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

% ***Judgment reserved on: 19.03.2026***
Judgment pronounced on: 06.04.2026

\+ O.M.P. (COMM) 111/2025, I.A. 5890/2025 (For Exemption) & I.A. 5891/2025 (For Stay)

FLEXING IT SERVICES PRIVATE LIMITED & ANR.
.....Petitioners

Through: Mr. Essenese Obhan, Ms. Ashima Obhan and Ms. Anjuri Saxena, Advocates.

versus

COLVYN JAMES HARRIS .....Respondent

Through: Mr. Tishampati Sen, Ms. Riddhi Sancheti and Mr. Anurag Anand, Advocates.

\+ OMP (ENF.) (COMM.) 101/2025 & EX.APPL.(OS) 751/2025 (For Disclosure of assets by the JD No. 01 on affidavit)

COLVYN JAMES HARRIS .....Decree Holder

Through: Mr. Tishampati Sen, Ms. Riddhi Sancheti and Mr. Anurag Anand, Advocates.

versus

FLEXING IT SERVICES PRIVATE LIMITED & ANR.
.....Judgement Debtors

Through: Mr. Essenese Obhan, Ms. Ashima Obhan and Ms. Anjuri Saxena, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The **Objection Petition, being OMP. (COMM.) 111/2025**[1], has been preferred under Section 34 of the **Arbitration and Conciliation Act, 1996**[2], by the Petitioners herein, assailing the **Arbitral Award dated 18.12.2024**[3] rendered by the learned **three-member Arbitral Tribunal**[4], in the matter titled as *Colvyn James Harris v. Flexing It Services Private Limited & Anr.*, to the limited extent of the findings contained in Paragraph Nos. 131(i) and 131(ii) thereof, whereby the claims of the Respondent have been held to be within limitation, and the Petitioners have been directed to convert the Respondent's **Compulsorily Convertible Debentures**[5] into equity shares equivalent to 2% of the paid-up capital of Petitioner No. 1 as on 31.01.2017.

2. The **Enforcement Petition, being OMP (ENF.) (COMM.) 101/2025**[6], has been filed by the Decree Holder/ Respondent in the Objection Petition, under Section 36 of the A&C Act, read with Order XXI Rules 10 and 11, and Section 151 of the **Code of Civil Procedure, 1908**[7], seeking execution and enforcement of the aforesaid Impugned Award passed in its favour.

3. For the sake of clarity and uniformity, the parties hereinafter shall be referred to, in the same rank and nomenclature as adopted in the Objection Petition.

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[1] Objection Petition
[2] A&C Act
[3] Impugned Award
[4] AT
[5] CCDs
[6] Enforcement Petition
[7] CPC

4. It is clarified that the Enforcement Petition is subject to the outcome of the Objection Petition, and in the event the Objection Petition is allowed, the Enforcement Petition shall consequently fail, to the extent the objections are allowed.

BRIEF FACTS:

5. Petitioner No. 1 is a private limited company engaged in providing a technology-driven platform enabling organisations to access independent consultants and domain experts on demand. Petitioner No. 2 is the Founder and Chief Executive Officer of Petitioner No. 1.

6. The Respondent is an investor who had subscribed to securities issued by Petitioner No. 1.

7. The disputes between the parties arise out of a **Debenture Subscription Agreement dated 16.07.2015**[8], executed between the parties, pursuant to which the Respondent invested a sum of ₹31,50,000/- in Petitioner No. 1 and was allotted 31,500 CCDs having a par value of ₹100 each.

8. In terms of clause 6.1 of the Agreement, the CCDs were to mandatorily convert into equity shares either upon the occurrence of a "Qualified Financing" or upon expiry of a period of 1.5 years from the date of issuance, i.e., on or before 31.01.2017, whichever was earlier. The Agreement further contemplated that in the event no Qualified Financing occurred within the stipulated period, the CCDs would convert into equity shares in the manner provided therein.

9. It is not in dispute that no Qualified Financing occurred within the aforesaid period. It is also not disputed that the CCDs held by the

[8] Agreement

Respondent were not converted into equity shares as on 31.01.2017 in terms of the Agreement.

10. Disputes thereafter arose between the parties in relation to the conversion of the CCDs, including the manner and timing of such conversion. The record further indicates that the parties continued to engage in correspondence subsequent to 31.01.2017 with respect to the terms and modalities of such conversion.

11. It is also relevant to note that prior to the constitution of the learned AT, the Respondent, who was the Petitioner therein, had approached this Court under Section 9 of the A&C Act, seeking interim measures. *Vide* Order dated 18.04.2023, this Court, while dealing with the said petition, made certain *prima facie* observations to the effect that the correspondence between the parties indicated that they had not insisted upon strict enforcement of the contractual provision relating to conversion and were negotiating the terms of conversion based on valuation and discount. The said Section 9 Petition was dismissed, leaving it open to the parties to avail appropriate remedies in accordance with law, and clarifying that the observations made therein were *prima facie* in nature and that the learned AT would be at liberty to consider the issues independently.

12. Thereafter, the Respondent invoked the arbitration in terms of the Agreement and filed a Statement of Claim, *inter alia*, seeking specific performance of the Agreement by directing the Petitioners to convert the CCDs into equity shareholding equivalent to 2% of Petitioner No. 1.

13. The Petitioners contested the claims, *inter alia*, on the ground that the same were barred by limitation and that the Respondent had,

by his conduct, waived his contractual rights and/or acquiesced by conduct, to a waiver of the terms of the Agreement.

14. Upon completion of pleadings, evidence and hearing the parties, the learned AT rendered the Impugned Award, whereby it held that the Respondent's claims were not barred by limitation and directed the Petitioners to convert the CCDs into equity shares equivalent to 2% of the paid-up capital of Petitioner No. 1 as on 31.01.2017, subject to compliance with applicable law.

15. Aggrieved by the aforesaid findings, the Petitioners have preferred the present Petition under Section 34 of the A&C Act, impugning the findings contained in Paragraph Nos. 131(i) and 131(ii) of the Impugned Award.

16. In the *interregnum*, the Respondent in the Objection Petition, being the Decree Holder, has initiated execution proceedings for the enforcement of the Impugned Award by way of *OMP(ENF.)(COMM.) 101/2025*.

<u>CONTENTIONS ON BEHALF OF THE PETITIONERS</u>:

17. Learned counsel appearing on behalf of the Petitioners would submit that the Impugned Award is liable to be set aside to the limited extent of the findings contained in Paragraph Nos. 131(i) and 131(ii), as the same are patently illegal, perverse, and contrary to the public policy of India.

18. It would be submitted that the learned AT has erred in holding that the claims of the Respondent were within limitation. According to the Petitioners, the cause of action arose, at the latest, on 31.01.2017, when the CCDs were not converted in terms of the Agreement, and

the arbitration having been invoked several years thereafter, the claims were *ex facie* barred by limitation.

19. Learned counsel for the Petitioner would submit that the findings on limitation are vitiated by failure to consider material evidence on record, including the contemporaneous correspondence exchanged between the parties, which, according to the Petitioners, clearly establishes that the Respondent was aware of the alleged breach and had asserted his rights as early as in the year 2016-2017.

20. It would further be submitted that the learned AT has erred in failing to appreciate that the correspondence exchanged between the parties was *de hors* the Agreement. It would be the Petitioners' case that the said correspondence pertained to negotiations on an alternate mechanism of conversion based on valuation and discount, which was outside the scope of the contractual framework, and could not have been relied upon to determine the rights and obligations of the parties under the Agreement or to extend the period of limitation.

21. Learned counsel for the Petitioner would submit that the finding of the learned AT that the limitation stood extended on account of alleged acknowledgements under Section 18 of the **Limitation Act, 1963**[9], is unsustainable, inasmuch as there was no acknowledgement of liability in terms of the Agreement, particularly under the relevant contractual provision governing conversion.

22. Learned counsel would further submit that the Respondent, by his conduct, had waived his contractual rights and/or acquiesced by conduct to a waiver of the terms of the Agreement. It would be contended that the Respondent, instead of seeking enforcement of

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[9] Limitation Act

conversion in terms of the Agreement, engaged in negotiations on different terms, thereby abandoning his purported rights under the relevant contractual provision.

23. It would also be contended that the learned AT has failed to consider this alternative defence of waiver and acquiescence, despite the same being specifically pleaded and supported by material on record, thereby rendering the Impugned Award perverse.

24. Learned counsel would further submit that the Impugned Award is patently illegal inasmuch as the learned AT has misconstrued the nature and scope of Clause 6.2.5 of the Agreement. It would be submitted that a plain reading of the contractual framework demonstrates a distinction between clauses governing valuation-based conversion and those providing for conversion in terms of shareholding.

25. It would be submitted that Clauses 6.2.1 to 6.2.4 operate within a valuation-based framework, whereas Clause 6.2.5 does not contemplate any valuation exercise and provides for conversion on a shareholding basis. The learned AT, however, has relied upon correspondence pertaining to valuation and discount to interpret Clause 6.2.5, thereby travelling beyond the contractual framework and applying considerations not borne out from the Agreement.

26. It would further be submitted that Clause 6.2.5 was not an open-ended provision and did not operate beyond 31.01.2017. Any reliance placed upon the said clause thereafter, according to the Petitioners, is contrary to the express terms of the Agreement and amounts to rewriting the contract.

27. Learned counsel for the Petitioners would place reliance on the decisions of the Hon'ble Supreme Court in ***Associate Builders v. DDA***[10] and ***PSA Sical Terminals Pvt. Ltd. v. V.O. Chidambaranar Port Trust***[11], as well as decisions of this Court in ***Cruz City 1 Mauritius Holdings v. Unitech Ltd.***[12], ***Shiel Trade Venture Pvt. Ltd. v. Samsung India Electronics Pvt. Ltd.***[13], and ***Value Advisory Services v. ZTE Corporation***[14], to contend that an arbitral award which ignores the terms of the contract, travels beyond the contractual framework, or disregards material evidence would be liable to be set aside on the ground of patent illegality and perversity.

28. Learned counsel for the Petitioner would further submit that the direction of the learned AT to convert the Respondent's CCDs into equity equivalent to 2% of the paid-up capital of Petitioner No. 1 is contrary to the terms of the Agreement. It would be contended that the Agreement contemplated conversion in terms of shareholding on a fully diluted basis, and not with reference to paid-up capital.

29. It would further be submitted that the substitution of the contractual expression of "shareholding" with "paid-up capital" materially alters the rights of the parties and amounts to rewriting the terms of the Agreement, which is impermissible in law.

30. Reliance would also be placed by the learned Counsel for the Petitioners on certain foreign judgments, including ***AQZ v. ARA***[15] and

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[10] (2015) 3 SCC 49
[11] (2023) 15 SCC 781
[12] 2017 SCC OnLine Del 7810
[13] 2019 SCC OnLine Del 9142
[14] 2017 SCC OnLine Del 8933
[15] (2015) SGHC 49

CNA v. CNB[16], to submit that an arbitral tribunal cannot rewrite the terms of the contract under the guise of interpretation.

31. It would also be contended that the learned AT has failed to consider relevant material, including prior proceedings initiated by the Respondent under Section 9 of the A&C Act, wherein this Court had, *prima facie*, observed that the parties were negotiating terms outside the strict framework of the Agreement.

32. On the aforesaid grounds, it would be submitted that the findings returned by the learned AT in Paragraph Nos. 131(i) and 131(ii) of the Impugned Award are unsustainable and liable to be set aside.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

33. Learned counsel appearing on behalf of the Respondent would submit that the present Petition is devoid of merit and is liable to be dismissed.

34. It would be submitted that the learned AT has, upon detailed consideration of the material on record, rightly held that the claims of the Respondent were not barred by limitation. It would be contended that the various communications exchanged between the parties were duly examined by the learned AT and were found to constitute acknowledgements of liability within the meaning of Section 18 of the Limitation Act.

35. Learned counsel would further submit that the issue of limitation, in the facts of the present case, is a mixed question of law and fact, and the findings rendered by the learned AT are based on an appreciation of evidence, including correspondence and contractual

[16] (2023) SGHC (1) 6

terms, which cannot be re-examined by this Court in proceedings under Section 34 of the A&C Act.

36. It would further be submitted that once the learned AT has returned findings on limitation upon appreciation of evidence, the same are not amenable to interference under Section 34 of the A&C Act.

37. Learned counsel for the Respondent would submit that the issue of limitation, being a mixed question of law and fact, cannot be re-adjudicated by re-appreciating evidence in proceedings under Section 34 of the A&C Act. In this regard, reliance would be placed on the decision of this Court in ***Oriental Insurance Company Limited v. April USA Assistance Inc.***[17], as well as the decision of the Bombay High Court in ***Thomas Cook (India) Ltd. v. Red Apple Chandrarat Travel.***[18], to contend that a challenge to an arbitral award on the ground of limitation, which entails a re-evaluation of factual aspects, would amount to a review on merits and is impermissible in law.

38. It would further be submitted that the Hon'ble Supreme Court in ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited & Anr.***[19], has held that the arbitrator is the ultimate master of the quality and quantity of evidence, and a possible view taken by the arbitrator cannot be interfered with unless the same is perverse. It would be contended that no perversity or patent illegality has been demonstrated by the Petitioners in the Impugned Award.

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[17] 2021 SCC OnLine Del 4843
[18] (2023) SCC OnLine Bom 97
[19] (2025) 2 SCC 417

39. Learned counsel for the Respondent would further rely upon the decision of the Hon'ble Supreme Court in ***Delhi Airport Metro Express (P) Ltd. v. DMRC***[20], to submit that patent illegality must go to the root of the matter, and that re-appreciation of evidence is impermissible under Section 34 of the A&C Act.

40. On merits, it would be submitted that the consistent case of the Respondent has been that the CCDs held by the Respondent were liable to be converted into 2% of the equity shareholding of Petitioner No. 1 as on 31.01.2017, in terms of Clause 6.2.5 of the Agreement. It would be contended that the learned AT has accepted this position and has rightly held that the Respondent is entitled to such conversion.

41. Learned counsel for the Respondent would submit that the findings of the learned AT, including those contained in Paragraph No. 102 of the Award, clearly indicate that the entitlement of the Respondent was to 2% of the shareholding, being 1/10th of the 20% shareholding envisaged under Clause 6.2.5 of the Agreement.

42. It would further be submitted that the expression used in Paragraph No. 131(ii) of the Impugned Award ought not to be read in isolation, but must be construed in the context of the findings and reasoning of the learned AT.

43. At this stage, it is noted that learned counsel for the Respondent, during the hearing before this Court, on instructions, submitted that the Respondent has no objection if the said expression is clarified to read as "*2% of the shareholding of Petitioner No. 1 as on 31.01.2017*".

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[20] (2022) 1 SCC 131

44. In view of the aforesaid submissions, it would be contended by the learned counsel for the Respondent that no ground is made out for interference under Section 34 of the A&C Act, and the present Petition is liable to be dismissed and the Impugned Award be upheld and enforced, and would further seek continuation and culmination of the execution proceedings in terms of the Impugned Award.

ANALYSIS:

45. This Court has carefully considered the submissions advanced on behalf of both sides and, with their able assistance, has perused the Impugned Award and the material placed before this Court.

46. At the outset, it is apposite to note that this Court remains conscious of the limited scope of its jurisdiction while examining an objection petition under Section 34 of the A&C Act. There is a consistent and evolving line of precedents whereby the Hon'ble Supreme Court has authoritatively delineated and settled the contours of judicial intervention in such proceedings.

47. In this regard, a 3-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier judgments, in ***OPG Power*** *(supra)*, while dealing with the grounds of conflict with the public policy of India perversity and patent illegality, grounds which have also been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

> "***Relevant legal principles governing a challenge to an arbitral award***
> **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

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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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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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.

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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 ***Ssangyong Engg. & 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 ***Ssangyong Engg. & 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 ***Ssangyong Engg. & 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 ***Ssangyong Engg. & 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 ***Ssangyong Engg. & 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 ***Ssangyong Engg. & 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."

48. In the backdrop of the aforesaid settled position of law, this Court now proceeds to examine whether the findings returned by the learned AT in Paragraph Nos. 131(i) and 131(ii) of the Impugned Award warrant interference within the limited scope of jurisdiction under Section 34 of the A&C Act. The said findings made by the learned AT are extracted herein below:

"**131.** Having considered all the evidence and submissions placed before the Tribunal and for the reasons set out above, the Tribunal; hereby **Declares, Determines and Awards** as follows:

i) The Claimant's claim seeking conversion of his CCDs into equity shareholding of the 1st Respondent Company in accordance with the Debenture Subscription Agreement dated 16 July 2015 is not barred by limitation;

ii) The Respondents are directed to convert the CCDs of the Claimant into equity shareholding of the 1st Respondent Company and issue to the Claimant, subject to compliance with applicable law, equity shares equivalent to 2% of the paid-up capital of the 1st Respondent Company as on 31 January 2017;…….."

49. The primary challenge raised by the Petitioners pertains to the finding of the learned AT that the claims of the Respondent are within the limitation. According to the Petitioners, the cause of action arose on 31.01.2017, and the claims having been invoked thereafter are barred by limitation. The relevant findings of the learned AT are reproduced herein below:

> **"Tribunal's Analysis**
> **72.** In its decision dated 18 April 2023 in O.M.P(I)(COMM.) 119.2023, the Hon'ble High Court of Delhi noted that many years had passed from the stipulated period for conversion of the CCDs and it would therefore have to be considered by the Arbitral Tribunal whether the Claimant could still place reliance on Clause 6.2.5 of the Agreement. However, the Hon'ble Court clarified that its observations *"would not prejudice either party before the Arbitral Tribunal."*
> **73.** On 6 November 2023, the Tribunal issued an order on the Respondents' application to dismiss the claims for being barred on account of limitation. The said Order noted as follows:
>
> > *"6. Having heard extensive arguments on behalf of the Claimant and the Respondents, we are of the view it would be appropriate in the facts and circumstances of the case that the issues of inter alia (a) whether the date fixed for performance of conversion of CCDs into equity was extended and set at-large; or (b) when the conversion of CCDs into equity under section 6.2.5 was refused, and (c) when the cause of action in respect of alleged breach of Clauses 5.1 and 5.2 arose be determined after trial. This is so because the findings on the issues referred to above are dependent not only on a reading of the Agreement and the pleadings of the parties, but require appreciation of the correspondence exchanged, documents on record and oral evidence to be led. As such, we are of the view that whether the claims are barred by limitation (which is a mixed question of fact and law) should not be decided at the threshold as a preliminary issue in the facts and circumstances of this case.*
> > *7. In the circumstances, we deem it fit to decide the issue of limitation along with the other issues at trial. Accordingly, IA No. 1 is kept pending for consideration after trial, alongside the final award."*
>
> **74.** Clause 6 of the Agreement provided the mechanism for conversion of the CCDs into equity shares. Clause 6.1 envisaged that the CCDs shall be mandatorily converted into fully paid-up

equity shares of the 1st Respondent Company on the occurrence of the earlier of (i) qualified financing, or (ii) at the expiry of; 1.5 years from the date of issuance of the CCDs (i.e., 31 January 2017).

75. Furthermore, Clause 6.2.4 provided that in the event of a qualified financing takes place, the CCDs would convert into such number of equity shares as set out in the formula set forth therein which provided a 25% discount to the price at which equity shares were issued in the qualified financing. Clause 6.2.5 of the Debenture Subscription Agreement provides that where the Company was unable to secure qualified financing within a period of 1.5 years from the date of issuance of the CCDs, such CCDs *"will convert to such number of equity shares that collectively amount to 20% (twenty percent) of the Shareholding of the Company on a fully diluted basis"* (or 2% of shareholding of the Company in the case of the Claimant, the Claimant having made l/10th of the investment.)

76. From the evidence on record, it is clear that the 1st Respondent Company was not able to convert the CCDs of the Claimant into equity shares by 31 January 2017 as mandated by the Agreement. This is also accepted by both parties. Failure to convert the CCDs within the specified timeframe constitutes breach of contract and entitled the Claimant to seek remedies available to him in law.

77. The limitation to seek such remedies would have expired by 30 January 2020, as, in this formulation, the cause of action arose on 31 January 2017. However, if there was an acknowledgment in writing of the liability before 30 January 2020, then in terms of Section 18 of the Limitation Act, this would have the effect of extending the period of limitation for a further period of three years from the date of such acknowledgment.

78. Section 18 of the Limitation Act provides that:

> ***"Effect of acknowledgment in writing.***—*(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed bv the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.* " (emphasis supplied).

79. It is the Claimant's case that the 2nd Respondent (on behalf of the 1st Respondent) acknowledged and undertook to convert the CCDs on multiple occasions and "in *light of the undertaking of the Respondents that the CCDs of the Claimant would certainly be converted to equity in March 2018, the Claimant chose to wait, and restrained himself from initiating arbitration at that staged* (paragraphs 19, 27 and 33 of the Statement of Claim)

80. The Tribunal has reviewed the evidence on record and concludes that the following key correspondences (amongst others)

constitute acknowledgments in writing of the liability of the Respondent to convert the CCDs into equity shares under the Agreement. These acknowledgments had the effect of extending the period of limitation from time to time:

i) 'On 31 March 2018, the 2nd Respondent sent an email **(Exhibit C16)** in which she said:

> *" A quick update- our discussions for Series A financing are proceeding well and we are in very active discussions with several VCs who are interested in the space and quality of business Flexing It is building. We are confident that we will close the CCDs fundraise in the next 1-2 quarters and have a solid partner to help us scale the business further.*
>
> *As a quick reminder, the amended conversion date of your original CCD investment was planned to be March 31st, 2018 and I wanted to reach out with this update and to communicate that the conversion while extended will occur in the next few months (outer window being September 30, 2018) to ensure we can complete the series A process."* (emphasis added)

This email (which is to be read along with the email of 10 November 2016 **(Exhibit C6, R2/Exhibit CW1/6)** where the 31 January 2017 date under the Subscription Agreement was sought to be extended to 31 March 2018) constitutes a clear and unequivocal acknowledgement of the 1st Respondent Company's liability to convert the Claimant's CCDs under the Subscription Agreement- and has the effect of extending the period of limitation until 30 March 2021.

ii) On 9 October 2018 **(Exhibit R17),** the 2nd Respondent, on behalf of the 1st Respondent company, sent an email to the Claimant stating:

> *"Given that this is a longer hold to conversion of your investment into equity, we would like to extend an additional discount of 10% to the series A price at the time of conversion on your original investment into Flexing It. So the total discount on your investment would be as follows:*
>
> *Original investment - 35% + an additional 10% (Total discount to series A of 45%)*
>
> *I know that our Series A has been delayed beyond what was originally planned, but this has given us the opportunity to build a solid and sustainable business in a frugal manner."*

This was an acknowledgment of Respondent No.l's obligation to convert the CCDs under the Subscription Agreement and an acknowledgment that it was delayed in performing this obligation. It further made a promise of an additional discount to compensate

for the delay in performance of its obligation. This email had the effect of extending the limitation until 8 October 2021.

iii) Similarly the email sent by the 2nd Respondent on 12 March 2019 **(Exhibit R19)** was a clear acknowledgment of the 1st Respondent's liability to convert the CCDs under the Subscription Agreement, and a further promise of additional discounts. It stated: *"In terms of your investment, as you are aware it is structured as a CCD which converts to equity at Series A with the angel investors converting at a discounted price. The original discount on your. CCD offered was 25% and we then increased that by 10% each in two tranches to get a total discount on your investment of 45%. This was driven by the fact that our early investors were having to wait longer for conversion, and* we *therefore wanted to offer additional return to them. At this discount, your investment of INR 31..5L should convert into equity worth approx. INR 57.3L when we raise financing in the next several months. We will definitely consider adding onto the discount for our early investors in the event we see the fundraise closure getting delayed beyond a few months".* This was a clear acknowledgment of the underlying liability of the 1st Respondent and its obligation to convert the CCDs under the Agreement. This email had the effect of extending the period of limitation until 11 March 2022.

iv) Again on 3 February 2020 **(Exhibit R19),** the 2nd *Respondent* sent a mail acknowledging its liability to convert the CCDs stating: *"A quick update re the conversion- We are in active conversations with several VCs over the last couple of months regards our fundraise We should have a better sense by the end of February, but we are targeting to close the raise and convert the original CCDs within the next few months."* This had the effect of extending the limitation until 2 February 2023.

v) On 10 June 2021, the 2nd Respondent sent an email **(Exhibit Cl8)** to the Claimant in which she said: *"As we had discussed a few months ago, we are committed to get a conversion for our early investors this FY and are aiming to make that happen."* Again, on 7 July 2021, the 2nd Respondent sent an email **(Exhibit Cl8)** to the Claimant in which she stated:

> *"As indicated a little while ago, we are committed to get a conversion for our early investors this FY and are aiming to make that happen - We should definitely see a conversion of CCDs to shares this financial year."*

Similarly, on 4 October 2021 and 14 December 2021 **(Exhibit C18),** the 2nd Respondent again reiterated their obligation to convert *"As I mentioned a couple of months earlier, we are committed to making the conversion for our early investors happen this FY. For me, this is top priority in addition to keeping up the growth momentum for the company and we will make this happen this year."* And *"As mentioned a couple of months earlier, we are*

committed to making the conversion for our early investors happen this FY i.e. by March 2022

These correspondences had the effect of extending limitation until October and December 2024 respectively.

vi) On 14 March 2022, the 2nd Respondent in her email **(Exhibit C20)** to the Claimant stated:

> *“"I understand that the conversion timelines planned initially have been delayed keeping in mind that we have given\the early investors additional discounts on the CCDs held so that their returns are protected You will recall that in 2017, you and I engaged in discussions on me buying out your CCDs under the Subscription Agreement, but unfortunately we were not able to agree on the valuation. At this time, I am focusing on a conversion for all investors and hope to have an update soon.'’*

This constituted yet another acknowledgement of the 1st Respondent Company’s obligation to convert the Claimant’s CCDs and had the effect of extending limitation until 13 March 2025.

vii) On 20 February 2023 **(Exhibit C20/Exhibit CW 1/19),** the 2nd Respondent sent the following email *"To quickly recap, your investment into FI came in the form of CCDs, which were to convert into shares at a discounted price when we raised Series A……….. For the longer hold period, as you are aware, we have given all of our equity investors additional discounts to compensate".* This also constitutes an acknowledgment of the Respondent’s obligation to convert the Claimant’s CCDs under the Agreement and had the effect of extending the limitation until 19 February 2026.

viii) The 2nd Respondent’s email of 17 March 2023 **(Exhibit R28)** is a clear and unequivocal acknowledgment of the liability of the Respondent company to convert the CCDs under the Agreement within 1.5 years. It states *“On the timing, the original CCD agreement did have a 1.5 years timeline for conversion as you mention. However, as has been communicated over the years in my updates to you and all other investors, we have not raised institutional funding relying on revenues and profits to drive growth. The delay in conversion was intimated to all investors by email at several occasions including formally on November 10, 2016 and then again over July- September 2018 and at each time an additional 10% discount was added to the original discount on the CCD (25% in your case) to compensate for this.* This email had the effect of extending the limitation until 16 March 2026.

81. What emerges on a plain reading of the above emails is that there were numerous acknowledgments of the 2nd Respondent Company’s obligations to convert the Claimant’s CCDs under the Agreement- such acknowledgments were provided in 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023. These communications clearly acknowledged the Claimant’s entitlement to a conversion of

his CCDs and extended the period of limitation. It is well established that an acknowledgement of liability in respect of a property or right made before the expiration of the period prescribed for filing of legal proceedings in respect of such property or right would have the effect of giving rise to a fresh period of limitation from the date of each such acknowledgement. The emails referred to hereinabove, sent by the 2nd Respondent on behalf of the 1st Respondent Company, clearly show repeated acknowledgements of the 1st Respondent's obligation to convert the Claimant's CCDs in accordance with the provision of the Agreement. As such, a fresh period of limitation would be deemed to have commenced from the date of each such acknowledgement. In these circumstances, the commencement of arbitration (as evidenced by the Notice of Arbitration dated 3 April 2024, **Exhibit C25)** cannot be said to be time barred.

82. In ***State of Kerala*** v ***T.M. Chacko*** (2000) 9 S.CC 722, the Hon'ble Supreme Court has laid down the test for applying Section 18 of the Limitation Act in circumstances where a party has acknowledged its liability towards any right or property:

> *"From a perusal of Sub-section (1) of Section 18 it is evident that to invoke this provision:*
> *(1) there must be an acknowledgement of liability in respect of property or right;*
> *(2) the acknowledgement must be in writing signed by the party against whom such right or property is claimed (or by any person) through whom he derives his title or liability;*
> *(3) the acknowledgement must be made before the expiration of the period prescribed for a suit or application (other than application for the execution of a decree) in respect of such property or right. The effect of such an acknowledgement is that a fresh period of limitation has to be computed from the time when the acknowledgement was so signed."* (emphasis supplied).

83. In ***Sudarshan Cargo Pvt Ltd*** v ***Techvac Engineering Pvt Ltd,*** 2013 SCC Online Kar 5063, it was noted that acknowledgments of liability by email are valid and would constitute proper acknowledgements of liability for the purposes of section 18 of the Limitation Act 1963.

84. In ***Lakshmirattan Cotton Mills*** v ***Aluminium Corpn of India,*** (1971) 1 SCC 67, it was held:

> *"The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the parties such as, for, instance, that of a debtor and a creditor and the intention to admit such a jural relationship. Such an intention need not be in*

express terms and can be inferred by implication or the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given" (emphasis added)

85. Applying these principles, it can clearly be inferred from the emails summarised above that the 1st and 2nd Respondents acknowledged their contractual liability to convert the CCDs of the Claimant. Based on such acknowledgment, the parties discussed various options to resolve the issue which proved to be unsuccessful and ultimately led to the commencement of these arbitration proceedings.

86. At no point in time between 2016 and 2022 did the Respondents disavow their obligation to convert the Claimant's CCDs. The first time when the Respondents refused to convert the Claimant's CCDs was only on 20 March 2023 **(Exhibit C22)** shortly after which the Claimant commenced arbitration by sending a Notice of Arbitration on 3 April 2023.

87. The Respondents have made two arguments to contend that these correspondences do not constitute an acknowledgment of liability under Section 18 of the Limitation Act:

A. *One,* they have argued that the communications between the parties were ***de hors*** the understanding contained in the Agreement and therefore were not acknowledgments of liability under the Agreement, and

B. *Two,* they have relied on an admission in the cross-examination of the Claimant that there was no specific email by the Respondents that the CCDs would be converted to equity shares at 2% after the default took place.

88. The Tribunal will deal with both these submissions.

A. Were the Correspondences de hors the Agreement?

i) The Tribunal has reviewed the communications between the parties and concludes that the correspondences were not *de hors* the Agreement but were in fact clearly with reference to the obligation of the Respondents to convert the CCDs under the Agreement. This obligation was repeatedly acknowledged and admitted in all the correspondences set out above. The reference in the communications to the timelines for conversion and the discount to the Series A price were all references to Clause 6 of the Agreement and not *de hors* it.

ii) What is further clear on a careful consideration of the correspondence between the parties is that even the settlement discussions were premised on the admitted obligation of the 1st Respondent Company to convert the Claimant's CCDs into equity shares and its admitted failure or inability to perform such obligation. The emails from the 2nd Respondent (on her own behalf and as the promoter of the 1st Respondent

Company) proposing or exploring options for resolving the issue is predicated on a breach of the 1st Respondent Company's obligation to convert the Claimant's CCDs into equity shares- and in that sense, these emails acknowledge and admit breach of contract and the liability to convert the CCDs. Further, it is apparent that the offers for settlement were rejected by the Claimant, and the Claimant insisted that the CCDs be converted in terms of the Agreement. The correspondence is clear that the Respondent continued to assure the Claimant that the CCDs would be converted in terms of the Agreement, but sought an extended timeframe to enable it to complete a Qualified Financing, and promised an additional discount to the Qualified Financing equity share price.

iii) It is instructive, in particular, to consider the: following communications exchanged between the parties:

• On 10 November 2016, the 2nd Respondent sent an email **(Exhibit C6)** to the Claimant. In the email, she proposed that the date of conversion be extended to March 2018 instead of the 31 January 2017 timeline prescribed in the Agreement. To compensate investors including the Claimant for the "slightly longer wait" for conversion, she proposed a total discount of 35% (an additional discount of 10% to the discount promised in the Subscription Agreement) for the conversion to happen. She asked the Claimant if such a proposal would be acceptable to him and if yes, she would send a *"short addendum to the investment agreement [...] so that all the paper-work is sorted too?'* This was, therefore, in the nature of a proposal to amend the Agreement, and the proposal was predicated on the inability of the 1st Respondent Company to convert the Claimant's CCDs by 31 January 2017.

• In response, the Claimant made it clear vide his email dated 21 November 2016 **(Exhibit C7)** that he preferred the original terms of the Agreement to adhered to.

• On 28 December 2016 **(Exhibit C9),** the 2nd Respondent referred to a consensus amongst the remaining investors to extend the CCD period to March 2018. However, since the Claimant had clearly expressed his preference to convert to equity in terms of the Agreement, she made the following proposal: '7 *as promoter and primary shareholder buy your CCDs in return for a certain amount of equity in the company from my shareholding. [...] I look forward to resolving this such that the answer works for both Flexing It and yourself'.*

• This proposal- that the 2nd Respondent buy out the Claimant's CCDs and provide him equity from her shareholding in the 1st Respondent as consideration for the buyout- proceeded on the basis of an acknowledgment that the 2nd Respondent was unable to perform its contractual

obligation to convert the Claimant's CCDs by end-January 2017. The proposal was, in this context, an attempt to resolve the situation arising out of the 1st Respondent's acknowledged breach of contract.

• This proposal was taken further by the 2nd Respondent who proposed, in her email of 14 February 2017 **(Exhibit C9),** that she would issue 0.39% of the 1st Respondent Company's shares from her own shareholding in the Company to the Claimant.

• The Claimant disagreed with the valuation methodology on the basis of which the 2nd Respondent had proposed transfer of 0.39% of the shares of the 1st Respondent from her shareholding in the Company. In his email dated 17 April 2017 **(Exhibit C13),** he said: *"Flexing It has defaulted in its representation ref the CCDs, the tenure and timelines, and needs to arrive at an amicable resolution to resolve my issue, and not a unilateral arbitrary valuation."*

• In response, the 2nd Respondent reiterated her keenness as also that of her fellow Directors and investors to settle the issue amicably. In her letter dated 21 April 2017 **(Exhibit C14),** she stated as follows:

> *"We have always tried to work towards an amicable resolution that gives you a fair solution and at the same time is not detrimental to the company and/or the other investors. Keeping this principle in mind, I have previously suggested 3 constructive approaches to move forward:*
> ***1.** Your accepting the tenure extension and additional discount as all other CCD holders have done;*
> ***2.** Flexing It returning the money you have invested, even though we are under no obligation to do so as it represented venture investment; or*
> ***3.** My buying your CCDs and in consideration issuing you equity out of my shareholding.*
> *However, you have refused all suggestions previously made by me. In response to my suggestion of us returning your investment amount (that we discussed in our call), your response was that you would consider it if it offered a substantial return. Your counter-suggestion has been that you receive 3.75% of the company's equity- a proposal that the board of the company cannot even consider given that it is detrimental to the company and our other investors and will meaningfully impact the ability to raise further capital. You have disregarded my suggestions and have instead only sent me contentious emails. Your way of amicably resolving*

> *this seems to be through the arbitration route. Given your stated desire for me to focus on business growth, it is difficult to understand how an arbitration process would be constructive or consistent with this aim. [...] You have also mentioned that you have not been provided with any data or documents. You will appreciate that the company can only share limited information with debenture holders dash the investment agreement also clearly provides for this and we have given you all documents and information that we are required to provide."*

• All options for an amicable resolution discussed in this letter flow from an acknowledged inability or failure of the Company to convert the Claimant's CCDs.

• It was also clear that the proposals were not accepted by the Claimant.

iv) It is further instructive to note the emails from the Respondent dated 31 March 2018, 9 October 2018, 12 March 2019, 3 February 2020, 7 July 2021, 4 October 2021, 14 December 2021, 14 March 2022, 20 March 2023 and 17 March 2023, all of which (extracted above) came after the settlement talks had failed and clearly and equivocally refer to the obligation of the Respondent to convert the CCDs under the Agreement.

v) Finally, the argument of the Respondent that the acknowledgments of the obligation to convert the CCDs were *de hors* the Agreement cannot also be accepted as it is common ground between the parties that there was no amendment of the contract.

The Agreement provides for a specific procedure for amendment. Clause 15.6 of the Agreement provides as follows:

> ***"15.6 Amendments***
> *No modification, alteration or amendment of this Agreement or any of its terms or provisions shall be valid or legally binding on the Parties unless made in writing and duly executed by or on behalf of all the Parties."*

vi) It is an admitted position of both parties that no such amendment was ever executed in writing between the parties. Whilst various proposals and counter proposals were exchanged at different points in time, there was no consensus that could be reached between the parties and hence there was no agreement to move away from the provisions of the Agreement. In the absence of any amendment to the Agreement, the parties remain bound by the provisions of the Agreement.

B. Admission in Cross Examination

i) The second ground raised by the Respondents that the Claimants have admitted in cross-examination that there was ho specific email by the Respondents assuring or acknowledging that the CCDs would be converted to equity shares at 2% after the default took place.

ii) It is the Tribunal's view that the question, and therefore, the answer was very narrow as to whether there was a specific mail containing an acknowledgment of conversion into "2%" equity shares. Even if there wa§ no such mail, it cannot be read to mean that the witness stated that there was no acknowledgment of the liability of the Respondent to convert the CCDs in terms of the Agreement. The law is clear that communications for the purpose of Section 18 of the Limitation Act need not indicate the exact nature or the specific character of the liability.

Moreover, Section 18(2) of the Limitation Act prohibits oral evidence of the contents of the acknowledgment and therefore no reliance can be placed on the oral evidence of the Claimant. Furthermore, any understanding of the Claimant who is not a lawyer- as to whether or not there was an acknowledgement of liability is not binding on the Tribunal and the Tribunal is obliged to arrive at an objective determination of the issue based on the evidence on record.

iii) The Tribunal has also considered the argument of the Respondent that there must be a specific acknowledgment of a right under Clause 6.2.5 and acknowledgment of the right under Clause 6 is not sufficient as that was a completely different mechanism based on valuation add additional discounting. The Tribunal disagrees with this reading of Clause 6. As already stated above, Clause 6 was a composite clause providing for the conversion into equity shares in both scenarios, one, if a qualified financing took place, and second, if a qualified financing does not take place, by 31 January 2017, Further, the Tribunal notes the reference to the date of 31 January 2017, or 1.5 years, or indeed to any time frame, is found only in Clause 6.2.5. Therefore, the acknowledgments referred in paragraph 76 above, which refer to time lines, 1.5 years and dates of conversion, do, in fact, specifically relate to Clause 6.2.5.

iv) Since the Tribunal has concluded that the Respondents had acknowledged their liability to convert the Claimant's CCDs on numerous occasions which had the effect of extending the period of limitation, it is not necessary for the Tribunal to address in detail the alternative arguments pressed into service by the Claimant that the Claimant's forbearance to sue based on express representations by the Respondents had the effect

> of extending the time for performance by virtue of the second part of Article 54 of the Limitation Act 1963 and the judgment of the Hon'ble Supreme Court in ***S Brahmanand*** v. ***KR Muthugopal*** (2005)12 SCC 764. Similarly, the Tribunal has not considered the arguments on continuing cause of action or the judgments in this regard relied upon by both parties.
>
> **v)** The correspondence on record also does not indicate that the Claimant in any manner slept over his rights on this aspect of the dispute, which would have resulted in his claims being time barred. On the other hand, the evidence on record indicates that the Claimant made repeated attempts to resolve issues through a dialogue with Respondents. It was only when such discussions failed to achieve amicable resolution did the Claimant commence these proceeding. The case relied upon by the Respondent ***Bharat Barrel and Drum Mfg co Ltd,*** (1971) 2 SCC 860 thus has no application.
>
> **vi)** Similarly, the cases of ***Bombay Dyeing*** v ***State of Bombay,*** 1957 SCC Online SC 7; ***Bharat Barrel and Drum Mfg Co Ltd,*** (1971) 2 SCC 860; ***N Balakrishnan*** v ***M Krishnamurthy,*** (1998) 7 SCC 123; ***DDA*** v ***Durga Construction Co,*** 2013 SCC Online Del 4451; ***India Tourism Development Corporation*** v ***Bajaj Electricals,*** 2023 SCC Online Del 158 and ***Raj Kumar Gupta v Narang Constructions & Financiers,*** 2023 SCC Online Del 40 relied upon by the Respondent to contend the trite proposition that limitation does not extinguish rights but only remedies have no application in the facts of the present case.
>
> **vii)** For all these reasons, the Tribunal holds that the Claimant's claims in the present arbitration are not barred by limitation."
>
> ***(emphasis supplied)***

50. A perusal of the afore-extracted findings indicates that the learned AT has undertaken a detailed examination of multiple communications exchanged between the parties and has found that the same reflect a continuing acknowledgement of the obligation to convert the CCDs, including assurances in relation thereto. The learned AT has further held that such correspondence constitutes an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, thereby resulting in an extension of the limitation period.

51. It is also noted that the issue of limitation, in the facts of the present case, is not a pure question of law but is inextricably linked with the appreciation of evidence, including the correspondence exchanged between the parties and the surrounding factual matrix.

52. The contention of the Petitioners that the said correspondence was *de hors* the Agreement and could not have been relied upon, in substance, invites this Court to re-evaluate the evidentiary material and substitute its own view in place of that taken by the learned AT.

53. The judgments relied upon by the Petitioners, including ***Associate Builders*** *(supra)*, ***PSA Sical Terminals Pvt. Ltd.*** *(supra)*, ***Cruz City 1 Mauritius Holdings*** *(supra)*, as well as the foreign decisions, lay down the settled principles governing interference with arbitral awards under Section 34 of the A&C Act, including the grounds of patent illegality, perversity, and the requirement that an arbitral tribunal must act in accordance with the terms of the contract.

54. There can be no quarrel with the aforesaid propositions. However, the applicability of the said principles depends upon the facts of each case. In the present case, this Court does not find that the Impugned Award suffers from any patent illegality, perversity, or jurisdictional error so as to warrant interference. The findings of the learned AT are based on a detailed appreciation of the material on record and constitute a plausible view, which cannot be interfered with in proceedings under Section 34 of the A&C Act.

55. Insofar as the reliance placed on ***Cruz City 1 Mauritius Holdings*** *(supra)* is concerned, the said decision does not advance the case of the Petitioners inasmuch as the issue of limitation in the present case arises out of the appreciation of evidence and does not

involve a pure question of jurisdiction warranting *de novo* consideration by this Court.

56. In the considered opinion of this Court, and in light of the ruling of the Hon'ble Supreme Court in ***OPG Power*** *(supra)*, any such exercise would necessarily entail a re-appreciation of evidence, which lies beyond the permissible scope of interference under Section 34 of the A&C Act.

57. In the absence of any perversity, patent illegality, or disregard of vital evidence, this Court finds no ground to interfere with the findings of the learned AT on the issue of limitation.

58. Moving further, insofar as the challenge on the waiver/ acquiescence, based on the correspondence as exchanged between the parties, the same are clearly articulated and well-reasoned, and this Court finds no reason to interfere with the learned AT's conclusions.

59. It is contended that while Clause 6.2.5 deals with the conversion of CCDs, the subsequent correspondence between the parties concerned negotiations on valuation and discount, which departed from the contractual provision. The Petitioners have submitted that by engaging in these negotiations, the Respondent waived their rights under Clause 6.2.5, and the learned Arbitrator failed to appreciate this correspondence, which effectively constituted a waiver and, in substance, created a new arrangement between the parties.

60. The aforesaid challenge, again, is a pure exercise in re-appreciation of the evidence and the contents of the various emails thereof. As discussed earlier, the Court, in exercise of its jurisdiction under Section 34 of the A&C Act, would not interfere with findings of

fact unless it is demonstrated that the same is patently illegal, contrary to the terms of the contract, or one which no reasonable person could have arrived at. In this backdrop, it would be apposite to reproduce the relevant findings of the learned AT on the interpretation of Clause 6.2.5 of the Agreement, which reads as under:

> **"Tribunal's analysis**
> **92.** Clause 6.1 of the Debenture Subscription Agreement provides that:
>
> > *"**6.1 Automatic Conversion***
> > *Each Investor CCD shall stand mandatorily converted into fully paid-up Equity Shares on the occurrence of the earlier of:*
> > *(i) Upon the occurrence of the Qualified Financing (defined hereinafter); or*
> > *(ii) At the expiry of 1.5 (one and a half) years from the date of issuance of the Investor CCD, in the manner set forth below*
> > *whichever is earlier"'*
>
> **93.** Clause 6.2.5 further provides that:
>
> > *"In the event of non-occurrence of a Qualified Financing (amounting to a minimum of USD Million) within a period of 1.5 (one and a half) years from the date of issuance of the Investor CCDs, the Investor CCDs will convert to such number of Equity Shares that collectively amount to 20% (twenty percent) of the Shareholding of the Company on a fully diluted basis."*
>
> **94.** A plain reading of Clauses 6 and 6.2.5 of the Agreement indicates that the intention of the parties was to convert the CCDs issued to the Claimant into equity shareholding at the expiry of the 1.5 years period contained in Clause 6.1(ii). However, for commercial reasons which have been detailed by the 2nd Respondent in paragraphs 42 to 48 of her Witness Statement, the Respondents did not convert the CCDs issued to their early investors (including the Claimant) into equity shareholding, and instead informed all investors that the time period for converting the CCDs was being extended. This was done for commercial reasons, chiefly to obtain higher revenues and higher valuations from new investors.
>
> **95.** The Tribunal notes that according to the Respondents, all other early investors apart from the Claimant had agreed to such an extension, and were content with availing them discount offered by the Respondents in lieu of the CCDs not being converted into equity shareholding. However, pertinently, the Claimant had indicated his intention to abide by the original terms of the

Agreement, and followed up with the Respondents subsequently on numerous occasions to check the status of the conversion. The Claimant's email dated 21 November 2016, which was issued in response to the 2nd Respondent's email informing him of an extension in the conversion of the CCDs till 31 March 2018, is relevant:

> *"As an Initial Investor. I would prefer if the original terms of the Agreement is adhered to, and completed, before any further fresh investments.*
> *In my own planning I had factored in a conversion to equity by Aug 2016, exactly as we had discussed and agreed to, and now it has anyway unilaterally been extended to the last possible date period i.e. Jan 31st 2017 as per the Agreement.*
> *The March 2018 is far too long a wait for me, with too many unknowns, hence the conversion to equity now"*

96. The Claimant was therefore keen to abide by the original terms of the Agreement, and did not agree to or provide his consent to any extension of the original time period for conversion, as had been sought by the 2nd Respondent in her email dated 10 November 2016 **(Exhibit C6).** This is also borne out by the Claimant's subsequent emails to the 2nd Respondent in January 2017, and 1 February 2017 **(Exhibit CIO),** seeking an update from the Respondents on the conversion of his CCDs into equity shareholding as per the terms of the Agreement.

97. The correspondences issued by the Claimant are particularly relevant, since the Respondents have now relied on the counter-offers and proposals exchanged between the parties *after* the expiry of the conversion period to claim that the Claimant had waived his rights under the Agreement, and had acquiesced to the non-conversion of his CCDs into equity shareholding by the Respondents. However, the Tribunal finds that the Claimant's correspondence with the 2nd Respondent, both before and after the expiry of the conversion period under the Agreement, were premised on breach of the obligation to convert the CCDs under clause 6 of the Agreement and explore various options to resolve the situation that had arisen as a result of this breach. It cannot, therefore, be reasonably contended that the parties through their negotiations had "moved away" from Clause 6.2.5 of the Agreement through their discussions. The breach of Clause 6.2.5 was the fundamental basis for these discussions and the purpose of the discussions were to find a resolution of the issue to remedy the breach.

98. Based on a review of the correspondence between the parties as summarised above in paragraphs 80 -88 herein, the Tribunal cannot accept the submission of the Respondents that the Claimant had waived his right to claim conversion as per Clause 6.2.5 of the Agreement, and had instead acquiesced to the non-conversion of

the CCDs in terms of the Agreement by the Respondents. In our view, the Claimant made consistent efforts to indicate to the Respondents (i) his intention to seek conversion only in terms of the Agreement, and on the original date, irrespective of the decisions of the other investors, and (ii) his displeasure with the Respondents' decision to unilaterally change the date for conversion, and failure to convert the Claimant's CCDs without his approval or consent. Whilst various other options may have been discussed, this was predicated on a breach of Clause 6.2.5 of the Agreement. Ultimately, none of the options proposed were mutually agreed to and no amendment of the Agreement was executed. As such, the parties remain bound by their obligations under the Agreement.

99. In the Tribunal's view, the Respondents have breached their obligation to ensure the prompt conversion of the Claimant's CCDs in terms of Clause 6.2.5 of the Agreement. Having failed to complete a conversion of the CCDs in terms of the Agreement, which the 2nd Respondent has justified on commercial grounds in her Witness Statement, the Respondents cannot rely on the doctrine of waiver, or any acquiescence on the part of the Claimant, particularly when the Claimant had, on numerous occasions through email, sought the conversion of the CCDs as per Clause 6.2.5 of the Agreement.

100. The Claimant is entitled to conversion of the CCDs issued to him. The 1st Respondent's failure to convert the CCDs in terms of the Agreement and the subsequent express refusal to convert the CCDs (as articulated in the 2nd Respondent's email dated 20 March 2023, **Exhibit C22)** constitutes a breach of the Agreement.

101. Clause 15.12 of the Agreement specifically envisages specific performance of the obligations contained in the Agreement and provides as follows:

> **"15.12 Specific Performance of Obligations.**
> *The Parties agree that their rights and obligations under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a defaulting person."*

102. Therefore, in the Tribunal's view, the Claimant is entitled to conversion of his CCDs. Whilst Clause 6.2.5 of the Agreement envisaged conversion of all the Investor CCDs, only the Claimant is before the Tribunal and the scope of the Tribunal's jurisdiction is limited to adjudicating the Claimant's claims. Admittedly, the Claimant subscribed to l/10th of the Investor CCDs and is entitled to be issued shares amounting to 2%, i.e., l/10th of the 20% shareholding envisaged by Clause 6.2.5, of the 1st Respondent Company's shareholding. Since the obligation of the Company was to issue shares in respect of the Claimant's CCDs as on 31 January 2017, the 1st Respondent Company shall issue shares to the Claimant reflecting 2% of the paid-up share capital of the Company

> as on that date. This is also because the 1st Respondent Company seems to have issued further CCDs/shares after this date in which rounds of' fundraising the Claimant chose not to participate (as discussed below in respect of Issue III). Hence, the Claimant cannot reasonably claim to be issued shares equivalent to 2% of the 1st Respondent Company's paid-up capital as on the date of the Award."

61. A careful perusal of the findings in the Impugned Award indicates that the learned AT has interpreted the contractual provisions in the context of the overall scheme of the Agreement as well as the conduct of the parties, including their post-contractual dealings.

62. The learned AT has also taken into account the Petitioners' failure to effect conversion of the CCDs within the stipulated period under the Agreement, which formed part of the factual matrix considered by the learned AT, and has consequently upheld the Respondent's entitlement to conversion of the CCDs in accordance with the terms of the Agreement.

63. The submission of the Petitioners that Clause 6.2.5 did not contemplate any valuation exercise and could not have been applied beyond 31.01.2017, in effect, seeks a re-interpretation of the contractual terms, which is impermissible under Section 34 of the A&C Act. The learned AT has, upon a consideration of the correspondence exchanged between the parties, treated the same as reflective of the parties' understanding of their obligations under the Agreement and, in that context, has determined the rights and obligations of the parties under the Agreement. In such circumstances, the Petitioners' contention that Clause 6.2.5 of the Agreement is inapplicable on the ground that it does not contemplate valuation is clearly misconceived and is liable to be rejected.

64. Consequently, this Court does not find the interpretation adopted by the learned AT to be unreasonable or perverse as to warrant interference. The view taken by the learned AT, at the very least, constitutes a possible and plausible interpretation of the contractual framework.

65. The Petitioners have further contended that the direction contained in Paragraph No. 131(ii) of the Impugned Award, referring to "*2% of the paid-up capital*", is contrary to the Agreement, which envisaged conversion in terms of shareholding.

66. In this regard, this Court notes the submission made by learned counsel for the Respondent that the said expression may be clarified to read as "*2% of the shareholding of Petitioner No. 1 as on 31.01.2017*".

67. Having regard to the findings of the learned AT, including those contained in Paragraph No. 102 of the Impugned Award, this Court is of the view that the aforesaid clarification would be in consonance with the reasoning of the learned AT and would not alter the substantive findings of the Impugned Award and the same is well permissible in view of the Judgment of the Constitution Bench of the Hon'ble Supreme Court in ***Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited***[21].

68. Accordingly, the expression in Paragraph No. 131(ii) of the Impugned Award is liable to be understood in the aforesaid terms.

<u>CONCLUSION</u>:

(i). <u>O.M.P. (COMM) 111/2025</u>

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69. In view of the foregoing discussion and bearing in mind the limited scope of interference under Section 34 of the A&C Act, this Court finds no ground to interfere with the findings returned by the learned AT in Paragraph No. 131(i) of the Impugned Award.

70. Insofar as the findings contained in Paragraph No. 131(ii) of the Impugned Award are concerned, this Court is of the considered view that the same do not warrant interference on merits. However, in light of the submission made on behalf of the Respondent, and to bring clarity in line with the reasoning of the learned AT, it is clarified that the direction for conversion shall be read as "*2% of the shareholding of Petitioner No. 1 as on 31.01.2017*".

71. Subject to the aforesaid clarification, the Objection Petition is dismissed, and the Impugned Award, as clarified hereinabove, stands upheld.

72. The pending application(s), if any, also stand disposed of.

73. No order as to costs.

(ii). <u>OMP (ENF.) (COMM.) 101/2025</u>

74. In view of the dismissal of the Objection Petition, being O.M.P. (COMM) 111/2025, in the aforesaid terms, the Enforcement Petition, being O.M.P. (ENF.) (COMM) 111/2025, under Section 36 of the A&C Act, read with Order XXI Rules 10 and 11, and Section 151 of the CPC shall proceed in accordance with law.

75. Accordingly, list the matter on 21.04.2026 for further proceedings.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 6, 2026/jk