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

Date of Decision: 02.04.2026

\+ O.M.P. (COMM) 246/2016

INDIAN OIL CARPORATION .....Petitioner

Through: Mr. V. N. Koura, Mr. Aditya Sharma and Mr. Shaurya Dahiya, Advocates

versus

M/SMETRO BUILDERS(ORISSA)PVT. LTD .....Respondent

Through: Mr. Akhil Sachar, Ms. Sunanda Tulsyan, Ms. Shweta Pattanaik, Ms. Babita Rawat, Ms. Kashish Maheshwari and Ms. Gulnar Arora, Advocates

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, filed under Section 34 read with Sections 28 and 31 of the **Arbitration and Conciliation Act, 1996**[1], assails the **Arbitral Award dated 20.11.2014**[2], in respect of Claim No. 2, rendered by the learned Sole Arbitrator in the arbitral proceedings titled *"Metro Builders (Orissa) Pvt. Ltd. v. Indian Oil Corporation Limited."*

2. By the Impugned award, the learned Arbitrator has allowed the claims preferred by the Respondent in respect of Claim No. 2, along

[1] Act
[2] Impugned Award

with interest at the rate of 9% per annum, payable after the expiry of two months from the date of the award until the date of payment.

3. Learned counsel for the Petitioner, at the outset, confines the challenge to a singular, yet foundational ground that the Impugned Award is *ex facie* contrary to the express terms of the Contract. In support thereof, reliance is placed upon Clauses 4.3.5.0, 4.3.5.1, 4.3.5.2 and 4.3.6.0 of the **General Clauses of the Contract**[3], forming part of the **Agreement dated 26.07.2006**[4], which are reproduced herein below:

> *"**4.3.5.0*** Within 7 (seven) days of the occurrence of any act, event or omission which, in the opinion of the Contractor, is likely to lead to delay in the commencement or completion of any particular work(s) or operation(s) or the entire work at any job site(s), and as such would entitle the Contractor to an extension of time specified in this behalf in the Progress Schedule(s), the Contractor shall inform the Site Engineer and the Engineer-in-Charge in writing of the occurrence of such act, event or omission and the date of commencement of such occurrence. Thereafter, if even upon the cessation of such act or event or the fulfillment of the omission, the Contractor is of the opinion that an extension of time specified in the Progress Schedule relative to any particular operation(s) or item(s) of work or the entire work at any job site is necessary, the Contractor shall, within 7 (seven) days after such cessation or fulfillment, make a written request to the Engineer-in-Charge for extension of the relative time specified in the Progress Schedule. The Engineer-in-Charge may, at any time prior to completion of the work, extend the relative time of completion in the Progress Schedule for such period(s) as he considers necessary, if he is of the opinion that such act/event/omission constitutes a ground for extension of time in terms of the Contract and that such act/event/omission has, in fact, resulted in insurmountable delay to the Contractor.
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> ***4.3.5.1*** The application for extension of time made by the Contractor to the Engineer-in-Charge shall contain full details of:
> (a) the notice under Clause 4.3.5.0, along with copies of the notices sent to the Engineer-in-Charge and the Site Engineer;
> (b) the activity in the Progress Schedule affected;

[3] GCC
[4] Agreement

(c) the bottlenecks or obstructions perceived/experienced, and the reasons therefor;
(d) the extension required on account of (c) above;
(e) the extension required on account of reasons attributable to the Owner;
(f) the extension required on account of force majeure; and
(g) the total extension of time required for completion, taking the above into account and after eliminating all overlaps.

4.3.5.2 The opinion/decision of the Engineer-in-Charge in this behalf and as to the extension of time necessary shall, subject to the provisions of Clause 4.3.6.0 hereof, be final and binding upon the Contractor.

4.3.6.0 Notwithstanding the provisions of Clause 4.3.5.0 hereof, the Owner may, at any time, at the request of the Contractor made by way of appeal either against the decision of the Engineer-in-Charge taken under Clause 4.3.5.0 or against the Engineer-in-Charge's refusal to take a decision under the said clause, grant extension of time for the work or any item or operation thereof for such period(s) as the Owner may consider necessary. The decision of the Owner as to the existence or otherwise of any grounds justifying the extension and as to the period(s) of extension necessary shall be final and binding upon the Contractor."

4. Learned counsel for the Petitioner further submits that the contractual scheme clearly envisages a structured mechanism for seeking extension of time. In a situation where the Engineer-in-charge fails to render a decision, Clause 4.3.6.0 stands triggered, thereby empowering the Owner/Petitioner herein to adjudicate upon the request.

5. Learned counsel for the Petitioner submits that the aforesaid contractual procedure was duly adhered to in the present case. Once a decision had been rendered in accordance with the agreed contractual framework by the Petitioner herein, the learned Arbitrator could not have sat in appeal over the same, particularly when such decision was expressly agreed by the parties to be final and binding between them.

6. Such interference, it is urged by the learned counsel for the

Petitioner, runs contrary to settled law laid down by the Hon'ble Supreme Court in ***Mitra Guha Builders (India) Company vs. Oil and Natural Gas Corporation Limited***[5], specifically Paragraph Nos. 23 and 26, which are extracted herein below:

> "**23**. The question to be decided in this case is whether the liability of the respondent to pay liquidated damages and the entitlement of the appellants to collect the same from the respondent is an excepted matter for the purpose of Clause 20.1 of the General Conditions of Contract. The High Court has pointed out correctly that the authority of the purchaser (BSNL) to quantify the liquidated damages payable by the supplier Motorola arises once it is found that the supplier is liable to pay the damages claimed. The decision contemplated under Clause 16.2 of the agreement is the decision regarding the quantification of the liquidated damages and not any decision regarding the fixing of the liability of the supplier. It is necessary as a condition precedent to find that there has been a delay on the part of the supplier in discharging his obligation for delivery under the agreement.
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> **26**. Quantification of liquidated damages may be an excepted matter as argued by the appellants, under Clause 16.2, but for the levy of liquidated damages, there has to be a delay in the first place. In the present case, there is a clear dispute as to the fact that whether there was any delay on the part of the respondent. For this reason, it cannot be accepted that the appointment of the arbitrator by the High Court was unwarranted in this case. Even if the quantification was excepted as argued by the appellants under Clause 16.2, this will only have effect when the dispute as to the delay is ascertained. Clause 16.2 cannot be treated as an excepted matter because of the fact that it does not provide for any adjudicatory process for decision on a question, dispute or difference, which is the condition precedent to lead to the stage of quantification of damages."

7. Learned counsel for the Petitioner further places reliance upon the judgment of the Hon'ble Supreme Court in ***Indian Oil Corporation vs. NCC Limited***[6] to emphasise the primacy of party autonomy in arbitral jurisprudence. It is submitted that the parties,

[5](2020) 3 SCC 222
[6] (2023) 2 SCC 539

having consciously agreed to a contractual regime conferring finality upon the decision of the Owner in specified circumstances, are bound by the same. The Impugned Award, in disregarding such agreed mechanism, is therefore contrary to both the contract and the governing legal principles.

8. ***Per contra,*** learned counsel for the Respondent supports the Impugned Award, contending that the same is legally sound and does not warrant interference under Section 34 of the Act.

9. Learned counsel for the Respondent submits that the Petitioner failed to adhere to the contractual procedure prescribed for seeking extension of time, thereby disentitling itself from any relief under the said clauses.

10. Learned counsel for the Respondent further relies upon Paragraph Nos. 12 to 18 of the Impugned Award to contend that the findings recorded therein are well-reasoned and fall within the domain of a plausible view. The said paragraphs are reproduced herein under:

> "**12.** The relevant provisions of the GCC provide as follows:
>
> - 4.3.5.0-The Contractors shall make a written request to the Engineer in Charge for extension of relative time specified in the progress schedule and the engineer in charge may extend the time of completion for such periods as he considers necessary, if he is of the opinion that an act, event or omission constitutes the ground for extension of time in terms of the contract.
> - 4.3.5.1 the application for extension of time is required to furnish certain information relating to the extension required/necessitated on account of the bottle necks or obstructions perceived/experienced.
> - 4.3.5.2-The opinion/decision of the Engineer in Charge in this behalf and as to the extension of time necessary shall be subject of the clause 4.3.6.0 be final and binding upon the Contractor.
> - 4.3.6.0-Notwithstanding the provisions of clause 4.3.5.0 hereof, the owner may, at any time, at the request of the contractor, made by way of appeal, either against the

> decision of the Engineer in charge, taken under clause 4.3.5.0 or against the Engineer in charge's, refusal to take a decision under the said clause, examine the correctness or propriety of the decision made by the Engineer in charge, and the decision of the owner shall be final and binding upon the contractor.

The procedure defined for application and condoning the delay in completion of the project is as follows. Whenever there is a hindrance, the contractor has to put in the details of the hindrance and apply for extension of time to the Engineer in charge. A decision is taken by the engineer in charge on accepting or denying the application for condoning the delay. In case the contractor is not satisfied with the order of the engineer in charge, he can apply to the General Manager for a review of the order given by the engineer in charge. The decision of the General Manager is final and is exempted from any reference to arbitration.

13. The procedure actually followed was follows. The contractor applied from time to time for extension of the contract time. The engineer in charge did not give any decision but kept on giving provisional extensions. When the project was over, a delay statement prepared by the contractor and commented upon by the engineer in charge.

14. To distinguish between claiming damages suffered due to delay and application of the price adjustment, the learned advocate of the Respondent has given two examples. First is the case of purchase of basmati rice. The contract provides that if more than 1% of the grains are the prescribed length, a price discount shall be applied. In the second case, for purchase of computers by the US Army, if the weight exceeded the prescribed limit of, say. 25kgs. then for every extra kg of weight of the computer, a price discount shall be applied. short of the

15. I have examined the argument from both the Respondent and the Claimant carefully. The objections raised by the Claimant to the levy of prescribed discount have merit. A construction contract is totally different from the contracts of purchase of rice and computers There are many stake holders in a construction contract including the architect, the engineer, the owner, the supplier of materials, and the contractor. Also, a construction contract is very complicated as compared to the simple illustrations given by the leamed Counsel. Nobody can foretell the weather, labour unrests, unavoidable delay in procuring materials not locally available and the various glitches in the process of construction. It is necessary, therefore. that every delay is evaluated in the light of the situation causing hindrance and a decision taken, clearly stating the basis of the decision, rather than arbitrarily rejecting a hindrance.

16. The Claimant has alleged that notwithstanding the provisions of the GCC, the then Engineer in charge Mr L Kalaivanan RW-1

has stated that the General Manager has approved a recommendation on time extension made by him on the basis of the report of the site engineer and in consultation with the GM. The decision regarding non-extension of time etc. has not been taken by the Engineer in charge, who is the designated, competent authority as per the GCC. The Claimant has alleged that he has been deprived of right of appeal to the competent appellate authority since the Engineer in charge has not taken the decision regarding extension of time and condoning delay. He has further alleged that there has been no application of mind by the authority rejecting the claim. Reasons in support of the decision have not been recorded. The necessity of giving recorded reasons in support of the decisions has been recorded in a large number of Supreme Court judgements, copies of which have been appended in 152 pages. Extracts from some of the Apex Court decisions are as below.

Case (2010)7 SCC, p21 of the Annexures:

"*The meaning and true import of arbitrariness is more easily visualised than precisely stated or defined. The question whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness."*

Again, in the same case, the Apex Court has stated.

"Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary and hence legally unsustainable."

In another case, of Kranti Associates Pvt Ltd and Anr. v. Shri Massood Ahmad Khan and ors. on 8th Sept 2010. In Messrs Kranti Associates (supra) this court after considering various judgements formulated certain principles in para 51 of the judgement which are set out below.

a) In India, the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b) A quasi-judicial authority must record reasons in support of its conclusions.

c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done, it must also appear to be done as well.
d) Recording the reasons also operates a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
g) Reasons facilitate the process of judicial review by superior courts."

17. To assess if these requirements are met in this case a reference is needed to the "delay analysis after scrutiny by IOCL" The statement has columns filled by the contractor stating hindrance/ start and end/ delay in days claimed. This is followed by columns filled by IOCL stating remarks/ delay considered/ delay considering overlapping period. The Claimant has brought out inconsistencies and lack of application of mind in not accepting the delay claimed by him. For example, Item 7 (delay caused by local labourers: 10 days) the remark is that it is not feasible as per contract. There are a number of delays for non-availability of materials, claim has been rejected without going into the reasons for delay. Item 33 (delay in availability of submersible pumps which are imported: 309 days) the remark is "not tenable under the contract". The contractor has given the dates of placing order for the pumps, which were ordered well in time and could not be received due supplies to be made by the German manufacturer. The comment, again, is "not tenable under contract". Other Iterns brought out by the Claimant pertain to non-availability of materials in the local market and which had to be ordered from outside Odisha. The orders were placed well in time and the supplies were not received within the expected period of delivery. Typical cases are Item 34 (delay of 83 days), Item 35 (delay of 221 days), Item 51 (delay of 18 days) and Item 41 (delay of 93 days). The remarks for not accepting the contractor's version have again been summarily disposed by the IOCL with phrases like "not tenable under contract", "no hold- up", "not admissible". The principles laid down by the apex court have not been followed.

18. To summarise the pleadings of the Claimant, the provision in the contract that every hindrance will be reported within ten days, a decision given by the Engr in charge, and an appeal allowed by the GM have not been followed. As can be seen, the argument by the Respondents that the price discount is simple as in case of Basmati

> rice and computer provision is not valid, as construction contracts are much more complicated and claims like delays have to be evaluated on the basis of data provided. The conclusion that the norms laid down by the apex Court have not been followed cannot be avoided."

11. Learned counsel for the Respondent further submits that the contents of the said paragraphs, as reproduced herein above, are immune from judicial intervention, given the narrow and circumscribed scope of interference as under Section 34 of the Act.

12. Learned counsel for the Respondent further submits that the "*reasoning*", as given by the learned Arbitrator, does not suffer from perversity or patent illegality, and consequently, no case for interference is made out.

ANALYSIS & DECISION:

13. This Court has heard the learned senior counsel appearing on behalf of the parties at length and, with their able assistance, has carefully perused the paper book as well as the case laws relied upon by the respective parties.

14. Here, it is apposite to note that this Court is conscious of the limited scope of its jurisdiction while examining an objection petition under Section 34 of the Act. The contours of judicial intervention in such proceedings have been authoritatively delineated and settled by a consistent and evolving line of precedents of the Hon'ble Supreme Court.

15. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier decisions, in ***OPG Power Generation (P) Ltd. v. Enexio Power***

Cooling Solutions (India) (P) Ltd.[7], while dealing with the grounds including conflict with the public policy of India and perversity, made certain pertinent observations, which are reproduced hereunder:

> *"**Relevant legal principles governing a challenge to an arbitral award***
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> **30.** Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) is concerned, it has two sub-clauses, namely, (*i*) and (*ii*). Sub-clause (*i*) of clause (*b*) is not relevant to the controversy in hand. Sub-clause (*ii*) of clause (*b*) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.
>
> ***Public policy***
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> **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.
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> **35.** In ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, a three-Judge Bench of this Court observed that the doctrine of public policy is somewhat open—textured and flexible. By citing earlier decisions, it was observed that there are two conflicting positions which are referred to as the "narrow view" and the "broad view". According to the narrow view, courts cannot create new heads of public policy whereas the broad view countenances judicial law making in these areas. In the field of private international law, it was pointed out, courts refuse to apply a rule of foreign law or recognise a foreign judgment or a foreign arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked or enforced. However, it was clarified, a distinction is to be drawn while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. It was observed that the application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic

[7] (2025) 2 SCC 417

law and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. It was held that contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required.

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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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40. In ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263, paras 35, 38 & 39**, which also related to the period prior to the 2015 Amendment of Section 34(2)(*b*)(*ii*), a three-Judge Bench of this Court, after considering the decision in***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, without exhaustively enumerating the purport of the expression "fundamental policy of Indian law", observed that it would include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. The Court thereafter illustratively referred to three fundamental juristic principles, namely:

(*a*) that in every determination that affects the rights of a citizen or leads to any civil consequences, the court or authority or quasi-judicial body must adopt a judicial approach, that is, it must act bona fide and deal with the subject in a fair, reasonable and objective manner and not actuated by any extraneous consideration;

(*b*) that while determining the rights and obligations of parties the court or Tribunal or authority must act in accordance with the principles of natural justice and must apply its mind to the attendant facts and circumstances while taking a view one way or the other; and

(*c*) that its decision must not be perverse or so irrational that no reasonable person would have arrived at the same.

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.

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.

The 2015 Amendment in Sections 34 and 48

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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.

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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*).

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Patent illegality

65. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by the 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) 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.

66. In***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

67. In***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, this Court held that an award would be patently illegal, if it is contrary to:

(*a*) substantive provisions of law of India;

(*b*) provisions of the 1996 Act; and

(*c*) terms of the contract [See also three-Judge Bench decision of this Court in ***State of Chhattisgarh* v. *SAL Udyog (P) Ltd.*, (2022) 2 SCC 275**].

The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(*a*) of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

68. In***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** this Court specifically dealt with the 2015

Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that 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 [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**]. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

Perversity as a ground of challenge

69. Perversity as a ground for setting aside an arbitral award was recognised in***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263**. Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

70. In***Associate Builders* v. *DDA*, (2015) 3 SCC 49** certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, 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.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, 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. 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.

71. In ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, 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. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was

also observed that 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 [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

72. The tests laid down in***Associate Builders* v. *DDA*, (2015) 3 SCC 49** to determine perversity were followed in ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** and later approved by a three-Judge Bench of this Court in***Patel Engg. Ltd.* v. *North Eastern Electric Power Corpn. Ltd.*, (2020) 7 SCC 167**.

73. In a recent three-Judge Bench decision of this Court in***DMRC Ltd.* v. *Delhi Airport Metro Express (P) Ltd.*, (2024) 6 SCC 357**, the ground of patent illegality/perversity was delineated in the following terms: (SCC p. 376, para 39)

> "*39.* In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. 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 under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."

Scope of interference with an arbitral award

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

75. In***Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*, (2019) 20 SCC 1**, paras 27-43, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless

the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.

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Scope of interference with the interpretation/construction of a contract accorded in an arbitral award

84. An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an Arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not intefere [See: ***SAIL* v. *Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63; *Pure Helium India (P) Ltd.* v. *ONGC*, (2003) 8 SCC 593; *McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181; *MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163**]. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference [*South East Asia Marine Engg. & Constructions Ltd.* v. *Oil India Ltd.*, (2020) 5 SCC 164**].

Whether unexpressed term can be read into a contract as an implied condition

85. Ordinarily, terms of the contract are to be understood in the way the parties wanted and intended them to be. In agreements of arbitration, where party autonomy is the *grund norm*, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions used [***BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2016) 4 SCC 126**].

86. However, reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by the parties thereto. An unexpressed term can be implied if, and only if, the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. Rather, it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although

> tacit, forms part of the contract [***Adani Power (Mundra) Ltd.* v. *Gujarat ERC*, (2019) 19 SCC 9**].
> **87.** But before an implied condition, not expressly found in the contract, is read into a contract, by invoking the business efficacy doctrine, it must satisfy the following five conditions:
> (*a*) it must be reasonable and equitable;
> (*b*) it must be necessary to give business efficacy to the contract, that is, a term will not be implied if the contract is effective without it;
> (*c*) it must be obvious that "it goes without saying";
> (*d*) it must be capable of clear expression;
> (*e*) it must not contradict any terms of the contract [***Nabha Power Ltd.* v. *Punjab SPCL*, (2018) 11 SCC 508**, followed in ***Adani Power case*, (2019) 19 SCC 9**].
>
> ***(emphasis supplied)***

16. This Court now proceeds to examine the considerations and findings returned by the learned Arbitrator on the anvil of the limited and circumscribed jurisdiction available under Section 34 of the Act, and in the light of the principles authoritatively laid down by the Hon'ble Supreme Court in ***OPG Power Generation*** (*supra*).

17. At the outset, upon a careful and holistic perusal of the Impugned Award, this Court finds that the same suffers from a fundamental infirmity, *namely*, the absence of discernible reasoning. The paragraphs relied upon by learned counsel for the Respondent herein, as constituting the reasoning of the learned Arbitrator, reveal that they are, in substance, a mere reproduction or reiteration of the submissions and factual assertions advanced on behalf of the Claimant/Respondent herein, rather than an independent adjudicatory analysis. The Award, thus, reflects a mechanical acceptance of one party's case without any demonstrable application of mind.

18. Although the issue as to whether the contractual procedure for extension of time, as envisaged under the GCC, was duly followed, finds a passing reference in Paragraph No. 13 of the Impugned Award,

the said observation remains conclusory in nature and is not meaningfully integrated into the final determination. There is no analytical linkage between the said observation and the ultimate conclusions reached by the learned Arbitrator.

19. In fact, the conclusions of the learned Arbitrator are traceable, if at all, only to Paragraph Nos. 18 and 19 of the Impugned Award, which merely summarise the pleadings and record the ultimate findings. A plain reading of these paragraphs makes it evident that they do not disclose the reasoning process which led the learned Arbitrator to reject the Petitioner's defence and allow the Respondent's claim. The observations contained therein are conclusory and devoid of any analytical reasoning. For ready reference, Paragraph Nos. 18 and 19 of the Impugned Award are reproduced hereunder:

> "**18.** To summarise the pleadings of the Claimant, the provision in the contract that every hindrance will be reported within ten days, a decision given by the Engr in charge, and an appeal allowed by the GM have not been followed. As can be seen, the argument by the Respondents that the price discount is simple as in case of Basmati rice and computer provision is not valid, as construction contracts are much more complicated and claims like delays have to be evaluated on the basis of data provided. The conclusion that the norms laid down by the apex Court have not been followed cannot be avoided.
> **19.** After considering all the facts and pleadings and arguments of both the parties, I have come to the conclusion that the imposition of "price discount" for a period of 69 days amounting to Rs91,59,654 is not admissible. Accordingly, I accept the Claim of the Claimant that a refund of the price discount already made (Rs 91.59.654) is justified."

20. The Impugned Award, therefore, suffers from what may appropriately be characterised as an "*acute reasoning deficit*". It is a well-settled and fundamental principle of law that reasons constitute

the soul of any judicial or quasi-judicial determination. The requirement of recording reasons is not an empty formality, rather, it serves to demonstrate that the decision-maker has applied its mind to the material on record, has duly considered the rival submissions, and has arrived at its conclusions through a rational and logical process. In the absence of such reasoning, the decision becomes inherently opaque and arbitrary, depriving the parties of the ability to understand the basis of the conclusions reached and rendering the same vulnerable to judicial scrutiny and interference. An arbitral award that merely sets out the final conclusions, without disclosing the mental process or analytical pathway leading thereto, fails to satisfy the minimum statutory mandate.

21. Significantly, although the learned Arbitrator in the present case makes a cursory reference to the necessity of rendering a reasoned decision in accordance with settled legal principles, the Impugned Award itself falls conspicuously short of that very standard. The findings recorded therein are unsupported by any cogent reasoning or legal analysis and do not reflect a meaningful consideration of the pleadings, evidence, or submissions advanced by both parties. Such a perfunctory approach strikes at the very root of the adjudicatory process and renders the Award unsustainable in law.

22. The Hon'ble Supreme Court, in a catena of decisions, including ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.***[8], has consistently held that Section 31(3) of the Act mandates that an arbitral award must contain reasons that are intelligible and adequate, though not necessarily elaborate. While arbitrators are not required to

[8](2019) 20 SCC 1

render judgments akin to courts, the reasoning must nonetheless reflect a rational nexus between the material on record and the conclusions arrived at. A reasoned award must satisfy three essential attributes, *namely*, that it is proper, intelligible, and adequate. Where the reasoning is improper, it discloses a flaw in the decision-making process and may render the award vulnerable to challenge under Section 34 of the Act on grounds of perversity.

23. The Apex Court, in ***Dyna Technologies*** *(supra)*, has clarified that where the reasoning is unintelligible, it is tantamount to no reasons at all, and such awards are ordinarily liable to be set aside. While the adequacy of reasons may vary depending upon the complexity of the issues involved, and minor gaps in reasoning may not by themselves warrant interference, an award that is fundamentally bereft of intelligible reasoning cannot be sustained. Courts must, therefore, carefully distinguish between a case of mere inadequacy of reasons and one of complete absence or unintelligibility of reasoning. The former may not justify interference, whereas the latter strikes at the very root of the award. The relevant paragraphs of the said judgment read as follows:

> "**1.** The question involved herein revolves around the requirement of reasoned award and the cautionary tale for the parties and arbitrators to have a clear award, rather than to have an award which is muddled in form and implied in its content, which inevitably leads to wastage of time and resources of the parties to get clarity, and in some cases, frustrate the very reason for going for an arbitration.
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> **24.** There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there

being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.

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28. Similar to the position under the Model Law, India also adopts a default rule to provide for reasons unless the parties agree otherwise. As with most countries like England, America and Model Law, Indian law recognises enforcement of the reasonless award if it has been so agreed between the parties.

29. There is no gainsaying that arbitration proceedings are not per se comparable to judicial proceedings before the Court. A party under Indian Arbitration Law can opt for an arbitration before any person, even those who do not have prior legal experience as well. In this regard, we need to understand that the intention of the legislature to provide for a default rule, should be given rational meaning in light of commercial wisdom inherent in the choice of arbitration.

30. A five-Judge Constitution Bench of this Court in ***Raipur Development Authority* v. *Chokhamal Contractors*, (1989) 2 SCC 721**, considered the scope of Section 30 of the Arbitration Act, 1940 and held as under: (SCC p. 736, para 19)

> "*19.* It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the court to set aside the award if it finds that an error of law has been committed by the arbitrator or

> umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under Section 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so."

31. A three-Judge Bench of this Court in another case of *S. Harcharan Singh* v. *Union of India* [*S. Harcharan Singh* v. *Union of India*, (1990) 4 SCC 647] , reiterated its earlier view that the arbitrator's adjudication is generally considered binding between the parties for he is a Tribunal selected by the parties and the power of the Court to set aside the award is restricted to cases set out in Section 30 of the Arbitration Act, 1940.

32. However, the ratio of ***Chokhamal case*** has not found favour of the legislature, and accordingly Section 31(3) has been enacted in the Arbitration Act. This Court in ***Som Datt Builders Ltd.* v. *State of Kerala*, (2009) 10 SCC 259**, a Division Bench of this Court has indicated that passing of a reasoned award is not an empty formulation under the Arbitration Act.

33. It may be relevant to note *Russell on Arbitration*, 23rd Edn. (2007), wherein he notes that:

> "If the Court can deduce from the award and the materials before it, which may include extracts from evidence and the transcript of hearing, the thrust of the tribunal's reasoning then no irregularity will be found….*Equally, the court should bear in mind that when considering awards produced by non-lawyer arbitrators, the court should look at the substance of such findings, rather than their form, and that one should approach a reading of the award in a fair, and not in an unduly literal way*."
>
> (emphasis supplied)

34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge

> to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."
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> **(*emphasis supplied*)**

24. In the considered opinion of this Court, the Impugned Award, when tested on the anvil of settled legal principles, squarely falls within the category of awards vitiated by unintelligibility of reasoning. This is not a case of mere inadequacy or insufficiency of reasons, where, despite certain gaps or brevity, the underlying thought process of the Arbitrator may still be gathered from the record.

25. On the contrary, the present case discloses a far more fundamental infirmity. The conclusions recorded therein are bald, conclusory, and unsupported by any discernible analytical process. Such an Award, which merely announces the result without revealing the complete mental process leading to it, cannot be sustained in law.

26. As noted earlier, the Impugned Award fails to disclose any coherent or logical adjudicatory pathway linking the factual assertions and the ultimate conclusions arrived at by the learned Arbitrator. The absence of such a reasoning framework renders it impossible for this Court to meaningfully examine or scrutinize the basis of the findings

returned. This deficiency strikes at the very root of the statutory mandate embodied in Section 31(3) of the Act.

27. Furthermore, in the absence of intelligible reasoning, the contentions raised by the Petitioner herein cannot be effectively examined on the merits. On this ground alone, the Impugned Award is rendered unsustainable.

28. Accordingly, the present Petition is allowed, and the Impugned Award dated 20.11.2014 is set aside.

29. The present Petition, along with pending Application(s), if any, stands disposed of in the aforesaid terms.

30. There shall be no order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 02, 2026/tk/ DJ