Arbitration, this Court now proceeds to examine the Impugned Arbitral Award strictly within the narrow confines permissible under the said provision. In proceedings of the present nature, the scope of interference remains circumscribed by the grounds expressly enumerated under Section 34(2) of the A&C Act, including Section 34(2)(b)(ii), *namely*, whether the award is in conflict with the public policy of India.

52. The significant facet of Section 34 of the A&C Act, namely, "*conflict with the public policy of India*", which constitutes the core fulcrum for testing an arbitral award arising out of an International Commercial Arbitration, has been comprehensively explained and authoritatively summarised by a three-Judge Bench of the Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[14].

53. The said judgment, after undertaking an exhaustive examination

[14] (2025) 2 SCC 417

of a catena of prior decisions rendered on the subject, lucidly delineates the contours, limitations, and permissible extent of judicial interference on the ground of "*public policy of India*", particularly after the amendments introduced by the Arbitration and Conciliation (Amendment) Act, 2015.

54. The Hon'ble Supreme Court, in that Judgment, while summarising the legal position in paragraphs 55 and 56 of the said judgment, reiterated that following the 2015 Amendments to Sections 34(2)(b)(ii) and 48(2)(b) of the A&C Act, the expression "*conflict with the public policy of India*" has been accorded a narrow and restricted interpretation, and since mere contravention of law is insufficient to invalidate an arbitral award unless such contravention affects the fundamental policy of Indian law governing the administration of justice and enforcement of law, only violations such as breach of natural justice, disregard of binding judgments or orders of superior courts, or contravention of laws linked to public interest or public good may justify interference, though even such scrutiny cannot extend into a review on merits. Certain pertinent observations from ***OPG Power*** (*supra*) are reproduced hereunder:

> *"**Public policy***
> **31.** "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.
> *****
> **36.** In fact, in ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644]**, this Court was dealing with the enforceability of a foreign award. For that end, it had to interpret the expression "contrary to public policy" in the context of Section 7(1)(*b*)(*ii*) of the Foreign Awards (Recognition and Enforcement) Act, 1961. While doing so, this Court held that:

(*a*) contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required [***Renusagar Power Co. case*, 1994 Supp (1) SCC 644, para 65**]; and

(*b*) the expression "public policy" must be construed in the sense the doctrine of public policy is applied in the field of private international law.

Applying the said criteria, it was held that enforcement of a foreign award could be refused on the ground of being contrary to public policy if such enforcement would be contrary to:

(*a*) fundamental policy of Indian law, or

(*b*) the interests of India, or

(*c*) justice or morality [***Renusagar Power Co. case*, 1994 Supp (1) SCC 644, para 66**].

The Court thereafter proceeded to hold that a contravention of the provisions of the Foreign Exchange Regulation Act would be contrary to the public policy of India as that statute is enacted for the national economic interest to ensure that the nation does not lose foreign exchange which is essential for the economic survival of the nation [***Renusagar Power Co. case*, 1994 Supp (1) SCC 644, para 75**].

37. What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.

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41. In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, a two-Judge Bench of this Court, held that *audi alteram partem* principle is undoubtedly a fundamental juristic principle in Indian law and is enshrined in Sections 18 and 34(2)(*a*)(*iii*) of the 1996 Act. In addition to the earlier recognised principles forming fundamental policy of Indian law, it was held that disregarding:

(*a*) orders of superior courts in India; and

(*b*) the binding effect of the judgment of a superior court would also be regarded as being contrary to the fundamental policy of Indian law [See ***Associate Builders case*, (2015) 3 SCC 49, para 27**].

Further, elaborating upon the third juristic principle (i.e. qua perversity), as laid down in ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263**, it was observed that where:

(*i*) a finding is based on no evidence; or

(*ii*) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(*iii*) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse [***Associate Builders case*, (2015) 3 SCC 49, para 31**].

To this a caveat was added by observing that when a court applies the "public policy test" to an arbitration award, it does not act as a court of appeal and, consequently, errors of fact cannot be corrected; and a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score. Thus, once it is found that the arbitrator's approach is not arbitrary or capricious, it is to be taken as the last word on facts [***Associate Builders case*, (2015) 3 SCC 49, para 33**] .

The 2015 Amendment in Sections 34 and 48

42. The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not used by the legislature in either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*). The pre-amended Section 34(2)(*b*)(*ii*) and its Explanation read:

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44. By the 2015 Amendment, in place of the old Explanation to Section 34(2)(*b*)(*ii*), *Explanations 1 and 2* were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted/added Explanations would apply [***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

46. The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*), in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it does away with the use of words: (*a*) "*without prejudice to the generality of sub-clause (ii)*" in the opening part of the pre-amended Explanation to Section 34(2)(b)(ii); and (b) "*without prejudice to the generality of clause (b) of this section*" in the opening part of the pre-amended Explanation to Section 48(2)(*b*); secondly, it limits the expanse of public policy of India to the three specified categories by using the words "*only if*". Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*) of the 1996 Act.

47. The 2015 Amendment by inserting sub-section (2-A) in Section

34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

48. *Explanation 1* to Section 34(2)(*b*)(*ii*), specifies that an arbitral award is in conflict with the public policy of India, *only if*:

(*i*) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(*ii*) it is in contravention with the fundamental policy of Indian law; or

(*iii*) it is in conflict with the most basic notions of morality or justice.

49. In the instant case, there is no allegation that the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81. Therefore, we shall confine our exercise in assessing as to whether the arbitral award is in contravention with the fundamental policy of Indian law, and/or whether it conflicts with the most basic notions of morality or justice. Additionally, in the light of the provisions of sub-section (2-A) of Section 34, we shall examine whether there is any patent illegality on the face of the award.

50. Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions:

(*a*) "in contravention with the fundamental policy of Indian law";

(*b*) "in conflict with the most basic notions of morality or justice"; and

(*c*) "patent illegality" have been construed.

In contravention with the fundamental policy of Indian law

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

(*a*) the fundamental policy of Indian law; and/or

(*b*) the interest of India; and/or

(*c*) justice or morality.

52. In the judicial pronouncements that followed ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, already discussed above, the domain of what could be considered contrary to the "public policy of India"/"fundamental policy of

Indian law" expanded, resulting in much greater interference with arbitral awards than what the lawmakers intended. This led to the 2015 Amendment in the 1996 Act.

53. In ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**, this Court dealt with the effect of the 2015 Amendment. While doing so, it took note of a supplementary report of February 2015 of the Law Commission of India made in the context of the proposed 2015 Amendments. The said supplementary report has been extracted in para 30 of that judgment. The key features of it are summarised below:

(*a*) Mere violation of law of India would not be a violation of public policy in cases of international commercial arbitrations held in India.

(*b*) The proposed 2015 Amendments in the 1996 Act [i.e. in Sections 34(2)(*b*)(*ii*) and 48(2)(*b*) including insertion of sub-section (2-A) in Section 34] were on the assumption that the terms, such as, "fundamental policy of Indian law" or conflict with "most basic notions of morality or justice" would not be widely construed.

(*c*) The power to review an award on merits is contrary to the object of the Act and international practice.

(*d*) The judgment in ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263** would expand the court's power, contrary to international practice. Hence, a clarification needs to be incorporated to ensure that the term "fundamental policy of Indian law" is narrowly construed. The applicability of ***Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)]** principles to public policy will open the floodgates. Hence, Explanation 2 to Section 34(2)(*b*)(*ii*) has been proposed.

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55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of *Explanation 1*. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(*a*) violation of the principles of natural justice;

> (*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and
> (*c*) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.
> However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)(*b*)(*ii*)."
>
> ***(emphasis supplied)***

55. Thus, the Impugned Award, which arises out of an International Commercial Arbitration, is rendered after the coming into force of the Arbitration and Conciliation (Amendment) Act, 2015. The scope of interference with such an Award, as rightly contended by the learned counsel for the Respondent, is considerably narrower than that applicable to a domestic arbitral award. Section 34(2A) of the A&C Act expressly confines the ground of '*patent illegality'* to arbitral awards arising out of arbitrations other than International Commercial Arbitrations.

56. Tested on the aforesaid principles, the question which arises for consideration in the present case is whether the interpretation placed by the learned Tribunal on the contractual provisions governing the MGC mechanism discloses any ground falling within Section 34(2)(b)(ii) of the A&C Act, or whether the challenge mounted by the Petitioner is, in substance, an invitation to this Court to re-appreciate the contractual interpretation adopted by the learned Tribunal.

57. The principal contention advanced on behalf of the Petitioner is that the Contract contemplated a minimum guaranteed tax credit of Rs. 47.29 Crores and that Clause 14.5.6 of the GCC entitled the Petitioner to recover any shortfall therein. According to the Petitioner, the learned Tribunal has effectively rewritten the Contract by holding

that the Respondent was not liable for the alleged shortfall occasioned by changes in the tax regime during execution of the works.

58. A perusal of the Impugned Award reveals that the learned Tribunal undertook an extensive examination of the contractual framework governing the parties, including Article 2 of the Contract, the pricing structure incorporated therein, the amendments executed by the parties, the tax-credit mechanism contemplated under the Contract and the rival interpretations advanced by both sides. The Impugned Award records the submissions of the parties in considerable detail before embarking upon its own analysis of the controversy. Therefore, the core reasoning adopted by the learned Tribunal may be noticed.

59. While dealing with the central dispute relating to the MGC mechanism, the learned Tribunal proceeded to examine the distinction between the *"Contract Price"* and the *"Package Price"* and the effect of such distinction on the parties' respective obligations under the Contract. Upon consideration of the contractual provisions and the rival submissions advanced before it, the learned Tribunal observed as under:

> "**274.** The Tribunal accepts the Claimant's submission (supra paragraph 225) that the Respondent has a primary independent obligation to pay the Contract Price, not just the lesser Package Price, (theContract Price net of taxes), as clearly distinguished by the Claimant in submissions, by reference to the documents to which its counsel referred. This distinction is well made, It equates to the same distinction made by the Tribunal and the Courts in the decisions in SAIL v Prime metals, which actuated the decisions in that case, which are contrary to what is advanced by the Respondent in this case.The Tribunal accepts there was an additional note in the summary price schedule in the contract in that case, objectively clarifying that the deduction on account of a shortfall in tax credits, was to be made from the gross contract price; but for reasons explained further below, proper interpretation of the Contract in this case, produces the same result, even without

> the additional clarificatory note found in the price schedule in that case. TheTribunal accepts that by reason of its withholding of the 16 crore amount, the Respondent has not fulfilled its primary obligation under the Contract to pay the Total Contract Price. It also accepts that the Claimant's reciprocal obligation to provide documentation for the Respondent to avail itself of the MGC, was premised on the Respondent's obligation to pay the Contract Price or in other words, premised on the payment of the full amount of the tax for which credit was to be made available under Article 2.1of the Contract. By reason of variations in taxes it did not pay the full amount of taxes calculated by reference to taxes applicable on the Base Date, but only the 32 crore amount. Consequently, the Claimant's obligation to provide documentation to the Respondent for it to avail itself of an available tax credit for the alleged shortfall of the16 crore amount, was never triggered."

60. The learned Tribunal thus accepted the Respondent's contention that the Petitioner's primary contractual obligation was to pay the agreed Contract Price and that the obligation of the Respondent relating to the furnishing of documentation for availing tax credits was predicated upon fulfilment of the said obligation. The learned Tribunal consequently concluded that the withholding of the amount in question could not be justified on the interpretation advanced by the Petitioner.

61. The learned Tribunal also examined the Petitioner's contention that the Respondent had failed to discharge its obligations relating to the furnishing of the requisite documentation for availing tax credits. On this aspect, the learned Tribunal returned the following findings:

> "**287.** The Tribunal has also considered the Respondent's contention that the Claimant should have approached the Respondent to seek a revision of the Contract Price (including the MGC) when the tax changes occurred. The Tribunal agrees with the Claimant in its submissions (supra paragraph 228) that it is disingenuous of the Respondent to so suggest. Clause 14.6.2 of the GCC imposes the obligation of adjusting the Contract Price towards variation in taxes on the Respondent — on production of documentary evidences by the Contractor. That contemplated obligation, provided for under Clauses 14.6.1 and 14.6.2 read together, requiring the Respondent to adjust the Contract Price in

> consequence of variations in taxes and duties, requires nothing more than the variations in taxes listed in Clause 14.6.1 of the GCC occurring, for it to arise. Having heard the Claimant's expert witness Mr Natarajan give evidence, and having reviewed the materials exhibited by him at [HB/C/73] and noted their effect as illustrated by him, the Tribunal accepts the Claimant's summary of the effect of his evidence at paragraph 233 above. The Tribunal found him to be a knowledgeable, impartial, reliable and truthful witness who was doing his best to assist the Tribunal and his evidence is therefore accepted as accurate and correct. More specifically, the Tribunal accepts the evidence of Mr Natarajan and the effect of the authorities he relied on, in response to the suggestion put to him as recounted in paragraph 234 above. The Tribunal accordingly rejects the suggestion that was put to him, that the Respondent was not entitled to take the benefit of CENVAT credit on iron and steel sent to it for fabrications and holds that it was so entitled. Further, it being agreed and obvious that the Claimant furnished the Respondent with documents which it verified, showing taxes payable at rates which were evident and available to it, and incurred from time to time, so that it could and did avail itself of credits in the amount of 32 crores; the Tribunal is satisfied that the necessary "documentary evidences" were produced by the Claimant to the Respondent so that the onus and obligation to adjust the Contract Price was imposed on the Respondent. The Tribunal accepts that by its letters referred to in paragraph 228 above, framed in terms of repeated requests to reconcile the Contract Price with the varied tax components within it, the Claimant was calling upon the Respondent to perform its obligation to adjust the contract price. The Tribunal has highlighted passages to that effect in its recounting of the details of the correspondence above to demonstrate that fact. The Respondent cannot rely on its own failure to adjust the Contract Price, to deny the effect of the reduction of taxes in reduction of the Contract Price, and of the MGC, in consequence of that reduction. The Tribunal treats what ought to have been done by the Respondent under the terms of the Contract as having been done in holding that the Contract Price and MGC to be made available to the Respondent, were reduced. The Tribunal therefore rejects all of the Respondent's submissions summarised in paragraphs 263-266 above."

62. Having considered the effect of the contractual provisions governing tax variations and the documentary evidence placed before it, the learned Tribunal proceeded to reject the Petitioner's contention that the MGC constituted an absolute and immutable obligation

entitling recovery of the alleged shortfall irrespective of the actual tax position. The relevant observations read as follows:

> "**288.** The Tribunal is reinforced in its interpretation of these clauses in this Contract by the decisions of the Tribunal and Courts reviewing that decision in SAIL v Prime Metals and it accepts the Claimant's submissions (summarised at paragraph 231 above) as to the effect of that decision. Whilst interpretation of the materially similar contract was somewhat easier for the Tribunal and Courts in that case, because of the note at the foot of the price schedule, stating that any shortfall in tax credits was to be deducted from the gross contract price, the absence of such a note in this case does not prevent or alter the objective interpretation of the Contract the Tribunal has articulated above. In short, the Tribunal holds that the Respondent's claim that the MGC was and remained an "absolute, invariable and stand-alone obligation" that entitled it to recover a claimed shortfall in tax credits, effectively from the Package Price, is without contractual foundation and is rejected."

63. The learned Tribunal thereafter examined the legality of the deductions effected by the Petitioner from amounts otherwise payable under the Contract and the consequences flowing therefrom. The relevant findings are reproduced herein below:

> "**290.** Finally in dealing with the Claimant's submissions, the Tribunal will deal shortly with the issue between the Parties, concerning whether the payments received by the Claimant were milestone payments or payments made during a running account or payments of running bills. It seems to the Tribunal that the Parties' competing submissions on these contentions have passed somewhat like ships in the night on divergent courses. In view of the Tribunal's determination of the limitation issue in favour of the Claimant, for the reasons given above, it is strictly no longer necessary for the Tribunal to determine whether there was a running account between the parties, as that concept is understood in the limitation law of India giving rise to the particular rule of when limitation begins to run, on claims relating to transactions between parties to such running accounts. For completeness however, and since it is an issue listed for determination by the Tribunal, the Tribunal records that it accepts the Respondent's submissions that there was no running account between these Parties in relation to this Contract, such as would give rise to the special rule of limitation the Respondent contended did not apply. The Claimant's submissions now, in its final written closing submissions, summarised at paragraphs 235-239 above, as to there being "running bills" rendered payable by way of progress

payments or advances which the Respondent was obliged to pay under Clause 2.1.3 of Appendix 3 to the Contract, do not seem to be directed to anything beyond showing that the Claimant was entitled to payment of them in accordance with the terms of the Contract, when rendered. In circumstances therefore, where the Tribunal has held that the Claimant was entitled to payment of the invoices from which amounts were withheld, under Clause 12.1.6 of the Terms of Payment, it seems nothing now turns on whether the payments were milestone payments as the Respondent contends; or progress payments or advances paid on running bills as the Claimant contends. The Tribunal accepts that payments were made on what the Claimant shows conclusively were described as running bills, but they were not rendered pursuant to a running account for limitation purposes.

291. The Tribunal concludes by dealing briefly with one of the Respondent's submissions on this Claim 1 which has not already been accepted or expressly or implicitly rejected, in the Tribunal's reasons given thus far. That is the submission summarised at paragraph 267 above, and the Respondent's belated attempt to raise as a live issue in these proceedings, an argument that since the Claimant was responsible for the delay in completion of the facilities, it is not eligible for any revision of the Contract Price by reason of the effect of Clause 14.6.1.1 of the GCC. Although briefly and ineffectually adverted to at the hearing in oral submissions by Ms Arora, SA, the Tribunal was surprised to see this contention resurrected again at such a late stage in the proceedings, especially in circumstances where the evidential burden (at least) of proving that the Claimant had "disentitled" itself to a price revision under Clause 14.6.1 of the GCC by reason of its delay, would squarely have been on the Respondent. The Respondent has at no stage sought to lead the extensive and detailed evidence that would be required for it to make out such a case, and, most notably, never sought to have this lately resurrected contention included in the List of Issues for the Tribunal's determination at the appropriate time.

292. All of that deficiency in presentation aside, the Respondent's argument at [HB/H3/51-54] is, in the Tribunal's judgment, lacking in any evidential foundation placed before the Tribunal and consequently devoid of all merit. There is nothing more than reliance on a pleaded assertion of delay being caused by the Claimant in the defence (with an excuse for the Respondent's liberal approach in not imposing liquidated damages) which is not admitted but denied and claimed to be irrelevant, in the rejoinder. That is followed by an attempt at reversal of the burden of proof, casting it onto the Claimant to disprove the allegation, and another unevidenced assertion of corroboration by a consultant. The Tribunal therefore has no hesitation in rejecting this unparticularised, unevidenced and consequently unsubstantiated

allegation, made by the Respondent.

293. In circumstances where the Tribunal has found that the Respondent's withholding of the 16 crores amount, from payments due under the relevant invoices, was un-contractual and therefore illegal; and that the Respondent is obliged for that reason alone, to pay over the 16 crores it has withheld to the Claimant, it is not necessary for the Tribunal to consider whether the Respondent has unjustly enriched itself at the Claimant's expense and it therefore does not do so, nor decide that issue."

64. A reading of the aforesaid findings leaves no room for doubt that the learned Tribunal was fully conscious of the contractual provisions relied upon by the Petitioner and expressly dealt with the very submissions which have been reiterated before this Court. The conclusions ultimately arrived at by the learned Tribunal are founded upon an examination of the contractual framework, the documentary record and the evidence led by the parties before it.

65. This Court is unable to hold that the interpretation adopted by the learned Tribunal is one that falls foul of the limited standards of judicial scrutiny permissible under Section 34 of the A&C Act. The learned Tribunal has assigned detailed reasons for the view taken by it and has construed the contractual provisions in a manner which is neither implausible nor incapable of being sustained on the language employed by the parties. Whether the interpretation canvassed by the Petitioner may also be a possible view is entirely beside the point. So long as the interpretation adopted by the learned Tribunal constitutes a plausible construction arising from the contractual documents, no interference would be warranted.

66. The submission that the learned Tribunal has re-written the Contract is equally unpersuasive. The Impugned Award does not ignore Article 2.1 of the Contract or Clause 14.5.6 of the GCC. On the contrary, the learned Tribunal has expressly considered those

provisions and construed them within the broader contractual framework governing the parties. Significantly, the challenge does not disclose any contractual provision that was ignored by the learned Tribunal; rather, the grievance is directed against the manner in which the relevant provisions were interpreted. The Petitioner essentially seeks acceptance of an alternative interpretation of the Contract in preference to that adopted by the learned Tribunal. Such an exercise would plainly travel beyond the scope of proceedings under Section 34 of the A&C Act and would amount to an appellate review on merits.

67. This Court further finds no merit in the contention that the Impugned Award is liable to be interfered with on the ground of conflict with the public policy of India. No violation of the fundamental policy of Indian law, no allegation of fraud, corruption, procedural unfairness, inability to present a case, excess of jurisdiction or breach of natural justice has been established. The challenge is directed entirely towards the merits of the contractual interpretation adopted by the learned Tribunal, which lies beyond the permissible contours of judicial review under Section 34 of the A&C Act, especially in respect of the International Commercial Arbitration.

68. In the considered opinion of this Court, the view taken by the learned Tribunal constitutes a plausible and commercially reasonable interpretation of the contractual framework governing the parties. The Award discloses due application of mind to the issues arising for determination and furnishes cogent reasons for the conclusions ultimately reached. Merely because the Petitioner prefers a different construction of the contractual provisions cannot furnish a ground to set aside an International Commercial Arbitral Award.

69. Therefore, this Court is of the considered opinion that no ground warranting interference under Section 34 of the A&C Act, and in particular under Section 34(2)(b)(ii) thereof, has been made out. The challenge mounted by the Petitioner to the findings returned by the learned Tribunal in respect of Claim No. 1 is consequently liable to fail.

DECISION:

70. In view of the aforesaid discussion, this Court finds no infirmity in the Impugned Award warranting interference in the exercise of jurisdiction under Section 34 of the A&C Act. The present Petition is, accordingly, dismissed.

71. The present Petition, along with pending Application(s), if any, is disposed of in aforesaid terms.

72. There shall be no Order as to Costs.

HARISH VAIDYANATHAN SHANKAR, J.

JULY 01, 2026/DJ