$~

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

% ***Judgment reserved on: 20.05.2026***
Judgment pronounced on: 06.07.2026

\+ O.M.P. (COMM) 161/2016

SHRIRAM PISTONS & RINGS LTD .....Petitioner

Through: Mr. Amit Agrawal, Mr. Rahul Kukreja, Mr. Jatin Shrivastava and Ms. Akanksha Chauhan, Advocates

versus

USHA INTERNATIONAL LTD .....Respondent

Through: Mr. J. Sai Deepak, Senior Advocate along with Ms. Divya Bhalla, Mr. Abhishek Chauhan, Mr. Devansh Jain and Mr. Abhishek, Advocates.

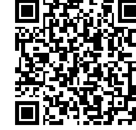
CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, filed by **Shriram Pistons and Rings Limited**[1] under Section 34 of the **Arbitration and Conciliation Act, 1996**[2], seeks setting aside of the **Arbitral Award dated 04.05.2013**[3] passed by the learned Sole Arbitrator in favour of **Usha International**

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



Limited[4] in the Arbitral proceedings titled *"M/s Usha International Limited versus M/s Shriram Pistons & Rings Limited"*.

2. By way of the Impugned Award, the Petitioner was directed to pay an amount of Rs. 17.76 lakhs, along with 10% pre-award, *pendente-lite* and post-award Interest, calculated simply. Further, the Petitioner was directed to pay Rs. 50,000/- as Costs for the Arbitral proceedings to the Respondent.

<u>FACTUAL MATRIX</u>:

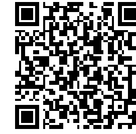
3. The Petitioner is engaged in the manufacture and export of automotive components, *inter alia*, engine valves, valve guides and valve train components, EV Kit sets, whereas the Respondent is engaged, *inter alia*, in marketing and procuring business opportunities for various products in domestic and international markets.

4. The parties entered into an **Agreement dated 30.04.1999**[5] whereby the Respondent was appointed as an agent for export sales of the engine valves, valve guides & valve train components and EV Kit sets, manufactured by the Petitioner on certain terms and conditions as per the Agreement. The Agreement was to remain operative from 01.05.1999 till 30.04.2004 and contained provisions governing commission, territorial exclusions, obligations of the Respondent and dispute resolution through arbitration.

5. The parties are stated to have entered into another **Agreement dated 31.03.2000**[6], in respect of the same time period and subject matter as the previous Agreement, whereby purportedly certain terms

---

[4] Respondent
[5] 1999 Agreement
[6] 2000 Agreement



of the Agreement between the parties were modified.

6. Upon expiry of the contractual period, the Petitioner, *vide* communication dated 27.03.2004, informed the Respondent that the agency arrangement would not be renewed beyond the contractual period, *i.e.*, 30.04.2004.

7. Thereafter, disputes arose between the parties regarding commission allegedly payable on export orders procured by the Respondent, including commission on pending orders, shipments awaiting execution and orders allegedly secured prior to expiry of the contractual relationship.

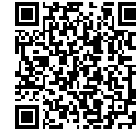
8. In this regard, the Respondent claimed that substantial commission remained unpaid notwithstanding repeated demands, whereas the Petitioner maintained that all legitimate dues had already been settled and further alleged that the Respondent had acted in breach of its obligations under the Agreements.

9. On 25.05.2005, the Respondent invoked Arbitration before the **Federation of Indian Chambers of Commerce and Industry**[7], relying upon the Arbitration clause allegedly contained in the 1999 Agreement, being Clause 18 thereof.

10. The Respondent simultaneously lodged its Statement of Claim seeking recovery of approximately Rs.21.22 lakhs along with rendition of accounts and other consequential reliefs. The Petitioner immediately objected to the invocation of arbitration, contending that there existed no valid arbitration agreement based on the alleged 1999 Agreement and that the arbitral proceedings were therefore without jurisdiction.

---

[7] FICCI



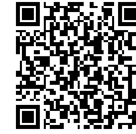
11. Despite the aforesaid objections, FICCI proceeded to appoint a Sole Arbitrator. The Petitioner challenged the constitution of the learned Tribunal by filing an Application under Section 12 of the A&C Act, *inter alia* questioning the validity of the appointment process and seeking disclosure of the material considered by FICCI while appointing the learned Arbitrator. The said Application came to be dismissed by the learned Arbitrator by Order dated 14.03.2006.

12. Thereafter, the Petitioner also filed an Application under Section 16 of the A&C Act raising objections to the existence and validity of the Arbitration agreement as well as the jurisdiction of the learned Tribunal.

13. During the pendency of the proceedings, the Respondent sought amendment of its Statement of Claim on the premise that the 2000 Agreement constituted a modification of the earlier 1999 Agreement. The amendment was allowed by the learned Arbitrator and the jurisdictional objections raised by the Petitioner were ultimately rejected.

14. Following completion of pleadings, the learned Arbitrator framed issues concerning the maintainability of the claims, entitlement to commission, rendition of accounts, reciprocal obligations of the parties, liability in respect of pending orders, damages, interest and costs.

15. Both parties led oral and documentary evidence in support of their respective cases. The Respondent examined multiple witnesses in support of its claims, whose testimonies were subjected to cross-examination by the Petitioner. The proceedings remained pending for several years and ultimately culminated in the Impugned Award dated



04.05.2013.

16. By the Impugned Award, the learned Arbitrator accepted the Respondent's contention that the 1999 Agreement was valid and subsisting, which stood modified by the 2000 Agreement.

17. The learned Arbitrator further held that the Respondent was entitled to commission under various heads in respect of export orders procured during the subsistence of the contractual relationship and consequently awarded a sum of approximately Rs.17.76 lakhs together with interest and costs.

18. Aggrieved thereby, the Petitioner has instituted the present proceedings under Section 34 of the A&C Act.

<u>SUBMISSIONS ON BEHALF OF THE PETITIONER</u>:

19. Learned counsel for the Petitioner would submit that the very initiation of the arbitral proceedings was founded upon the alleged 1999 Agreement, which according to the Petitioner never fructified into a binding contract between the parties. It would be contended that the said document admittedly did not bear the signatures of the Respondent/Claimant and, therefore, could not be regarded as a concluded agreement capable of conferring arbitral jurisdiction.

20. Learned counsel for the Petitioner would therefore contend that the only binding agreement between the parties was the 2000 Agreement, which had been duly executed by both parties and which operated independently in its own right.

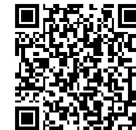
21. It would further be submitted that the 2000 Agreement neither referred to the alleged 1999 Agreement nor described itself as a modification thereof. Learned counsel would contend that even assuming, without admitting, that any prior arrangement existed, the

execution of the 2000 Agreement constituted a fresh and independent contract governing the rights and obligations of the parties. Consequently, the invocation of arbitration on the basis of the alleged 1999 Agreement was itself fundamentally misconceived.

22. Learned counsel would further submit that the Petitioner had repeatedly raised objections regarding the existence and validity of the alleged 1999 Agreement. Learned counsel would place particular emphasis on the Order dated 22.08.2006, whereby the learned Arbitrator, while allowing the amendment Application filed by the Respondent, expressly observed that the question concerning the validity of the 1999 Agreement and the existence of the Arbitration Agreement would be decided after evidence was led and at the stage of the final Award. It would be contended that notwithstanding the aforesaid observation, no specific issue came to be framed or adjudicated on the said aspect.

23. In this regard, it would further be submitted that the Impugned Award nevertheless proceeds in Paragraph No. 19 to uphold the existence of the alleged 1999 Agreement on wholly erroneous premises. Learned counsel would contend that the finding is based upon an assumption that the parties had acted under the said Agreement, whereas the parties had, in fact, admittedly operated under the 2000 Agreement.

24. It would further be submitted that the Impugned Award erroneously relies upon certain correspondence as constituting an admission by the Petitioner regarding the existence of the 1999 Agreement, although one of the documents relied upon is stated to be a letter issued by the Respondent itself and the remaining



correspondence contains no such admission.

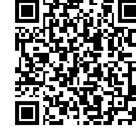
25. On the aforesaid basis, learned counsel for the Petitioner would contend that the finding returned by the learned Arbitrator regarding the existence and effect of the alleged 1999 Agreement is unsupported by the record, suffers from patent perversity and has resulted in the Impugned Award being rendered on a fundamentally erroneous jurisdictional premise.

26. Learned counsel for the Petitioner would further submit that the constitution of the learned Tribunal itself was under challenge from the inception of the proceedings. It would be contended that the Petitioner had consistently disputed the existence of a valid Arbitration agreement and had sought disclosure regarding the manner in which the learned Arbitrator came to be appointed.

27. Learned counsel for the Petitioner would submit that, despite repeated requests, neither FICCI nor the learned Arbitrator disclosed the basis of such appointment, thereby depriving the Petitioner of an effective opportunity to challenge the constitution of the learned Tribunal.

28. It would further be submitted that the Petitioner's Application under Section 12 of the A&C Act, seeking disclosure of the nomination and records pertaining to the appointment of the learned Arbitrator, was rejected without any meaningful consideration of the issues raised therein. Learned counsel would contend that the challenge raised by the Petitioner went to the root of the arbitral process and could not have been brushed aside without a proper adjudication.

29. Learned counsel would further submit that the Petitioner had

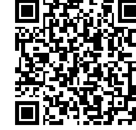


also invoked Section 16 of the A&C Act and specifically challenged the jurisdiction of the learned Tribunal on the ground that the Arbitration Agreement relied upon by the Respondent was itself invalid and incapable of conferring jurisdiction. It would be contended that while the learned Arbitrator, in earlier orders, observed that the issue regarding the existence and validity of the arbitration agreement would be considered at the stage of the Award, no independent determination thereof was ultimately rendered.

30. It would thus be contended that the Petitioner's objections under Sections 12 and 16 of the A&C Act were never effectively adjudicated in accordance with law. The Impugned Award, therefore, proceeds on the assumption of a validly constituted Tribunal possessing jurisdiction over the disputes without first conclusively determining the foundational objections raised by the Petitioner.

31. It would accordingly be contended that the failure to effectively adjudicate the Petitioner's objections under Sections 12 and 16 of the A&C Act strikes at the very foundation of the arbitral proceedings.

32. According to the Petitioner, the questions concerning the constitution of the learned Tribunal and the existence of a valid arbitration agreement were jurisdictional issues which required a clear and reasoned determination before the disputes could be adjudicated on merits, and the learned Tribunal erroneously proceeded to render the Impugned Award without conclusively deciding the foundational objections raised by the Petitioner. The Impugned Award is therefore stated to be liable to be set aside under Sections 34(2)(a)(v) and 34(2A) of the A&C Act, being an Award rendered by a Tribunal whose constitution and jurisdiction were specifically under challenge



and which objections, according to the Petitioner, were not adjudicated in accordance with law.

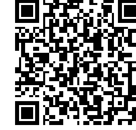
33. Learned counsel for the Petitioner would further submit that the Impugned Award suffers from a fundamental error in the application of the principles governing burden of proof. It would be contended that the learned Arbitrator proceeded on the premise that the Petitioner had failed to disprove the case set up by the Respondent, instead of first examining whether the Respondent had discharged its primary burden of establishing the claims made before the learned Tribunal.

34. Learned counsel would submit that it is a settled principle that the burden of proving a claim lies upon the party asserting it and does not shift merely because the opposite party is unable to adduce evidence to the contrary.

35. Learned counsel for the Petitioner would submit that the learned Arbitrator, while returning findings in favour of the Respondent, repeatedly observed that the Petitioner had failed to rebut or disprove the assertions advanced by the Respondent and thereby effectively shifted the burden of proof upon the Petitioner.

36. It would therefore be contended that the learned Arbitrator was required to independently examine whether the Respondent had established the existence of the alleged transactions, the amounts claimed and the entitlement thereto on the basis of reliable and admissible evidence. However, instead of insisting upon strict proof from the Respondent, the learned Arbitrator proceeded to draw adverse conclusions against the Petitioner for its inability to dislodge the Respondent's version.

37. Learned counsel would therefore submit that the findings

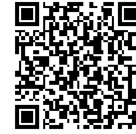


recorded in the Impugned Award stand vitiated by a reversal of the settled burden of proof and are consequently unsustainable in law. Learned counsel for the Petitioner would therefore submit that the Impugned Award proceeds on an erroneous legal premise that the weakness of the Petitioner's defence, before the learned Tribunal, could compensate for deficiencies in the Respondent's evidence, which is contrary to the fundamental principles governing adjudication of civil claims.

38. Learned counsel for the Petitioner would further submit that the Impugned Award is rendered suspect from the face of the record inasmuch as the stamp papers upon which the Impugned Award was engrossed bear dates preceding the date on which the Impugned Award itself is stated to have been pronounced.

39. It would be contended that the Impugned Award records one date of pronouncement whereas the stamp papers used for engrossing the Impugned Award appears to have been purchased much prior thereto, thereby giving rise to serious doubts regarding the actual date on which the Award was made and signed.

40. Learned counsel would further submit that the Impugned Award is also liable to be set aside on account of the inordinate and unexplained delay in its pronouncement. It is contended that the arbitral proceedings stood concluded and the Award was reserved; however, the same ultimately came to be rendered after an extraordinary lapse of approximately eighteen months. Learned counsel for the Petitioner would therefore contend that such prolonged delay defeats the very objective of arbitration as an expeditious dispute resolution mechanism and raises a legitimate apprehension



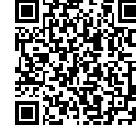
that the learned Arbitrator may not have retained a proper recollection of the evidence, submissions and issues that arose for consideration.

41. It would further be submitted that the delay in pronouncement of the Award has not been explained either in the Impugned Award itself or otherwise on record. Learned counsel would contend that an Award rendered after such an inordinate lapse of time stands vitiated as the delay itself causes serious prejudice to the parties and undermines confidence in the adjudicatory process.

42. Learned counsel for the Petitioner would accordingly contend that the circumstances surrounding the rendering of the Impugned Award, namely the apparent discrepancy in the dates borne on the stamp papers and the Impugned Award, coupled with the unexplained delay of approximately eighteen months in its pronouncement, cast serious doubt upon the integrity and validity of the arbitral process.

43. Learned counsel for the Petitioner would therefore submit that an Award rendered after such an inordinate lapse of time, without any explanation whatsoever, defeats the fundamental objective of arbitration as an expeditious mechanism for dispute resolution and gives rise to a legitimate apprehension that the adjudication may not have been based upon a contemporaneous consideration of the evidence and submissions advanced by the parties. It would accordingly be submitted that the Impugned Award suffers from patent illegality and is contrary to the fundamental policy of Indian law, thereby warranting interference under Sections 34(2)(b)(ii) and 34(2A) of the A&C Act.

44. Learned counsel for the Petitioner would further submit that the Impugned Award is also liable to be set aside on the ground that the

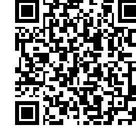


learned Arbitrator failed to adjudicate upon material issues specifically framed for determination between the parties.

45. It would be contended that after completion of pleadings, the learned Arbitrator framed thirteen issues for adjudication, including Issue No. IV and Issue No. VII, which went to the root of the disputes raised by the parties. However, despite framing the said issues, no findings whatsoever have been returned thereon in the Impugned Award.

46. Learned counsel would submit that Issue No. IV specifically required determination of whether the Respondent was entitled to commission in respect of exports for which sub-agents appointed by the Respondent had already received payment directly from the Petitioner. Likewise, Issue No. VII required adjudication of the Petitioner's defence that the Respondent was under reciprocal contractual obligations under the Agreement dated 31.03.2000 and whether such obligations had in fact been performed. Both issues were framed on the basis of rival pleadings and constituted substantive defences raised by the Petitioner. Despite the same, the learned Arbitrator has proceeded to allow the claims without rendering any finding on either of the aforesaid issues.

47. It would contended be that once issues are framed, the adjudicatory authority is under an obligation to return findings thereon. Failure to decide issues which arise from the pleadings and which have a direct bearing on the rights and liabilities of the parties amounts to a failure to adjudicate material disputes referred to arbitration. According to the Petitioner, the Award proceeds as though Issue Nos. IV and VII did not exist, thereby leaving vital questions



completely unanswered.

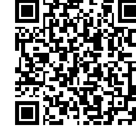
48. Learned counsel would further submit that the omission is not a mere irregularity but strikes at the very foundation of the Award. Had the learned Arbitrator examined the aforesaid issues, the conclusions ultimately reached may have been materially different. The Impugned Award therefore suffers from patent illegality apparent on the face of the record and is liable to be set aside for non-consideration of material issues which formed part of the reference before the learned Arbitrator.

SUBMISSION ON BEHALF OF THE RESPONDENT:

49. Learned senior counsel appearing on behalf of the Respondent would submit that the present Petition is entirely misconceived and seeks to convert proceedings under Section 34 of the A&C Act into a full-fledged appeal against the findings returned by the learned Arbitrator. It would be contended that the Impugned Award is a detailed and reasoned Award rendered after consideration of the pleadings, oral evidence and documentary material placed on record by both parties and does not warrant interference within the limited parameters of Section 34 of the A&C Act.

50. Learned senior counsel would submit that the challenge founded upon the alleged invalidity of the 1999 Agreement is wholly devoid of merit. It would be contended that the learned Arbitrator has specifically considered the rival contentions concerning the said Agreement and has returned a categorical finding that the parties had acted upon the terms thereof for several years.

51. According to the Respondent, the mere absence of the signature of one party on the Agreement dated 30.04.1999 could not, by itself,

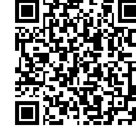


negate the existence of a binding contractual arrangement when the conduct of the parties unequivocally demonstrated acceptance and performance of the contractual terms.

52. It would further be submitted that the Agreement dated 31.03.2000 did not supersede or extinguish the earlier arrangement but merely modified certain commercial terms governing the relationship between the parties. Learned counsel would contend that the arbitration clause contained in the original arrangement continued to govern the disputes between the parties and that the learned Arbitrator rightly concluded that a valid and enforceable arbitration agreement existed between them. It would further be submitted that the finding returned by the learned Arbitrator on this aspect is a pure finding of fact based on the documentary record and conduct of the parties and is therefore not amenable to interference under Section 34 of the A&C Act.

53. Learned senior counsel would further submit that the Petitioner's grievance regarding non-framing of a specific issue concerning the validity of the 1999 Agreement is equally unsustainable. It would be contended that the learned Arbitrator specifically considered the question concerning the existence of the contractual relationship and the arbitration agreement while adjudicating the disputes and ultimately returned findings thereon in the Award itself. According to the Respondent, mere absence of a separately numbered issue would not vitiate the Award when the controversy itself stood considered and adjudicated upon.

54. Learned senior counsel would further submit that the objections raised by the Petitioner under Sections 12 and 16 of the A&C Act



were duly considered and rejected by the learned Arbitrator during the course of the proceedings. It would be contended that the Petitioner was afforded full opportunity to agitate all objections regarding the constitution of the learned Tribunal and the existence of arbitral jurisdiction. The mere fact that such objections were not accepted cannot furnish a ground for setting aside the Award.

55. It would further be submitted that the challenge raised under Section 12 of the A&C Act was not based upon any legally recognised ground giving rise to doubts regarding the independence or impartiality of the learned Arbitrator. Learned senior counsel would contend that the Petitioner merely sought disclosure regarding the process of appointment and, after due consideration, the learned Arbitrator found no basis to sustain such objections. According to the learned senior counsel, the Petitioner has failed to demonstrate any circumstance falling within the scope of Section 12 of the A&C Act which could render the constitution of the learned Tribunal invalid.

56. Learned senior counsel would further submit that the challenge under Section 16 of the A&C Act was likewise considered and rejected. It would be contended that the learned Arbitrator expressly dealt with the question of jurisdiction while examining the existence of the contractual arrangement and the arbitration agreement between the parties. The Impugned Award itself records findings on the existence of the agreement and the maintainability of the claims.

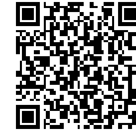
57. It would therefore be contended that the constitution of the learned Tribunal and the jurisdiction exercised by it stood squarely within the framework contemplated by the parties and the governing arbitration rules. No infirmity falling within Section 34(2)(a)(v) of the

A&C Act has been established and the challenge on this ground is liable to be rejected.

58. Learned senior counsel would next submit that the allegation regarding reversal of the burden of proof is founded upon a complete misreading of the Award. It would be contended that the learned Arbitrator examined the documentary and oral evidence adduced by the Respondent and, only upon being satisfied that the Respondent had established its case, proceeded to evaluate the defence raised by the Petitioner.

59. Learned senior counsel for the Respondent would submit that the Impugned Award does not proceed on the basis that the Petitioner was required to prove its innocence or disprove the Respondent's claims in the first instance. Rather, the observations relied upon by the Petitioner merely reflect the learned Arbitrator's conclusion that the evidence led by the Respondent remained un-rebutted despite adequate opportunity being afforded to the Petitioner. Learned counsel would submit that appreciation of evidence and determination of the evidentiary value of material placed on record falls squarely within the domain of the learned Arbitrator and cannot be reopened in proceedings under Section 34 of the A&C Act.

60. Learned counsel would further contend that the challenge founded upon alleged errors in appreciation of evidence, including the findings concerning TDS deductions and the documentary record relied upon by the learned Arbitrator, amounts to nothing more than an invitation to this Court to undertake a fresh re-appreciation of the evidence. Such an exercise, according to the learned senior counsel for the Respondent, is expressly impermissible within the limited scope of



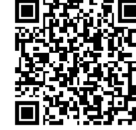
judicial review available under Section 34 of the A&C Act.

61. Learned senior counsel would further submit that the contention regarding the dates borne on the stamp papers used for engrossing the Impugned Award is wholly frivolous and does not affect the validity of the Impugned Award in any manner. It would be contended that the Petitioner has failed to demonstrate how the alleged discrepancy has caused any prejudice or has any bearing upon the adjudication of the disputes between the parties. According to the learned senior counsel for the Respondent, the challenge is founded on mere conjecture and speculation unsupported by any substantive material.

62. Learned senior counsel would further submit that the challenge based on the alleged delay in pronouncement of the Award is equally untenable. It would be contended that mere delay in rendering an Award, by itself, does not furnish an independent ground for setting aside the Impugned Award unless actual prejudice is demonstrated. The Petitioner has neither pleaded nor established any prejudice arising from the alleged delay.

63. It would further be submitted that the Impugned Award runs into considerable detail, analyses the pleadings and evidence extensively and returns reasoned findings on each claim and defence. According to the learned senior counsel, the nature and quality of the reasoning contained in the Award itself dispels any suggestion that the learned Arbitrator failed to properly consider the material on record.

64. Learned senior counsel would further submit that the challenge founded upon non-adjudication of Issue Nos. IV and VII is likewise misconceived. It would be contended that an arbitral award must be read as a whole and not in a fragmented or hyper-technical manner.



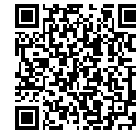
According to the learned senior counsel for the Respondent, the findings recorded by the learned Arbitrator while adjudicating the claims and defences substantially answer the issues framed and disclose the reasoning which led to the conclusions ultimately reached.

65. It would further be submitted that the law does not require an arbitral award to contain a separate heading or issue-wise determination corresponding to every issue framed during the proceedings. What is required is that the disputes referred to arbitration are adjudicated and reasons are furnished for the conclusions reached. Learned senior counsel would contend that a holistic reading of the Impugned Award clearly demonstrates that all material controversies between the parties stood considered and determined by the learned Arbitrator.

66. Learned senior counsel would therefore submit that the Petitioner has failed to establish that any dispute forming part of the reference remained undecided or that any omission in the Award has occasioned prejudice affecting the merits of the adjudication. The challenge based upon Issue Nos. IV and VII is accordingly stated to be devoid of merit.

67. In conclusion, learned senior counsel for the Respondent would submit that every challenge raised by the Petitioner ultimately seeks a re-examination of factual findings, appreciation of evidence and conclusions arrived at by the learned Arbitrator after a full-fledged adjudication.

68. It would be contended that none of the grounds urged by the Petitioner disclose any patent illegality, jurisdictional error, violation



of natural justice or conflict with the fundamental policy of Indian law. The Impugned Award, being a reasoned and plausible view arising from the material on record, is therefore entitled to judicial deference and warrants no interference under Section 34 of the A&C Act. Accordingly, dismissal of the present Petition is prayed for.

ANALYSIS:

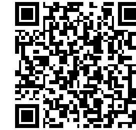
69. This Court has heard the learned counsel appearing on behalf of the parties at length and, with their able assistance, carefully perused the paper-book and other material documents placed on record, including the record of the learned Tribunal.

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

71. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier decisions, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[8], while dealing with the grounds of conflict with the public policy of India and perversity, 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

[8] (2025) 2 SCC 417



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

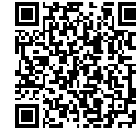
31. "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.

*****

35. In ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, a three-Judge Bench of this Court observed that the doctrine of public policy is somewhat open—textured and flexible. By citing earlier decisions, it was observed that there are two conflicting positions which are referred to as the "narrow view" and the "broad view". According to the narrow view, courts cannot create new heads of public policy whereas the broad view countenances judicial law making in these areas. In the field of private international law, it was pointed out, courts refuse to apply a rule of foreign law or recognise a foreign judgment or a foreign arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked or enforced. However, it was clarified, a distinction is to be drawn while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. It was observed that the application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. It was held that contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required.

*****

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.



*****

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

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

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

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

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

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

(*b*) the binding effect of the judgment of a superior court would also be regarded as being contrary to the fundamental policy of Indian law.

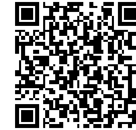
Further, elaborating upon the third juristic principle (i.e. qua perversity), as laid down in ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263**, it was observed that where:

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

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

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

To this a caveat was added by observing that when a court applies the "public policy test" to an arbitration award, it does not act as a court of appeal and, consequently, errors of fact cannot be



corrected; and a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score. Thus, once it is found that the arbitrator's approach is not arbitrary or capricious, it is to be taken as the last word on facts.

The 2015 Amendment in Sections 34 and 48

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:

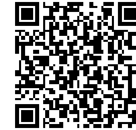
*****

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 [***SsangyongEngg. & 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:

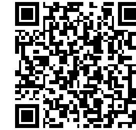
(*a*) the fundamental policy of Indian law; and/or

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

(*c*) justice or morality.

*****

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*).

*****

Patent illegality

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

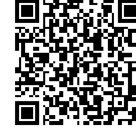
66. In ***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it,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

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

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

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

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



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

68. In ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to "public policy" or "public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**]. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

Perversity as a ground of challenge

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

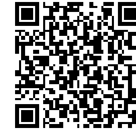
70. In***Associate Builders* v. *DDA*, (2015) 3 SCC 49** certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:

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

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

(*iii*) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.



71. In ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

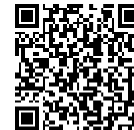
72. The tests laid down in ***Associate Builders* v. *DDA*, (2015) 3 SCC 49** to determine perversity were followed in ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** and later approved by a three-Judge Bench of this Court in ***Patel Engg. Ltd.* v. *North Eastern Electric Power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

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

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

Scope of interference with an arbitral award

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



not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

75. In ***Dyna Technologies (P) Ltd.*** **v.** ***Crompton Greaves Ltd.*****, (2019) 20 SCC 1**, paras 27-43, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.

*****

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

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

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

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

86. However, reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by the parties thereto. An unexpressed term can be

implied if, and only if, the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. Rather, it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract [***Adani Power (Mundra) Ltd.* v. *Gujarat ERC*, (2019) 19 SCC 9**].

87. But before an implied condition, not expressly found in the contract, is read into a contract, by invoking the business efficacy doctrine, it must satisfy the following five conditions:

(*a*) it must be reasonable and equitable;

(*b*) it must be necessary to give business efficacy to the contract, that is, a term will not be implied if the contract is effective without it;

(*c*) it must be obvious that "it goes without saying";

(*d*) it must be capable of clear expression;

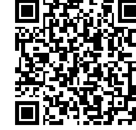
(*e*) it must not contradict any terms of the contract [***Nabha Power Ltd.* v. *Punjab SPCL*, (2018) 11 SCC 508**, followed in ***Adani Power case*, (2019) 19 SCC 9**].

(emphasis supplied)

72. In light of the aforesaid principles, this Court is required to examine whether the Impugned Award suffers from any jurisdictional infirmity, patent illegality apparent on the face of the Award, perversity in the sense recognised by law, violation of the principles of natural justice or conflict with the fundamental policy of Indian law. Equally, this Court must remain conscious that it cannot undertake a re-appreciation of evidence or substitute its own view for a plausible view adopted by the learned Arbitrator merely because another view may also be possible.

73. Examined in the aforesaid backdrop, the principal challenge raised by the Petitioner concerns the validity and effect of the 1999 Agreement and the existence of a valid arbitration agreement between the parties.

74. It is the case of the Petitioner that the 1999 Agreement never fructified into a binding contract as it did not bear the signatures of



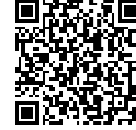
both parties and, therefore, could not constitute the source of arbitral jurisdiction and that the 2000 Agreement was an independent contract which neither referred to nor incorporated the earlier 1999 Agreement.

75. This Court is unable to accept the aforesaid submission.

76. A perusal of the Impugned Award demonstrates that the learned Arbitrator specifically noticed the objection raised by the Petitioner regarding the alleged non-existence of the 1999 Agreement. In fact, Paragraph No. 11 of the Impugned Award records in considerable detail the very contentions which are now sought to be reiterated before this Court, namely, that the 1999 Agreement was unsigned, that the 2000 Agreement did not refer to the earlier 1999 Agreement and that the latter 2000 Agreement amounted to novation of the former.

77. The learned Arbitrator thereafter proceeded to examine the documentary record and returned a categorical finding in Paragraph No. 19 of the Impugned Award that the objection regarding non-existence of the 1999 Agreement was liable to be rejected. The learned Arbitrator observed that both parties had acted under the Agreement, that payments had been made thereunder, that the modifications under the 2000 Agreement had been signed by both parties and that various communications exchanged between the parties acknowledged the subsisting arrangement between them. Paragraph 19 of the Impugned Award is reproduced herein under for ready reference:

> "**19.** The objection taken by the Respondent regarding the nonexistence of the agreement of 30.4.1999 and its modification on 31.03.2000, the same is rejected, as the claimant and the Respondent have both worked under the agreement and have acted upon the same, and the Respondent has made payments to the claimant on the basis of calculation sheets generated by the Respondent itself. The modifications in the agreement / made on



> 31.03.2000 have been signed by both the parties. The Respondent vide its letters of 01.04.2004, 13.07.2004 and 04.02.2004 has admitted the liability to make payments to the claimant. The Respondents were sending the statements of commission regularly for the export orders to the Claimants as per the agreement between themselves."

78. The challenge raised by the Petitioner therefore proceeds on an incorrect factual premise that the issue concerning the existence and validity of the 1999 Agreement remained undecided. The Impugned Award itself demonstrates that the issue was consciously considered and adjudicated upon.

79. Whether the conclusion reached by the learned Arbitrator on the basis of the correspondence exchanged between the parties and their conduct is the only possible conclusion is not the question before this Court. The question under Section 34 of the A&C Act is whether the view adopted by the learned Arbitrator is a possible view arising from the material on record. This Court finds that it undoubtedly is.

80. Significantly, the learned Arbitrator relied not merely upon the existence of the Agreement itself but also upon the conduct of the parties in acting thereunder for several years, generation of commission statements, payment of commission and admissions contained in the correspondence exchanged between the parties. Such appreciation of evidence falls squarely within the domain of the Arbitral Tribunal and cannot be revisited in proceedings under Section 34 of the A&C Act.

81. Even assuming that one or more of the communications referred to by the learned Arbitrator were incorrectly described or that the evidentiary value attributed to a particular document is open to debate, the finding regarding the existence of the contractual relationship does not rest upon any single document in isolation. The Impugned Award

demonstrates that the conclusion was founded upon the cumulative effect of the parties' conduct, admitted commercial dealings, payment of commission and contemporaneous correspondence. Consequently, even if an individual piece of evidence is viewed differently, the finding itself cannot be characterised as one based on no evidence or as suffering from patent perversity.

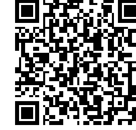
82. This Court, therefore, finds no merit in the challenge founded upon the ground of patent illegality sought to be invited on the premise of alleged invalidity of the 1999 Agreement or alleged non-existence of the Arbitration agreement.

83. The next limb of challenge mounted by the Petitioner concerns the objections raised by the Petitioner by way of Applications under Sections 12 and 16 of the A&C Act before the learned Tribunal and rejection thereof.

84. The Petitioner contends that the constitution of the learned Tribunal itself was under challenge and that its objections regarding the appointment of the learned Arbitrator and the existence of arbitral jurisdiction were not effectively adjudicated.

85. This Court is unable to accept the aforesaid contention. The record reveals that the arbitral proceedings continued for several years and that the Petitioner actively participated therein. The Applications preferred by the Petitioner under Sections 12 and 16 of the A&C Act were considered during the course of the proceedings and orders came to be passed thereon.

86. More importantly, the Petitioner has failed to demonstrate before this Court any circumstance giving rise to justifiable doubts regarding the independence or impartiality of the learned Arbitrator.

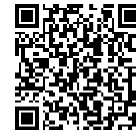


No case of ineligibility under Section 12(5) of the A&C Act has been made out. Equally, no violation of the agreed procedure for constitution of the learned Tribunal has been established.

87. The grievance of the Petitioner essentially appears to be that the arbitral institution and the learned Arbitrator did not furnish the disclosures and records sought by it regarding the process of appointment. However, mere dissatisfaction with the response furnished to such requests cannot, by itself, invalidate the constitution of the learned Tribunal. More so, when the learned Arbitrator was appointed under the institutional rules of FICCI, particularly Rule 22 thereof.

88. Furthermore, insofar as the jurisdictional objection is concerned, the same ultimately rested upon the Petitioner's challenge to the existence of a valid arbitration agreement. Once the learned Arbitrator examined the contractual relationship between the parties and returned a finding affirming the existence of the Agreement and arbitration clause, the jurisdictional objection necessarily stood answered. This Court therefore finds no infirmity attracting Section 34(2)(a)(v) of the A&C Act.

89. It is also pertinent to note that the Petitioner has not demonstrated how the alleged procedural deficiencies in the appointment process translated into any actual prejudice during the conduct of the arbitral proceedings. The Petitioner actively participated in the proceedings, filed detailed pleadings, examined witnesses, cross-examined the witnesses produced by the Respondent and fully contested the claims on the merits. In the absence of any demonstrated prejudice, the challenge cannot succeed merely on



speculative assertions concerning the process of appointment.

90. The next contention advanced by the Petitioner relates to the alleged reversal of the burden of proof by the learned Arbitrator. According to the Petitioner, the learned Arbitrator proceeded on the premise that the Petitioner had failed to disprove the case of the Respondent rather than requiring the Respondent to establish its claim in the first instance.

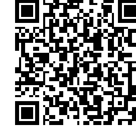
91. A reading of the Impugned Award along with the record of the evidence in its entirety does not support the aforesaid submission.

92. The Impugned Award discloses a detailed examination by the learned Arbitrator of the documentary evidence produced by the Claimant, including commission statements, correspondence exchanged between the parties, payment advices, TDS certificates and admissions emerging from the oral testimony of witnesses.

93. The learned Arbitrator specifically relied upon the Petitioner's own communication dated 27.03.2004 acknowledging liability to pay commission on pending orders, the statement of dues furnished by the Respondent, the calculation sheets generated by the Petitioner itself and the admissions made during cross-examination.

94. It is only after discussing the aforesaid material that the learned Arbitrator observed that the Petitioner had failed to disprove the amount claimed by the Respondent and had failed to produce any documentary material in support of its defence.

95. The observations relied upon by the Petitioner cannot therefore be read in isolation. The Impugned Award does not proceed on the basis that the burden of proof rested upon the Petitioner from the inception. Rather, the Award first records reasons for accepting the



evidence adduced by the Respondent and thereafter notices that the same remained substantially unrebutted.

96. In the considered opinion of this Court, the challenge on this ground amounts to nothing more than an invitation to reassess the evidentiary value assigned by the learned Arbitrator to the material on record, an exercise which is wholly impermissible under Section 34 of the A&C Act.

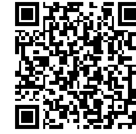
97. The Petitioner has next assailed the Impugned Award on the ground that the stamp papers upon which the Award was engrossed bear dates preceding the date of pronouncement of the Award.

98. Apart from drawing an inference on the basis of the dates borne on the stamp papers, the Petitioner has placed no material whatsoever on record to establish that the Impugned Award was in fact signed or rendered on a date different from the date recorded therein.

99. Mere suspicion, conjecture or surmise cannot constitute a ground for setting aside an arbitral award under Section 34 of the A&C Act. The Petitioner has neither demonstrated prejudice nor established any illegality flowing from the alleged discrepancy. This contention therefore merits rejection.

100. The next submission concerns the delay of approximately eighteen months in pronouncement of the Impugned Award.

101. There can be no dispute that arbitral proceedings are expected to culminate in a timely determination and that unexplained delays in rendering awards are undesirable. However, it is equally well settled that delay by itself does not constitute an independent ground for setting aside an award. The party challenging the award must additionally demonstrate that such delay has resulted in prejudice



affecting the adjudicatory process.

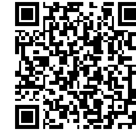
102. In the present case, apart from a general apprehension that the learned Arbitrator may not have retained a proper recollection of the proceedings, no specific prejudice has been demonstrated.

103. On the contrary, the Impugned Award runs into considerable detail and reflects an extensive examination of the pleadings, documentary evidence, oral testimony and rival submissions. In the considered opinion of this Court, the reasoning contained in Paragraphs 13 to 30 of the Impugned Award demonstrates active engagement with the material placed on record and dispels the suggestion that the adjudication suffered on account of lapse of time.

104. In the absence of any demonstrated prejudice, this Court is unable to hold that the delay in pronouncement, by itself, renders the Impugned Award liable to be set aside. Mere delay, without anything more, cannot lead to an automatic inference that the learned Arbitrator failed to consider the evidence or submissions advanced by the parties. Such a presumption would run contrary to the settled principle that arbitral awards carry a presumption of regularity. Unless the challenging party is able to point out specific findings demonstrably attributable to such delay, interference under Section 34 of the A&C Act would be unwarranted.

105. The final challenge raised by the Petitioner concerns Issue Nos. IV and VII framed by the learned Arbitrator. According to the Petitioner, the learned Arbitrator framed the said issues but failed to return findings thereon.

106. It is true that the Award does not contain separately captioned findings corresponding to Issue Nos. IV and VII. However, an arbitral



award must be read as a whole and not in a fragmented manner.

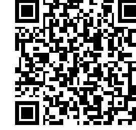
107. Issue No. IV concerned the entitlement of the Respondent to commission in respect of exports where sub-agents had allegedly received payment. Issue No. VII concerned the reciprocal obligations of the Respondent under the Agreement and the consequences of any alleged failure to perform such obligations.

108. A reading of the Impugned Award demonstrates that the learned Arbitrator considered the allegations regarding breach of obligations by the Respondent, the defence founded upon exports through collaborators and the objections regarding entitlement to commission before ultimately rejecting the Petitioner's defence.

109. The law does not require an arbitral award to mirror the format of a civil court judgment or to contain separately numbered findings corresponding to every issue framed during the proceedings. What is required is that the disputes referred to arbitration stand adjudicated and that reasons are furnished for the conclusions reached.

110. In the present case, this Court finds that the substance of the controversies underlying Issue Nos. IV and VII stood considered while adjudicating the claims and defences of the parties. Merely because the findings are not structured issue-wise cannot furnish a ground for interference under Section 34 of the A&C Act.

111. The remaining submissions advanced by the Petitioner, including those relating to TDS deductions, exports to allegedly excluded territories, entitlement to commission in respect of pending orders, payments made to sub-agents, collaborator transactions and interpretation of Clause 9 of the Agreements, are all founded upon the Petitioner's preferred reading of the contractual provisions and



evidentiary record.

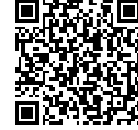
112. The learned Arbitrator has considered the material placed before it and adopted a particular view on such issues. Whether another interpretation was possible is immaterial. None of the aforesaid contentions demonstrate that the view adopted by the learned Arbitrator was one which no reasonable person could have taken or that the Award is contrary to the terms of the contract in a manner attracting Section 34(2A) of the A&C Act.

113. It is equally well settled that interpretation of contractual clauses falls primarily within the province of the Arbitral Tribunal. Unless the construction adopted by the learned Arbitrator is one that no reasonable person could have arrived at or is plainly contrary to the contractual stipulations, interference under Section 34 of the A&C Act would not be warranted.

114. Ultimately, every ground urged by the Petitioner seeks either a re-appreciation of evidence, reconsideration of findings of fact or substitution of the view adopted by the learned Arbitrator with another possible view.

115. The Impugned Award reflects due consideration of the pleadings, documentary evidence and rival submissions advanced before the learned Arbitrator. The findings returned therein are founded upon material available on record and cannot be characterised as perverse, irrational or unsupported by evidence.

116. This Court is therefore unable to discern any patent illegality appearing on the face of the Award, any violation of the fundamental policy of Indian law, any breach of principles of natural justice or any jurisdictional infirmity warranting interference under Section 34 of the



A&C Act. The challenge raised by the Petitioner accordingly fails.

DECISION:

117. In view of the foregoing discussion, the present Petition under Section 34 of the A&C Act is dismissed.

118. Accordingly, the present Petition, along with pending Application(s), if any, is disposed of.

119. There shall be no Order as to the costs.

HARISH VAIDYANATHAN SHANKAR, J.

JULY 06, 2026/DJ