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

% ***Judgment reserved on: 03.02.2026***
Judgment pronounced on: 06.04.2026

\+ O.M.P. (COMM) 286/2024, I.A. 33341/2024 (Stay), I.A. 33342/2024 (Ex. from filing certified copies of the arbitral record), I.A. 33343/2024 (Ex. from filing entire original/certified copies of the arbitral tribunal record), I.A. 33344/2024 (Delay of 5 days in re-filing the petition) & I.A. 36363/2024 (Delay of 4 days in filing the short note)

INSTITUTE OF HUMAN BEHAVIOUR AND ALLIED SCIENCES .....Petitioner

Through: Mr. Tushar Sannu, Standing Counsel with Ms. Ankita Bhadouriya and Mr. Umesh Kumar, Advocates.

versus

MI 2 C SECURITIES AND FACILITIES .....Respondent

Through: Mr. Rajesh Gogna, Mr. Shivam Tiwari, Ms. Rebina Rai and Ms. Punita Jha, Advocates.

\+ OMP (ENF.) (COMM.) 272/2024, EX.APPL.(OS) 2/2025 (Filed on behalf of the decree holder to place on record the new certificate of incorporation dt. 29.04.2024) & EX.APPL.(OS) 59/2025 (Filed on behalf of the decree holder for amendment of memo of parties)

MI2C SECURITY AND FACILITIES PVT LTD .....Decree Holder

Through: Mr. Rajesh Gogna, Mr. Shivam Tiwari, Ms. Rebina Rai and Ms. Punita Jha, Advocates.

versus

INSTITUTE OF HUMAN BEHAVIOUR AND ALLIED SCIENCES .....Judgement Debtor

Through: Mr. Tushar Sannu, Standing Counsel with Ms. Ankita Bhadouriya and Mr. Umesh Kumar, 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 O.M.P. (COMM) 286/2024**[1], has been instituted under Section 34 of the **Arbitration and Conciliation Act, 1996**[2], by **Institute of Human Behaviour & Allied Sciences**[3], assailing the **Arbitral Award dated 26.02.2024**[4] rendered by the learned Sole Arbitrator in the arbitral proceedings initiated at the instance of **MI2C Securities and Facilities**[5].

2. The Claimant, in the above-stated arbitral proceedings *vide* the Impugned Award, was awarded a principal sum of Rs. 1,37,05,429/- towards the invoices raised along with Pre-reference Interest and *pendente lite* interest at the rate of 18% and further, future interest at the rate of 20% from the date of award until actual realisation.

3. For the sake of convenience, clarity and consistency, the parties shall hereinafter be referred to in the same rank and nomenclature as adopted in the above-stated Objection Petition.

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[1] Objection Petition
[2] A&C Act
[3] Petitioner
[4] Impugned Award
[5] Respondent

4. Parallelly, an **Enforcement Petition, being O.M.P. (COMM) 272/2024**[6] has been filed by the Respondent/ Award Holder under Section 36 of the A&C Act, read with Order XXI Rules 1, 11(2), 30, 43, 64 & 66, read with Section 151 of the Code of Civil Procedure, 1908, seeking enforcement and execution of the Impugned Award.

5. It is because the enforceability of the Impugned Award is directly contingent upon the fate of the challenge laid by way of the Objection Petition, and since both the proceedings are intrinsically interlinked with the Impugned Award, the Objection Petition and the Enforcement Petition were heard together contemporaneously, in order to obviate the possibility of conflicting determinations.

6. It is accordingly clarified that the Enforcement Petition shall necessarily abide by the outcome of the Objection Petition, and in the event the challenge to the Impugned Award succeeds, the Enforcement Petition would consequently not survive for consideration.

BRIEF FACTS:

7. The Petitioner is stated to be an autonomous Government Institution and Hospital under the aegis of the Government of N.C.T. of Delhi and the Respondent, a private limited company registered as **Micro, Small and Medium Enterprises**[7], is stated to be an integrated security and facility management service provider engaged in providing manpower for security services.

[6] Enforcement Petition
[7] MSME

8. The Petitioner issued a **Notice inviting Tender dated 06.11.2015** [8] seeking bids to provide security manpower to be deployed at its premises. The Respondent participated in the said bidding process and stood successful, in pursuance of which the Petitioner issued an **Offer Letter dated 08.08.2017**[9] in favour of the Respondent.

9. Consequent upon the issuance of the Offer Letter, the parties entered into an **Agreement dated 23.08.2017**[10], initially operative for a period of one year from 24.08.2017 to 24.08.2018, however, the said Agreement was thereafter extended from time to time and remained in force till 31.07.2020.

10. It is the case of the Respondent that, in addition to the sanctioned strength stipulated for the guards under the Agreement, they provided deployment of additional guards, bouncers and gunmen to the Petitioner, on their oral instructions, pursuant to a meeting held on 24.08.2017.

11. Accordingly, as per the Respondent, additional manpower comprising additional guards, bouncers and gunmen was deployed on several occasions as per the requirement of the Petitioner, in addition to the originally agreed strength of the guards, bouncers and gunmen, as per the Agreement.

12. The Respondent raised invoices towards the Petitioner against the regular services provided as per the Agreement, as well as against the additional manpower provided.

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[8] NIT
[9] Offer Letter
[10] Agreement

13. It is the case of the Respondent that the Petitioner made a short payment for the month of March, 2020 amounting to Rs. 5,01,000/-, salary of the month of July, 2020 amounting to Rs. 57,45,826/- for the sanctioned strength as per the Agreement and also no payment was made with regards to the additional security guards, bouncers and gunmen deployed on various occasions, amounting to Rs.1,37,05,429/- even after various requests for the same was made to the Petitioner.

14. Pursuant to the above-stated non-payment of the aggregate amount of Rs. 1,99,52,255/-, the Respondent issued a Legal Notice dated 25.12.2020 demanding therein the said due amounts, return of performance bank guarantee amounting to Rs. 63,13,065/- and invoked the Dispute Resolution Clause.

15. Pursuant to the Legal Notice, the Petitioners made the due payment with regard to the short payment for the month of March, 2020 and salary due on sanctioned strength for the month of July, 2020.

16. Consequently, another Legal Notice dated 14.09.2021 was issued by the Respondent to the Petitioner demanding dues of Rs. 1,37,05,429/- against deployment of additional security guards, bouncers and gunmen, and invocation of the Dispute Resolution Clause to refer the dispute with regards to non-payment of dues.

17. It is stated that the Petitioner failed to reply to the said Legal Notice.

18. It is the case of the Respondent that the Petitioner made all the payments with respect to the invoices raised against the regular services rendered as per the Agreement, but did not make any

payments against the invoices raised for the additional guards, bouncers and gunmen provided to the Petitioners.

19. Subsequently, the Respondent approached this Court under Section 11 of the A&C Act for the appointment of an Arbitrator by way of a Petition, being Arb. P No. 186/2022, which was allowed *vide* Order dated 23.03.2022 and thereby an Arbitrator was appointed to adjudicate upon the disputes *inter se* the parties.

20. The Respondent, who was the Claimant before the Arbitral Tribunal, filed their Statement of Claim, thereby pressing upon the following Claims *viz.*,

(i) Claim A, for payment towards invoices raised for additional deployment i.e., extra security guards, bouncers and gunmen;

(ii) Claim B, interest on Claim A;

(iii) Claim C, Cost of Arbitration;

(iv) Claim D, any other relief which the learned Arbitrator may think proper.

21. Upon completion of the pleadings and after the parties had led their respective evidence, the learned Sole Arbitrator, by way of the Impugned Arbitral Award dated 26.02.2024, issued the following directions in relation to the claims preferred by the Respondent herein:

(i) **Direction A** - Claim A was allowed in favour of the Respondent for a sum of Rs. 1,37,05,429/- towards the payment on account of deployment of extra security guards, bouncers and gunmen.

(ii) **Direction B** - Claim B was allowed, directing the Petitioner to pay the Respondent interest at the rate of 18% with monthly rests on the principal amount granted by way of direction A. Furthermore, the Respondent was directed to compute the

interest in terms of the **Micro, Small and Medium Enterprises Development Act, 2006**[11], till the date of the Award, and provide the same to the Petitioner within 2 weeks from the date of the Award.

(iii) **Direction C** - The learned Arbitrator awarded the Respondent post award future interest at the rate of 20%, if the Petitioner failed to pay the amounts directed as per Directions A and B, within a period of 60 days from the date of the award till actual payment.

(iv) **Direction D** - Claim C was rejected, thereby directing each party to bear their respective costs of arbitration.

22. Aggrieved thereof, the Petitioner has approached this Court, by way of the Objection Petition, seeking to set aside the Impugned Award.

CONTENTIONS ON BEHALF OF THE PETITIONER:

23. Learned counsel appearing on behalf of the Petitioner would, at the outset, contend that the Impugned Award suffers from the vice of being patently illegal. It would be submitted that the conclusions arrived at by the learned Sole Arbitrator are bereft of cogent reasons and unsupported by the pleadings and evidence on record. It would be urged that the Award discloses non-application of the mind to material objections raised by the Petitioner and, records conclusions in the absence of necessary evidentiary and contractual foundation.

Challenge to Direction A - Award of Principal Amount for Alleged Additional Deployment

[11] MSMED Act

24. Learned counsel for the Petitioner would contend that the learned Arbitrator was only empowered to adjudicate upon subject matters within the terms of the Agreement as entered into between the parties and disputes which arise thereof, and nothing beyond it.

25. Learned counsel for the Petitioner would, in this backdrop, submit that the Agreement as between the parties was only restricted to deployment of 'security guards', and cannot be expanded to include any other category, *inter alia*, bouncers or gunmen.

26. Learned counsel for the Petitioner would contend that the learned Arbitrator has erred in interpreting the 'variation clause' of deployment at Annexure IV of the NIT Documents to mean additional deployment.

27. It would be submitted that the 'variation clause' of Annexure IV of the NIT Documents only stipulates 25% "extra guards", which cannot be interpreted to include deployment of bouncers and gunmen. This stipulation, if any meaning is to be assigned to it, would be limited to 25% of the total number of guards (Total 247) which were deployed as per the contract, and would be restricted to approximately 62 extra/additional guards.

28. It would be further contended that the Respondent produced no evidence as to the market rates of the said additional bouncers and gunmen, and raised invoices at rates that were inflated and which were not agreed upon between the parties.

29. Learned counsel for the Petitioner would further assail the Impugned award on the ground that the award travels beyond the Statement of Claims of the Respondent, as before the learned Arbitral Tribunal and grants reliefs which were not prayed for.

30. Learned counsel would urge that the Arbitral Tribunal, being a creature of reference, is bound by the pleadings of the parties and cannot grant reliefs not sought, nor mould reliefs in a manner that prejudices the opposite party.

31. Assailing the award on merits, learned counsel would contend that the learned Arbitrator erred in allowing claims for the period August 2017 to December 2017 without any supporting evidence. It would be further submitted that, the Claimant's own case, as borne out from the record, was that attendance sheets and deployment records were duly verified only for the period January 2018 to July 2020. Despite this, the learned Arbitrator awarded amounts for an earlier period without any documentary substantiation, rendering the finding perverse and contrary to the evidence on record.

Challenge to Direction B - Grant of Interest at 18% under the MSMED Act

32. On this premise, with particular emphasis on the award of interest, learned counsel for the Petitioner would submit that the Respondent had itself limited and quantified its claim towards interest. Leaned counsel for the Petitioner would draw the attention of this Court to the Statement of Claim filed by the Respondent before the Arbitral Tribunal and the accompanying documents, wherein the Respondent had expressly computed interest at the rate of 12.5%, aggregating to Rs. 64,06,296.36/-, for a specific period. However, the learned Arbitrator proceeded to grant interest at the rate of 18% per annum, purportedly under the MSMED Act, followed by future interest at the rate of 20% per annum, without any pleading, quantification, or reasoned analysis.

33. Learned counsel for the Petitioner would further contend that the learned Arbitrator has erroneously invoked the principles of the MSMED Act without any foundational pleadings or proof.

34. Learned counsel would submit that the Respondent neither pleaded nor established that it fulfilled the requirement of being a 'supplier' under the MSMED Act, nor was any determination made with respect to the 'appointed date' or the contractual trigger under Sections 15 and 16 of the MSMED Act.

35. It would be urged that the mere assertion of MSME registration, without pleading and proof of statutory compliance, cannot, *ipso facto*, entitle a party to the penal rate of interest contemplated under the MSMED Act.

36. Learned counsel for the Petitioner would further submit that the statutory scheme of the MSMED Act was selectively and impermissibly applied. It would be argued that the MSMED Act is a self-sufficient statute that provides not only substantive benefits but also a mandatory procedural mechanism under Section 18 of the MSMED Act, including reference to the **Micro and Small Enterprise Facilitation Council**[12].

37. Learned counsel for the Petitioner would place reliance on the decision of a Co-ordinate Bench of this Court in ***Idemia Syscom India Private Limited vs. M/s Conjoinix Total Solutions Private Limited***[13] to contend that recourse to the MSEFC is mandatory and that the learned Arbitrator erred in simultaneously declining such recourse while awarding interest under the MSMED Act and that the MSMED

[12] MSEFC
[13] 2025:DHC:1205

Act would have an overriding effect on the provisions of the A&C Act.

38. Learned counsel would, in this backdrop, submit that the learned Arbitrator erred in holding that recourse to the MSEFC was not necessary, while simultaneously granting interest under the MSMED Act. Such an approach, it would be urged, amounts to permitting a party to approbate and reprobate, invoking the benefits of a special statute while bypassing its mandatory procedure.

Challenge to Direction C - Award of Future Interest at 20% per annum

39. Learned counsel for the Petitioner would seek to assail the award of Future interest at the rate of 20% per annum on the ground of patent illegality as being wholly arbitrary and unsupported by reasoning.

40. It would be urged that the Impugned Award does not disclose any rationale, contractual stipulation or statutory basis for the grant of such a high rate of future interest. It would further be submitted that the absence of reasons renders this direction of awarding future interest vulnerable under Section 31(3) of the A&C Act and constitutes patent illegality apparent on the face of the award.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

41. ***Per contra,*** learned counsel appearing on behalf of the Respondent would contend that Section 34 of the A&C Act does not envisage re-appreciation of evidence or facts, it does not constitute an appeal on facts or law. It would be submitted that the ground of 'patent illegality' as contended by the Petitioner under Section 34(2A) is a narrow ground and can be invoked to set aside an arbitral award

only in exceptional circumstances, where the arbitral award exhibits perversity that goes to the root of the matter.

Direction A- Award of Principal Amount for Alleged Additional Deployment

42. Learned counsel for the Respondent would submit that the finding of the learned Arbitrator allowing the claim towards invoices raised for additional deployment of guards, gunmen and bouncers is based on a holistic appreciation of the contractual framework, tender conditions, contemporaneous correspondence and admitted conduct of the parties.

43. It would be contended that the Agreement between the parties cannot be read in a pedantic manner. The variation clause contained in Annexure IV of the NIT documents was correctly interpreted by the learned Arbitrator to permit deployment beyond the baseline requirement, particularly in the emergent and sensitive circumstances, and such interpretation is a possible and reasonable view.

44. As regards the challenge on alleged absence of proof of market rates, learned counsel would submit that the Arbitrator has taken into account the material placed on record, including invoices, deployment details and the prevailing contractual rates, and has returned findings of fact which are immune from interference under Section 34 of the A&C Act.

45. It would be further urged that the contention that the award travels beyond the Statement of Claim is wholly unfounded. The reliefs granted fall squarely within the claims as pleaded, and the learned Arbitrator has neither granted any relief *de hors* the pleadings nor moulded relief in excess thereof.

46. Addressing the challenge to the grant of the claims for deployment for the period August 2017 to December 2017, learned counsel would submit that the Arbitrator has recorded reasons for allowing the claim based on cumulative material and oral evidence, and the mere absence of certain documents does not render the finding perverse. It would be contended that sufficiency or adequacy of evidence is beyond the remit of Section 34 of the A&C Act.

Direction B- Grant of Interest at 18% under the MSMED Act

47. With respect to Direction B, learned counsel for the Respondent would submit that the award of *pendente lite* interest at the rate of 18% is fully justified in law. It would be contended that the Respondent is a registered MSME and had placed its registration on record, which was duly considered by the learned Arbitrator.

48. Learned counsel would argue that once the Respondent is found to be an MSME supplier and the payments are delayed beyond the statutory period, the entitlement to interest under Sections 15 and 16 of the MSMED Act flows as a matter of law. It would be urged that the learned Arbitrator was competent to apply the statutory mandate, even if the exact computation was left to be finalised post-award.

49. It would further be submitted that the Petitioner cannot take shelter behind technical pleas of pleading when the statutory entitlement is clear and the delay in payment is undisputed.

50. The award of interest, it would be urged by the Respondent, is compensatory in nature and intended to neutralise the economic prejudice suffered by small enterprises.

51. On the issue of Section 18 of the MSMED Act, learned counsel would submit that recourse to the MSEFC is an enabling mechanism

and does not oust the jurisdiction of an arbitral tribunal constituted under an existing arbitration Agreement. It would be contended that the invocation of arbitration by consent of parties is legally permissible, and the Petitioner cannot selectively rely on the MSMED Act only to resist interest.

52. In this regard, learned counsel for the Respondent would also place strong reliance on the decision of a Co-ordinate Bench of this Court in ***Indian Highways Management Company Limited v. SOWiL Limited***[14] wherein the Court held that the buyer's obligation to pay interest on delayed payments under Sections 15 and 16 of the MSMED Act is absolute and not contingent upon the supplier invoking the dispute resolution mechanism under Section 18 of the MSMED Act.

Direction C - Award of Future Interest at 20% per annum

53. Assailing the challenge to Direction C, learned counsel for the Respondent would submit that the award of future interest at the rate of 20% is neither arbitrary nor illegal. It would be contended that the rate has been awarded as a deterrent against continued default and prolonged withholding of legitimate dues.

54. Learned counsel would argue that Section 31(7) of the A&C Act vests wide discretion in the arbitral tribunal to award post-award interest, and unless the rate is shown to be shockingly unconscionable or prohibited by statute, the same cannot be interfered with under Section 34 of the A&C Act.

55. It would be urged that the Petitioner, having enjoyed the benefit of the Respondent's services and having withheld payment for years,

[14] 2021 SCC OnLine Del 5523

cannot now plead hardship against the award of future interest. The direction, it would be submitted, is equitable and intended to ensure timely compliance with the award.

ANALYSIS:

56. This Court has heard the learned counsel appearing on behalf of the parties at length and, with their able assistance, perused the materials placed on record.

57. 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.

58. 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 Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[15], 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*)

[15] (2025) 2 SCC 417

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."

59. Having delineated the scope and ambit of Section 34 of the A&C Act, this Court now proceeds to examine and analyze the specific grounds urged by the Petitioner in respect of each of the directions issued by the learned Arbitrator in the Impugned Award.

Direction A - Award of Principal Amount for Alleged Additional Deployment

60. The primary ground on which the Petitioner assails Direction A is that the learned Arbitrator travelled beyond the contractual framework by awarding amounts towards deployment of additional guards, gunmen and bouncers, whereas, according to the Petitioner, the Agreement contemplated only deployment of 'security guards'. It has thus been urged that such an award runs contrary to the Agreement and, therefore, attracts the vice of patent illegality under Section 34(2A) of the Act.

61. A careful perusal of the Impugned Award, however, reveals that the learned Arbitrator did not proceed on an extraneous or arbitrary

footing. On the contrary, the learned Arbitrator undertook a contextual and holistic interpretation of the Agreement along with the contractual documents, including the NIT conditions and the 'variation clause' contained in Annexure IV of the NIT Documents.

62. The submission that the variation clause is restricted only to "25% extra guards" and cannot include other categories such as bouncers or gunmen, is, in essence, an invitation to this Court to adopt a narrower interpretation in substitution of that adopted by the learned Arbitrator. Such an exercise is impermissible under Section 34 of the A&C Act. It is well settled that the interpretation of contractual terms lies within the domain of Arbitral Tribunal, and where the view taken is a plausible one, the same does not warrant interference. The view taken by the learned Arbitrator is delineated in Paragraph No. 4.17 of the Impugned Award. The said paragraph reads as under:

> "**4.17** Relevant paragraphs have been extracted herein above. From the perusal of different clauses of the contract, the pleadings, documents available on record, the evidence led by the parties **it is found by me that the deployment of extra security of guards, gunmen and bouncers is part of the contract between the parties**. Annexure IV to the agreement titled **DEPLOYMENT** provides as under:
>
> *"**1.** The contractor will provide following number of Security Guards as mentioned hereunder:*
> *Total number of Security guards required = 247 (25% extra may be deployed as Extended requirement from time to time for patient specific **legal/ clinical** obligations of the Institute)*
> ***Total No. of Gunmen required =03***
> ***Note: Detailed deployment of security personnel will be provided at the time of award of contract. There will be no additional payment towards relievers etc. In other words, the above number will include deployment and roster of deployment such that the relievers are subsumed in the total no. of manpower required.***
> ***2.** The above numbers may vary by 25% at the beginning of the contract or any time during the course of the contract depending upon the requirement. The pro rate additional payment on this account will be calculated on the basis of wage component cost*

> *as defined in the next year three. No additional payment in respect of material cost and administrative/service charges component will be made for additional deployment over and above the Number mentioned in the agreement. This coupled with part B of Annexure xiv as appearing on page No. 74 of the paper book, clauses x and xi clearly state that deployment number may vary by 25% at any time during the course of contract depending upon the requirement."*
>
> ***(emphasis supplied)***

63. In the present case, the interpretation adopted by the learned Arbitrator is neither perverse nor one that no reasonable person would arrive at. The contractual architecture itself supports the aforementioned interpretation of the learned Arbitrator. Clause 2(c) of the Agreement expressly stipulates that the NIT shall form part of the Agreement between the parties. Once the NIT is contractually incorporated, the annexures thereto, including Annexure IV, cannot be selectively excluded or read in isolation. Merely because an alternative interpretation is possible would not render the Award vulnerable.

64. Further, the contention of the Petitioner that the 'variation clause', as read and interpreted by the learned Arbitrator to form part of the Agreement, is without merit and equally untenable. Annexure IV, which contains the said 'variation clause', forms an integral part of the NIT, which in turn, stands expressly incorporated into the Agreement by virtue of Clause 2(c). Once such incorporation is contractually acknowledged, the Arbitrator's reliance on Annexure IV cannot be characterised as extraneous, perverse, or beyond the scope of the Agreement. The interpretative exercise undertaken by the learned Arbitrator, therefore, remains firmly anchored within the contractual framework agreed upon by the parties and does not

transgress into the realm of patent illegality. The relevant portion of the Agreement, being Clause 2, is reproduced herein under:

> "2. The following documents shall be deemed to form and be read and constructed as part of this Agreement, *viz.*:
> a. Letter of acceptance of award of contract;
> b. General/Special conditions of contract and service level;
> c. Notice inviting Tender;
> d. Financial Bid;
> e. Scope of service;
> F. Addendums, if any; and
> g. Standing Operating Procedures (SOPs)."
>
> ***(emphasis supplied)***

65. It is trite law that the interpretation of contractual terms lies within the exclusive domain of the arbitral tribunal. Even if two views are possible, the Court, in proceedings under Section 34 of the A&C Act, cannot substitute its own interpretation for that of the Arbitrator, so long as the view adopted is a plausible one. The jurisdiction under Section 34 of the A&C Act does not permit the Court to don the mantle of an appellate forum over contractual interpretation merely on the ground that another view may appear more appealing.

66. Insofar as the contention of the Petitioner regarding alleged inflation of invoices or insufficiency of evidence is concerned, the same pertains to the appreciation of evidence. The Impugned Award reflects that the learned Arbitrator has considered the invoices, deployment records and other material placed on record before arriving at the quantified amount. The sufficiency or adequacy of such evidence, again, cannot be re-examined in proceedings under Section 34 of the A&C Act, unless it is demonstrated that the findings are based on no evidence at all or that vital evidence has been ignored, which is not the case here.

67. Viewed thus, the findings returned by the learned Arbitrator are based on plausible interpretation of the contract and an appreciation of the material on record. The same do not suffer from perversity, patent illegality, or any infirmity warranting interference under Section 34 of the A&C Act.

68. In this regard, this Court deems it apposite to reference the discussion as undertaken by the Hon'ble Supreme Court in ***Ramesh Kumar Jain vs. Bharat Aluminium Company Limited***[16], with respect to when does an award fall into the ambit of being 'patently illegal' *vis-à-vis* the appreciation of evidence and interpretation of contractual terms. The Apex Court has clarified that patent illegality must be something that goes to the root of the matter, such as an award that is contrary to the contract, based on no evidence, or so irrational that it shocks the judicial conscience. Mere erroneous appreciation of evidence or adoption of one plausible interpretation over another does not cross this high threshold. The relevant portion of the said judgement is reproduced herein under fore ready reference:

> "**34.** Thereafter, this court elucidated the meaning of the expression 'patent illegality' in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI22*** while taking into consideration the amendment act of 2015 and held it as a glaring, evident illegality that goes to the root of the award. This includes: (a) an award deciding matters outside the scope of the arbitration (beyond the contract or submission); (b) an award contradicting the substantive law of India or the Arbitration Act itself; (c) an award against the terms of the contract; and (d) an award so unreasoned or irrational that it manifests an error on its face.
>
> **35.** Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational

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that no fair or sensible person would have arrived at it given the same facts. A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference. However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence.

36. Having discussed the said law, we move ahead to another limb of the submission which was espoused by the respondent particularly with reference to obligations of the arbitrator to decide the dispute in accordance with the terms of the contract. It is a fundamental principle that the arbitrator cannot award anything that is contrary to the contract. The arbitrator is bound by clear stipulations *inter se* the parties, and an award ignoring such stipulations would violate public policy by undermining freedom of contract. However, that does not mean that not every award which gives a benefit not expressly mentioned in the contract is in violation. The arbitral tribunal in exercise of their power can very well interpret the implied terms or fill gaps where the contract is silent, so long as doing so does not contradict any express term. For example, if a contract is silent on interest on delayed payments, an arbitrator awarding reasonable interest is not contradicting the contract rather it is a power exercised by the arbitrator to fulfill the gap on the basis of equity which also mandated under Section 31(7)(a) of the A&C Act. Similarly, if a contract does not say either way about compensating extra work done at request, the arbitrator can imply a term or use principles of restitution to award a reasonable sum, without violating the terms of contract. The thin line is whether an express prohibition or restrictions in the contract is breached by the award? If the answer is in affirmative, the award is liable to struck down. However, where the contract is simply silent on a legitimate claim which is inherently linked to the natural corollary of contractual obligation of the parties the arbitrator will be well within his powers to interpret the contract in the light of principles of the contractual jurisprudence and apply the equity to that situation. A contrary interpretation would lead to opening a floodgate whereby a party who may have dominant position would intentionally not ink down the natural obligation flowing from the contract and subsequently; after obtaining the benefit the party

would agitate absence of express terms to sway away from even discharging his alternative obligation of compensating the party at loss. Hence the question which arises in such situations is, can the party who bears the brunt and suffers the loss due to silence under the contract regarding the natural contractual obligation which arises in usual course of business be left in limbo? In our view, that is the very purpose why section 70 of the Contract Act, 1872, has been an intrinsic part of our Contract Act. The said provision creates a statutory right independent of contract, often termed *quantum meruit* or unjust enrichment remedy. For ready reference the said provision has been extracted hereinbelow:

> ***"70. Obligation of person enjoying benefit of non-gratuitous act.***
>
> **Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."**

37. The close scrutiny of the aforesaid provision reveals that it comes into play when one party confers a benefit on another in circumstances not governed by 28a contract, without intent to act gratuitously. Hence in such situation, the party taking the benefit is bound to pay compensation to the party who had gratuitously taken the benefits and the courts including arbitral tribunals, can award compensation under Section 70 if the conditions are met.

(emphasis supplied)

69. In ***Hindustan Construction Company Ltd. Vs National Highways Authority of India***[17], the Hon'ble Supreme Court cautioned that courts exercising jurisdiction under Section 34 of the A&C Act do not sit in appeal over the findings of the arbitral tribunal and cannot re-examine contractual interpretation unless the view taken is perverse or wholly untenable. The Apex Court expressly held that where the arbitral tribunal adopts a plausible view after considering the material on record, judicial interference is unwarranted. The relevant portion, being Paragraph No. 13 of the said judgment, is reproduced herein under for ready reference:

[17] (2024) 2 SCC 613

"**13.** Now, we turn to the issue of whether the claim for the construction of embankment forms part of the activity of clearing and grubbing and was not payable as embankment work. We may note here that two expert members of the Arbitral Tribunal held in favour of the respondent on this point, whereas the third member dissented. There cannot be any dispute that as far as the construction of the terms of a contract is concerned, it is for the Arbitral Tribunal to adjudicate upon. If, after considering the material on record, the Arbitral Tribunal takes a particular view on the interpretation of the contract, the Court under Section 34 does not sit in appeal over the findings of the arbitrator. The Division Bench has adverted to the findings recorded by the two members of the Arbitral Tribunal. After considering the view taken by the Arbitral Tribunal, the High Court observed that the real controversy was whether the work of backfilling had been done and whether the said work was liable to be excluded from the work of the embankment construction by the respondent. The Division Bench held that nothing is shown that indicates that the construction of the embankment can be said to have been done in a manner where the lower part of the embankment is made only by carrying out the activity of backfilling. The High Court also noted that the appellant sought to make deductions after initially paying the amounts for the embankment. The Division Bench was right in holding that the majority opinion of technical persons need not be subjected to a relook, especially when the learned Single Judge had also agreed with the view taken by the Arbitral Tribunal. We have also perused the findings of the majority in the Award. We find nothing perverse or illegal about it."

(emphasis supplied)

70. Now turning to the contention of the Petitioner that the learned Arbitrator awarded amounts for the period from August 2017 to July 2020 without supporting evidence. This contention is also equally unpersuasive. Paragraph No. 4.2 of the Impugned Award demonstrates that the learned Arbitrator relied upon attendance sheets duly verified from January 2018 to July 2020, as well as the invoices placed on record. The arbitral record further evidences that an invoice dated 06.09.2017 was raised for additional deployment for the month of August 2017 and was considered by the learned Arbitrator. The

relevant paragraph, being Paragraph No. 4.2 of the Impugned Award, is reproduced herein under for ready reference:

> "**4.2** Dispute is with regard to the deployment of extra security guards, gunmen and bouncers, which is seen from Attendance sheets being exhibit CW-1/A-5, duly verified from January 2018 to July 2020 confirming the deployment prepared by Mr. Satish Kumar and verified by Mr. Vijender. I have also perused the bills/ invoices placed as Exhibit CW-1/A-6."

71. In light of this, the plea of insufficiency of evidence, in substance, invites this Court to re-appreciate evidentiary material, a course of action impermissible under section 34 of the A&C Act. As consistently held by the Hon'ble Supreme Court, including in ***Ramesh Kumar Jain*** *(supra)*, sufficiency or adequacy of evidence is not a ground for setting aside an arbitral award unless the finding is based on no evidence or is so perverse that no reasonable person could have arrived at it. This threshold is clearly, in view of the foregoing discussion, not crossed in the present case.

72. The further submission of the Petitioner that the learned Arbitrator granted relief beyond the Statement of Claim is also devoid of merit. A reading of the Award indicates that the relief granted falls within the scope of the claims raised. The Arbitrator neither granted relief which was not pleaded nor moulded the claims in a manner alien to the reference. It bears reiteration that pleadings in arbitral proceedings are not to be construed with the same rigidity as in civil suits.

73. Viewed thus, this Court finds no patent illegality in Direction A of the Impugned Award. The reasoning adopted by the learned Arbitrator is grounded in the contractual documents and supported by the material on record. Whether this Court might have arrived at a different conclusion is wholly irrelevant. The Impugned Award does

not disclose any perversity, irrationality, or violation of the contractual framework warranting interference under Section 34 of the A&C Act.

74. In view of the foregoing discussion, the judicial precedents and established threshold for interference under Section 34 of the A&C Act, this Court is satisfied that the determination under the impugned Direction does not merit interference. The view adopted by the learned Arbitrator is founded on a plausible interpretation of the contractual and statutory framework, supported by material on record, and arrived at after due consideration of the rival submissions. The impugned finding neither travels beyond the terms of reference nor disregards any vital evidence, nor does it disclose such perversity or irrationality as would shock the conscience of this Court. Interference under Section 34, therefore, is plainly unwarranted.

Direction B - Grant of Interest at 18% under the MSMED Act

75. The challenge to Direction B is premised on the contention that the learned Arbitrator improperly invoked the provisions of the MSMED Act without foundational pleadings and without the Respondent having first approached the MSEFC under Section 18 of the MSMED Act, thereby rendering the award of interest patently illegal.

76. This Court finds no infirmity in the approach adopted by the learned Arbitrator. The Impugned Award records that the Respondent had placed on record its MSME registration, which pre-dated the execution of the Agreement between the parties, and that the payments due were admittedly delayed. Once these foundational facts stood established, the entitlement to interest under Sections 15 and 16 of the MSMED Act followed as a statutory *sequitur*.

77. In this regard, the reliance placed by the learned counsel for the Respondent on ***Indian Highways Management Company Limited*** *(supra)* is squarely apposite and legally sound. The said decision categorically holds that the buyer's obligation to pay interest on delayed payments under Sections 15 and 16 of the MSMED Act is absolute and not contingent upon the supplier invoking the dispute resolution mechanism under Section 18 of the said Act. The Court expressly observed that Sections 15 and 16 confer substantive rights and impose statutory obligations, independent of the forum chosen for adjudication. It was further clarified that by virtue of Section 18(3), an arbitral tribunal constituted under the MSMED Act is competent to award statutory interest under the said Act, even in cases where the MSEFC route has not been invoked. The relevant portion of the said judgment reads as follows:

> "**34.** It is apparent from the above that the provisions of Sections 15 and 16 of the MSMED Act confer substantive rights and impose obligations, which are not contingent upon recourse to any dispute resolution mechanism. Section 18 of the MSMED Act provides for a dispute resolution mechanism in respect of any amount due under Section 17 of the MSMED Act. It is obvious that it may not be necessary for a supplier to seek recourse to any proceedings for recovery of the amounts that may be otherwise due to it, if the buyer complies with its obligation under Sections 15 and 16 of the MSMED Act.
>
> **35.** The import of the contentions advanced on behalf of IHMCL is that the obligations of the buyer under Sections 15 and 16 of the MSMED Act are contingent upon the supplier resorting to Conciliation or the adjudicatory process under Section 18 of the MSMED Act. The plain language of Sections 15, 16 and 17 of the MSMED Act, does not support this proposition.
>
> ****
>
> **41.** As pointed out by Ms Arora, one of the Statements and Objects of enacting the MSMED Act was to "make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment."

> **43.** In view of the above, it is clear that the MSMED Act is a special legislation with regard to payment of interest and the provisions of MSMED Act would override the provisions of the A&C Act to the extent of any repugnancy. This view further draws support from the non obstante provisions of Section 24 of the MSMED Act, which reads as under: -
>
> > "**24. Overriding effect. –** The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."
>
> **45.** Before concluding, it would also relevant to reiterate that the scope of interference with an arbitral award is restricted. It is permissible only on the grounds as set out under Section 34 of the A&C Act. The view of an arbitral tribunal is final and binding unless it is found that the impugned award is vitiated by patent illegality or falls foul of the public policy of India. Even in those cases, where it is found that the arbitral tribunal has erred in law, interference with the arbitral award would not be permissible unless it is found that the patent illegality goes to the root of the matter and which vitiates the award [See: ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.: 2021 SCC OnLine SC 695***]. Clearly, in this case, the impugned award cannot be stated to be vitiated by patent illegality or in conflict with the public policy of India."

78. The reliance placed by the Petitioner on ***Idemia Syscom India Private Limited*** *(supra)* to contend that recourse to the MSEFC is mandatory and that the learned Arbitrator erred in simultaneously declining such recourse while awarding interest under the MSMED Act is misplaced and distinguishable on facts. The said decision arose in the context of a petition under Section 11 of the A&C Act, where proceedings before the MSEFC had already been initiated. The observations therein regarding the overriding effect of the MSMED Act were made in that specific factual backdrop and cannot be read as laying down an inflexible rule that statutory interest under Sections 15 and 16 can be granted only through the Section 18 mechanism. The relevant portion of the said judgement reads as under:

> "**12.** While the A&C Act is the general law governing the field of arbitration, MSMED Act governs a very specific nature of disputes

> concerning MSME's and it sets out a statutory mechanism for the payment of interest on delayed payments. MSMED Act being the specific law, and A&C Act being the general law, the specific law would prevail over the general law. Even otherwise. MSMED Act has been enacted subsequent to the A&C Act and the legislature is presumed to have been aware about the existence of A&C Act when the act was enacted. Sub-sections (1) and (4) of Section 18 contain non-obstante clauses which have the effect of overriding any other law for the time being in force. Section 24 of the Act states that the provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, the legislative intent is clear that MSMED Act would have an overriding effect on the provisions of A&C Act. The provisions of MSMED Act would become ineffective if, by way of an independent arbitration agreement between the parties, the process mandated in Section 18 of the MSMED Act is sidestepped. Moreover, the fact that the petitioner has approached the Court under Section 11 of the A&C Act first would be of no help to him as the MSMED Act does not does not carve out any such exception to the non-obstante clause."
>
> ***(emphasis supplied)***

79. In view of the foregoing discussion, this Court is unable to accept the submission that recourse to the MSEFC under Section 18 of the MSMED Act is a mandatory precondition for the grant of statutory interest. The arbitration proceedings in the present case were initiated pursuant to a valid arbitration Agreement, and the Petitioner participated therein without demur. Once the Respondent's status as an MSME supplier and the *factum* of delayed payment stood established, the statutory consequence of interest followed inexorably. The grant of *pendente lite* interest at the rate of 18% per annum, therefore, does not suffer from patent illegality.

80. Accordingly, this Court finds that Direction B of the Impugned Award is firmly anchored in the statutory mandate of Sections 15 and 16 of the MSMED Act and does not rest on any discretionary or extraneous consideration. The learned Arbitrator has neither travelled beyond the reference nor applied the law in a manner contrary to the

contractual framework or the governing statute. The award of *pendente lite* interest at the rate of 18% is a legal consequence flowing from delayed payment to a registered MSME supplier and cannot be characterised as arbitrary, excessive, or perverse. No element of patent illegality, going to the root of the matter, is therefore made out so as to warrant interference under Section 34 of the A&C Act.

Direction C- Award of Future Interest at 20% per annum

81. The challenge by the Petitioner to Direction C proceeds on the footing that the grant of future interest at the rate of 20% per annum is excessive, arbitrary, and unsupported by adequate reasons, and therefore falls foul of the standard of patent illegality. This submission, however, also does not withstand judicial scrutiny.

82. It is apposite to note that Section 31(7)(b) of the A&C Act expressly empowers an Arbitral Tribunal to award post-award interest at such rate as it deems reasonable, unless otherwise agreed by the parties. The provision vests a wide discretion in the arbitral tribunal, recognising that post-award interest serves a distinct purpose, *namely*, to secure compliance with the award and to compensate the award-holder for the time value of money during the period of non-payment. Section 31(7) of the A&C Act reads as under:

> "**31. Form and contents of arbitral award. —**
>
> *********
>
> (7) (a) Unless otherwise agreed by the parties, where and in so far asm, an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
>
> (b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent.

> higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment."

83. It is equally well settled that the mere fact that the rate of future interest appears to be on the higher side does not, by itself, render the award vulnerable to interference under Section 34 of the A&C Act. Interference is warranted only where the rate awarded is either expressly prohibited by statute, contractually interdicted, or so unconscionable or irrational as to shock the judicial conscience. None of these contingencies arises in the present case.

84. The Impugned Award discloses that the learned Arbitrator granted future interest at a stepped-up rate only in the event of continued non-compliance beyond the stipulated period of 60 days post-award. The grant of future interest at 20% per annum is thus not punitive in nature, but deterrent in design, intended to disincentivise recalcitrance and to ensure timely satisfaction of the award. Such an approach cannot be said to be alien to arbitral jurisprudence, particularly in matters involving delayed payments despite crystallisation of liability.

85. The contention that the learned Arbitrator failed to furnish elaborate reasons for selecting the precise rate of 20% is also devoid of merit. While Section 31(3) of the A&C Act mandates that reasons be recorded for an arbitral award, it does not require a mathematical exposition or granular justification for the exact percentage of interest awarded, especially where the discretion exercised is statutorily conferred and contextually justified. The requirement is of intelligible reasoning, not forensic exactitude.

86. The objection that future interest at the rate of 20% per annum was granted in the absence of a specific prayer in the Statement of

Claim is equally unsustainable. It is well settled that the power of an arbitral tribunal to award post-award interest flows directly from Section 31(7)(b) of the A&C Act and does not depend upon a specific pleading or prayer by the claimant. Once a monetary award is made, the grant of future interest operates as a statutory incident to secure enforcement and cannot be characterised as a relief *de hors* the reference. The award of post-award interest, therefore, is not in the nature of an independent or unpleaded claim, but a legal consequence that follows the adjudication of liability. Consequently, the exercise of such statutory discretion cannot be faulted on the ground that it was not expressly sought in the Statement of Claim.

87. Viewed through the prism of the settled parameters governing patent illegality, Direction C also does not suffer from any infirmity that goes to the root of the matter. The learned Arbitrator has acted within jurisdiction, exercised a discretion expressly vested by statute, and adopted an approach that is neither capricious nor perverse.

88. This Court is therefore of the considered view that the award of future interest at the rate of 20% per annum does not cross the high threshold of 'patent illegality' and does not warrant interference under Section 34 of the A&C Act, which is a scalpel and not a sledgehammer. It corrects jurisdictional aberrations, not discretionary outcomes.

DECISION:

(i). O.M.P. (COMM) 286/2024

89. For the reasons recorded hereinabove, this Court is of the considered view that none of the grounds urged by the Petitioner satisfy the narrow and exacting threshold for interference under

Section 34 of the A&C Act. The Impugned Award represents a plausible and reasoned view taken by the learned Arbitral Tribunal upon appreciation of the contractual framework, evidence on record, and the applicable statutory regime.

90. Consequently, the Objection Petition is dismissed as devoid of merit.

91. Accordingly, this Petition, being *O.M.P. (COMM) 286/2024*, along with pending Application(s), if any, stands disposed of in the aforesaid terms.

92. No Order as to costs.

(ii). <u>O.M.P. (ENF.) (COMM.) 272/2024</u>

93. In view of the dismissal of the Objection Petition, being *O.M.P. (COMM) 286/2024*, in the aforesaid terms, the present Enforcement Petition under Section 36 of the A&C Act shall proceed in accordance with law.

94. In view of the Arbitral Award dated 26.02.2024 being in the nature of a monetary decree, the Judgment Debtor is directed to deposit, if not already deposited, the entire awarded sum, along with accrued interest up to date with the Registry of this Court, within a period of four (4) weeks from the date of this Judgement.

95. Accordingly, list the matter on 07.05.2026 for further proceedings.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 06, 2026/ DJ