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

% ***Judgment reserved on: 30.07.2025***

Judgment pronounced on: 07.08.2025

\+ FAO (COMM) 197/2025, CM APPL.46101/2025 (for exemption), CM APPL.46102/2025 (for delay of 360 days in refilling the Appeal) & CM APPL.46103/2025 (for stay)

SAHIB SITAL SINGH BAJWA AND ORS. .....Appellants

Through: Mr. Manoj Chandra Mishra and Ms. Pratibha Dwivedi, Advocates.

versus

AAKASH EDUCATIONAL SERVICE LIMITED AND ANR. .....Respondents

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal under Section 37 of the **Arbitration and Conciliation Act, 1996**[1] and Section 13 of the Commercial Courts Act, 2015 raises a challenge to **Order dated 19.04.2024**[2] passed by learned District Judge (Commercial Court-01), District South, Saket Courts, New Delhi, in OMP (Comm.) No. 33/2023, in a Petition under Section 34 of the A&C Act, titled as ***Sahib Sital Singh Bajwa & Ors. v. Aakash Educational Services Ltd. & Anr.,*** confirming the Award dated 09.02.2023 and correction Order dated 06.03.2023 passed by the

[1] A&C Act.
[2] Impugned Order

learned Sole Arbitrator in Arbitration Case No. 06/07/2020.

2. Shorn of all details, the present Appeal is premised on the pointed contention that the Impugned Order is liable to be set aside on the ground that it failed to consider the significant fact of the Award having been pronounced after a considerable delay.

CONTENTIONS OF THE APPELLANTS:

3. Learned counsel for the Appellants contends that the jurisdiction of arbitration was invoked on 23.05.2020 and that the Tribunal was thereafter constituted on 29.06.2020. It is submitted that Section 29A of the A&C Act stipulates that the entire arbitral proceedings ought to have been concluded within a period of one year. However, in the present case, the proceedings have taken almost two and a half years to conclude, without any extension or permission having been sought from the Court. It is, therefore, submitted that the Award stands vitiated, having been rendered in violation of the express provisions of Section 29A of the A&C Act.

4. During the course of arguments, the Bench drew the attention of the learned counsel for the Appellants to the Order dated 10.01.2022 passed by the Hon'ble Supreme Court in ***Cognizance for Extension of Limitation, In re***[3], whereby the time period under Section 29A of the A&C Act was expressly suspended by the Hon'ble Supreme Court. The relevant excerpt from the aforesaid Order dated 10.01.2022 is as follows:

> ***5 (IV).*** *"It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe*

[3] (2022) 3 SCC 117.

> *period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*
>
> ***(Emphasis supplied)***

5. Learned counsel for the Appellants, upon a perusal of paragraph 5 of the aforesaid order, sought leave to withdraw the present Appeal, albeit with a caveat that liberty be reserved in favour of the Appellants to suitably amend and re-present the Appeal under Section 37 of the A&C Act.

6. This Court, by that time, had already heard the learned counsel for the Appellants at considerable length and was of the opinion that the matter can be heard and decided.

7. Apart from the point of limitation; the challenge to the Impugned Order and the Award rested primarily on the contention that the underlying contract was itself unenforceable and contrary to the express provisions of the Indian Contract Act, 1872.

8. Learned counsel for the Appellants further submitted that the terms and conditions of the Contract were *ex facie* one-sided, and as a consequence, the performance thereof imposed an undue and onerous burden upon the Appellants, culminating in substantial losses. It was, thus, urged that, on this ground as well, both the Impugned Order and the Award warranted interference and ought to be set aside.

9. Learned counsel for the Appellants also made a categorical statement that the evidence which has been rendered by the Appellants has not been taken into consideration while passing the Award as well as the Order impugned herein.

10. Learned counsel for the Appellants further submitted that the period affected by the COVID-19 pandemic constituted a "*Force Majeure*" event, and yet, no benefit or consideration in respect thereof

had been extended to the Appellants in any manner whatsoever.

11. We have heard the learned counsel for the Appellants and carefully perused the contents of the Arbitral Award, the impugned Judgment, and the pleadings along with the documents annexed in support thereof.

ANALYSIS:

12. While examining the issues contended in this appeal under Section 37 of the A&C Act, we remain mindful of the Hon'ble Supreme Court's rulings that limit judicial interference in arbitral proceedings have an extremely narrow scope. In a recent judgment, in the case of ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[4], the Hon'ble Supreme Court summarized the settled position as follows:

> *"**11.** Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.*
> ***12.** It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.*
> ***13.** In paragraph 11 of Bharat Coking Coal Ltd. v. L.K. Ahuja, it has been observed as under:*
>
> > *"11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the*

[4] 2024 SCC OnLine SC 2632

arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."

14. *It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.*

15. *In Dyna Technology Private Limited v. Crompton Greaves Limited, the court observed as under:*

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

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

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of MMTC Limited v. Vedanta Limited, it has been held as under:

> *"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."*

18. *Recently a three-Judge Bench in Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking referring to MMTC Limited (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.*

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CONCLUSION:

20. *In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.*

21. *It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged*

regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

13. This Court finds it apposite to extract the relevant paragraphs from what is, indubitably, an extremely detailed and well-reasoned Award, as follows:

"ISSUE WISE ADJUDICTION

44*. Before I adjudicate issue Nos. (1) and (2), it would to appropriate to adjudicate issue No.3. Issue No.3*

Whether the contrar.t was terminated by the Claimant or the Respondent exited from the same? OPP

45. *The relevant Article in the contract that deals with 'termination' and 'exit' are reproduced hereinbelow:*

ARTICLE# 5

DEFAULT

5.1 If the franchisee violates any of the terms and conditions mentioned in the franchise agreement, the company shall be fully competent to terminate the franchise agreement.

5.2 The consequence of any of the following events/acts shall continue good cause for the Company to act at its option and without prejudice to any other rights or remedies provided for here under or in law or equity, to terminate without compensation to the Franchisee this Agreement by notice in writing to the Franchisee, such notice to expire at such date as the company may in its absolute discretion determine:

(a) ....

(b) If the Franchisee defaults in payment of dues. or in the payments of any other dues to the Company or in collection of course fees and/ or deposit of such collection into the designated bank account, within a period decided by the company under or pursuant to this Agreement or as a result of the operation of this

Agreement.

(c) If the Franchisee ceases to conduct the franchisee centre at the address mentioned in agreement or loses its right to the possession/ use of the premises in which the franchisee centre is located.

(d) xxxxxx ..... .

(q) ~

5.3. The Company may, in its absolute discretion and without prejudice to its rights to terminate, condone or compound any breach or breaches by the Franchisee, seek and require immediate

rectification of the concerned breach or breaches where the same are capable of remedy together with payment of damages to the Company which shall be assessed by the Company and be binding on the Franchisee and within such time as the Company prescribes;

Provided that until the breach or breaches are remedied and further until the damages referred in the preceding clause are paid, the Franchisee shall not be entitled to seek and the Company shall be entitled to suspend fulfilment of Company's obligations provided for under this agreement.

And provided that during the period contemplated under the preceding clause, the Franchisee shall not register students to any of the courses and not conduct classes at the franchisee centre.

And provided further that the Company shall be entitled to take over the administration and premises of the said franchisee centre and/ or appoint any other party to operate the franchisee centre with immediate effect with no obligation to compensate the Franchisee in any manner or to seek the Franchisee's concurrence.

5. 4 xxxxxxxx

5.5. EXIT CLAUSE

a) In case, the franchisee, under compelling circumstances wishes to make an exit from the agreement, it should do so when all the courses for a particular session have been completed. In such a case, the franchisee shall be required to:

(i) Give a notice to the company in writing of its intention to make an exit from the agreement at least 6 months before making such exit.

(ii) Discharge the full consideration of the franchisee fees as agreed and make all balance payments to the company due on that account and all other outstanding due payable to the company.

b) However, In any case, if the franchisee wishes to make an exit from the agreement in mid-session, it will have to compensate the company as follows: -

(i) A sum of Rs. 15 lacs (Rupees Fifteen Lacs Only) as compensation for business loss and damage to company's brand caused by such exit.

(ii) Pay 1 00% of the gross fee received for the number of students enrolled at the centre minus service charges paid to company.

(iii) The full consideration of the franchisee fees as agreed and make all balance payments to the company if any due on that account and all other outstanding dues payable to the company.

c) In the event that this Agreement is terminated for any breach by the Franchisee as provided herein, the Company shall be entitled to the following: -

(i) ·A sum of Rs. 15 lacs (Rupees Fifteen Lacs Only) as compensation for business loss and damage to company's brand caused by such termination.

(ii) The full consideration of the franchisee fees as agreed and make all balance payments to the company if any due on that account and all other outstanding dues payable to the company."

(Emphasis supplied)

***46**. From the forgoing clauses of the contract, it is clear that in case the Respondents exit, clauses (a) and (b) of Article 5.5, as the case may be, triggers in. While in case the Claimant has terminated the agreement, Cause (c) of Article 5.5 triggers in. The case of the Claimant is that the Respondents terminated the contract in terms of the letter dated 08.05.2020. Emphasis is laid on the following sentence in the said letter, "sir, by your actions, conduct and behaviour towards Pathankot centre, the Aakash Institute, Pathankot Centre stands closed". According to the learned counsel for the Claimant 'closure' actually means final closure i.e. end of the contract and its termination. His submission is that although by letter dated 25.02.2020, the Claimant intimated to the Respondent that it shall be withdrawing all its services to the Respondent on account of non -payment of dues and that the Respondent would also not be entitled to register any new students. It is argued that in reality, the Claimant had not stopped its services. Even otherwise, the Claimant vide its letter dated 17.4.2020 expressly took a decision and communicated to the Respondent that it was restarting all support and services to it (except enrolment of new students), subject to the assurance that due payments would be made after the lockdown due to COVID 19 Pandemic.*

***47**. Reference to emails exchanged between 14.4.2020 till 21.4.2020 would show that there was no. deficiency in support being given to the Respondent. By the letter dated 5.5.2020 of the Respondents even said that the Academic Session Planner phase II was not required for the Pathankot centre. The Learned Counsel for the Claimant places reliance on (200.5) 11 SCC 73 to show how the contract can be said to be repudiated. ·*

48. *On the other hand the Learned Counsel for the Respondent relies upon the correspondence between the parties to show that the Claimant had in fact stopped support and by it's letter dated 11.05.2020 categorically terminated the contract by invoking Article 5 of the Agreement between the parties. First, the claimant withdrew the support and services by letter dated 25.02.2020 and later terminated the contract vide letter dated 11.5.2020. In fact, vide email dated 26.02.2020 made an earnest request to the Claimant not to stop the support and allow admissions. Vide emails dated 03.003.2020, 04.03.2020 and 05.03.2020 of the Respondent shows that the Respondent was keen to continue the Centre as it pleaded and requested the Claimant not to withdraw support and allow it to admit students. All this according to the Respondent shows that the Respondent wanted to run the Centre and never exited from it. But the Claimant remained rigid on its stand and directed the Respondent not to take admission even after the lock-down vide email dated 21.04.2020.*

49. *I have carefully gone through the correspondence between the parties, particularly letters dated 25.02.2020 and 11.5.2020, of the Claimant. The email dated 08.05.2020 of the Respondent and the other mails exchanged between the parties. Had the Claimant understood that the respondent had 'exited' the contract then there was no need for the Claimant to have expressly used the word, "hereby terminates the Franchisee Agreement dated 30th June 2016 executed between you, the Franchisee and the Company with immediate effect." In its letter dated 11.05.2020. It would be relevant to reproduce the said letter hereunder.*

"Without Prejudice
Through Speed Post I e-Mail

May 11, 2020

To, Mls Paramount Learning Solutions
A partnership firm,
Registered Office at: VPO- Jug ail,
Tehsil & Distt. Pathankot, Punjab.
Through its partners:

1. Mr. Sahib Sital Singh Bajwa
Slo Mr. Gunnail Singh,
Rio: Village Jandrai, PO-Ranipur,
Tehsil & District- Pathankot.

2. Srnt. Renu Sharma
wlo Sh. Davinder Pal Sharma,
Rio: PO- Jugail,
Tehsil & Distt. Pathankot,
Punjab.

(Collectively referred as "Franchisee")
Also at:
1st & 2nd Floor, Above Axis Bank,
Patel Chowk, Saili Road,

Pathankot, Punjab
May 11,2020
Subject: Termination of Franchise Agreement dated 3oth June, 2016 ("AAKASH INSTITUTE/ AAKASH IIT-JEE") between Aakash Educational Services Ltd. and Mls Paramount Learning Solutions to run the franchise coaching centre at 151 & 2nd Floor, above Axis Bank, Patel Chowk, Salll Road, Pathankot, Punjab 145001.
Ref.: Your e-mail dated 8th May 2020, where in you have mentioned that Pathankot centre stands closed.

Dear Mr. Sahib Sital Singh Bajwa & Smt. Renu Sharma,

At the outset, this is to inform you that abrupt closing of Pathankot Franchisee Centre, as informed by you via e-mail dated 81h May, 2020, is arbitrary, illegal & against the agreed terms of Franchise Agreement dated 3oth June, 2016. Please be informed that vide Franchise Agreement dated 30th June 2016 [For XII Boards, Medical/IITJEE/Engineering. Entrance Exams] you are not allowed to close the centre and abruptly suspend the classes without even talking and discussing with Aakash Educational Services Limited and thereby you have put the career of innocent students at stake.

1. You the Franchisee being desirous of coaching students appearing in XII Board, Medical, IIT-JEE/ Engineering Entrance Examinations approached Aakash Educational Services Limited (Formerly Aakash Educational Services Pvt. Ltd.,· hereinafter referred to as "Company? for permission/license to launch coaching centre in the name and style of "AAKASH INSTITUTE! AAKASH IIT-JEE" for the coaching of Medical/ Engineering students. On your representation, Company agreed and allowed you to run the centre at the space available with you. Accordingly, a franchise agreement was duly executed on 30th June, 2016 between you, the franchisee & Company wherein Company agreed and allowed you to nm the coaching centre in the name and style of "AAKASH INSTITUTEIAAKASH IIT-JEE" at 1st & 2nd Floor, Above Axis Bank, Patel Chowk, Saili Road, Pathankot, Punjab-145001 at your cost and expenses for imparting coaching to students appearing in XII board, Medical/IIT-JEE/Engineering Entrance Examination initially

for a period of 5 years commencing from 30th June, 2016 till 29th June, 2021 (Refer Annexure A). Franchise agreement was duly signed by both the parties and both the parties mutually agreed to be abide by the terms and conditions of the Franchise Agreement.

2. That as per Clause 1.2 of the above noted Franchise Agreement, you, the franchisee, were under contractual obligation to pay 33% of the gross fee collected to the Company. Clause 1.2 of the Agreement is reproduced hereunder for your reference:

> *"1.2 The Franchisee shall pay 33% of the gross fee collected/ to be collected including PDCs for all courses. and for the services provided and permitted by the company by demand draft in favour of Aakash Educational Services Pvt. Ltd. payable at New Delhi, on expiry of each fortnight i.e., 4th Day & 19111 Day of every English Calendar month along with a statement offees collected (and data in CD) in the preceding month by the franchisee ..... For payment purpose, time is the essence of this agreement."*

However, fact of the matter is that you continuously failed to peiform your contractual obligations under the abovementioned clause 1.2 and defaulted on several occasions to clear the outstanding dues as under:

> *a. You have been in violation of the above-mentioned clause for the past 24 months. Numerous reminders/advisories were issued to you for clearing the dues but you did not pay any heed to it. Details of the communications made in this regard are annexed as Annexure- B.*
> *b. You also visited Delhi Head office of the Company in the month of May, 2019 for a meeting with Managing Director of the Company wherein you assured verbally as well as in writing vide letter dated 3th May, 2019 [Refer Annexure G) that going forward all payments shall be made regularly on fortnightly basis as per the invoice received from Company's Head Office.*
> *c. Further, to ensure the financial security of the Company, a Bank Guarantee of Rs. 25, 00,000/- was also provided by you to the Company.*
> *d. But defaults in payment continued despite your assurances. The situation reached to such an extent that company was forced to invoke the Bank Guarantee of Rs. 25,00,000/- on 24th December 2019.*

e. Despite given enough chances to mend your ways and to work according to the company franchise agreement norms, you failed to fall in line.

3. That you also defaulted in making timely payment of salaries to your staff working at the franchise centre. It has been brought to the knowledge of the Company that salaries have not been paid to academic and non-academic staff of your franchise centre since January, 2020 [Refer Annexure C). Non-payment of salary is gross violation of Clause 3.9 of the franchise agreement by you as well as applicable labour laws. Retevant clauses are reproduced for your reference:

"Clause 3.9: Payments
3.9.1 All liabilities for payments/salaries of teachers, employments of personnel, payments of wages, and compensation packages to teachers shall be the liability of the franchisee alone.
3.9.2 The payment to the teachers and other staff shall be regularly made and after every quarter, a certificate shall be issued by the franchisee, addressed to the· company at its registered office certifying that the payments to teachers/other staff has been made. In case any report or complaint is received for non-payment/short payment. It shall be the sole responsibility of the franchisee to discharge its obligations of payments to the teachers and staff employed at his/her centre."

4. That even you did not spare the Government Treasury from cheating, leave alone the Company or your Franchisee staff. It is on record that in violation of applicable Income Tax Rules and Clause 4.1.3 of the Franchise Agreement, you did not deposit the TDS amounting to Rs. 7,98,2871- with the Government for the FY-2018-19 despite deducting this TDS at the time of payment to the Company. Relevant Clause 4.1.3 of the Franchisee Agreement is given below: [Refer Annexure F)

"Clause 4.1.3 The franchisee will/oak after its all type of tax obligations but not limited to Service Tax, TDS, Income tax, PF & VAT etc. as may be imposed by the Central Government, State Government and local authorities from time to time. The· company shall not be responsible in any manner in respect to any tax liability or any other legal liability in nature of civil or criminal".

5. That in the month of May, 2019 an audit was conducted at your Pathankot Franchise Centre, in terms of the Franchise Agreement,

wherein financial & operational irregularities were found. Accordingly, a letter dated 25th May, 2019 was issued to you to mend your ways however, you did not take the note of the same [Refer Annexure D (a)].

6. That another audit was conducted by corporate audit team at your Pathankot Centre in the month of March, 2020, but again serious financial & operational irregularities were found. [Refer Annexure D (b)}, but there was no remorse or signs of improvement on your part rather you started making false allegations against the Company itself.

7. That you were well·aware that as per Clause No. 5.5 of the franchise agreement you, the franchisee, were under contractual obligation to serve 6 months' advance notice in writing to the Company before making an exit from the agreement.

Clause No. 5.5 is reproduced hereunder for your reference:

"Clause 5.5: EXIT CLAUSE

a) In case, the franchisee, under compelling circumstances wishes to make an exit from the agreement, it should do so when all the courses for a particular session have been completed. In such a case, the franchisee shall be required to:

(i) Give a notice to the Company in writing of its intention to make an exit from the agreement at least 6 months before making such exit.

(ii) Discharge the full consideration of the franchisee fees as agreed and make all balance payments to the company due on that account and all other outstanding dues payable to the company.

b) However, in any case, if the franchisee wishes to make an exit from the agreement in midsession, it will have to compensate the company as follows: -

(i) A sum of Rs. 151acs (Rupees Fifteen Lacs Only) as compensation for business Joss and damage to company's brand caused by such exit.

(ii) Pay 100% of the gross fee received for the number of students enrolled at the centre minus service charges paid to company

(iii) The full consideration of the franchisee fees as agreed and make all balance payments to the company if any due on that account and all other outstanding dues payable to the company.

(c) In the event that this Agreement is terminated for any breach by the Franchisee as provided herein, the Company shall be entitled to the following:

(i) A sum of Rs. 15/lacs (Rupees Fifteen Lacs Only) as compensation for business Joss and damage to company's brand caused by such termination.

(ii) The full consideration of the franchisee fee as agreed and make all balance payments to the company if any due on that account and all other outstanding dues payable to the company"

You were advised to stop all new admissions at Aakash Pathankot centre for the session 2020-2021 & 2022, as we were concerned that you will not be able to serve the students as per the Aakash corporate norms and will further increase the liabilities towards service charges payable to the company. However, to the utter shock of the Company, vide e-mail dated 8th May 2020, you informed the Company that Pathankot centre stands closed. It has also come to our knowledge that you, the franchisee, through your representatives have been communicating to the parents/students of the Aakash Pathankot centre that the centre has been closed, no more classes will be conducted and you are no more associated with the Company & will start your own Institute. We are in receipt of such numerous calls lately from the parents at our Aakash Customer Care Service Centre. Franchise Agreement clearly provides that you cannot stop the classes and have to complete the remaining course. You cannot put the future of the students at stake and play with their careers. You are advised to resume their classes with immediate effect. Relevant clause is reproduced hereinbelow for your reference:

"Clause 8.3

. .. . In case, the franchisee decides to prematurely discontinue the affiliation, he/if/they will be liable and duty bound to get the remaining course of the enrolled students fully completed up to their best satisfaction and also up to the satisfaction of the Company. Any type of claims by any student or his/her parents/representatives will have to be borne by the franchisee. "It is also pertinent to mention here that Franchisee centre has been closed unlawfully, unauthorizedly and in an arbitrary manner. Before closing down the franchise centre neither you served the 6 months' notice period nor cleared the outstanding dues as per above mentioned clauses 5.5, nor you compensated the Company in terms of abovementioned clauses. You shut down the franchise centre suddenly without getting the clearance I permission from Company for closure of the franchise centre. Even you did not think for a moment about the career of innocent students who are the worst affected victims of your above noted misconduct. Students and their parents are worried and enquiring about the centre and classes which

were being held there. Such unlawful and unauthorized act of suddenly closing down the centre at Pathankot has caused irreparable loss and permanent dent in the career of students studying at the above-mentioned centres. This unauthorized act on your part has caused loss of profits to the Company as well as tarnished the image of the Company in general public resultantly causing loss to the Goodwill of the Company.

8. That Company vide numerous reminders informed/remind you to clear the outstanding dues to the tune of Rs. 70,66,7521- however, you miserably failed to clear the same. This is to bring to your notice that your continuous defaults in making the due payment to the Company are in gross violation of Clause 1.2 of the Franchise

Agreement. [Refer Annexure E]

Your above noted misconduct is also in absolute violation of various clauses of the franchise agreement including but not limited to clause nos.5.1, 5.2 (b) and 5.2(c) of the above noted Franchise Agreement:

"5. I If the franchisee violates any of the terms and conditions mentioned in the franchise agreement, the company shall be fully competent to terminate the franchise agreement.

5.2 The consequences of any of the following events/acts shall continue good cause for the Company to act at its option and without prejudice to any other rights or remedies provided for hereunder or i law or equity, to terminate without compensation to the Franchise this Agreement by notice in writing to the Franchisee, such notice to expire at such date as the company may in its absolute discretion determine:

(b) if the Franchisee defaults in payment of dues or in the payments of any other dues to the Company or in collection of course fees and/or deposit of such collection into the designated bank account, within a period decided by the company under or pursuant to this Agreement or as a result of the operation of this Agreement.

(c) If the Franchisee ceases to conduct the franchisee centre at the address mentioned in agreement or loses its right to the possession/use of the premises in which the franchisee centre is located. "

From the above noted facts, it is established and evident that you have deliberately violated the terms and conditions of the Franchise Agreement and committed the continuous default in making payment to the Company despite being served with constant reminders and hence, as per Article 5 of the Franchise Agreement, Company hereby terminates Franchise Agreement dated 30 June, 20I6 executed between you, the Franchisee and the Company with immediate effect.

9. You are hereby directed to remove all material, boards, hoardings bearing name of Aakash institute/Aakash IIT-JEE as well as new admissions immediately on the receipt of this Termination notice. as per Article# 6 (Effect of Termination) of the Franchise Agreement, it is the clear mandate of sub clause 6.4 (Premises of Franchisee) that after termination or nonrenewal of agreement due to any reason whatsoever, the franchisee cannot use the same premises for activity of caching for Medical/IIT-JEE/Engineering courses of its own or any other brand in competition with Aakash for a period of 02 years from the termination/agreement expiry date. Franchisee cannot use telephone nos. which were operational when it was a franchisee. These telephone numbers have to be surrendered with the company from where they were got issued. Hence, you are hereby informed to abide by the above noted mandatory term of the Franchise Agreement with immediate effect.

10. You are also directed to make the payment of below mention amount through demand draft payable to "Aakash Educational Services Limited" within 10 (ten) days of receipt of this notice:

Franchisee Name	*Category*	*Reference*	*Total*
M/s Paramount Learning Solution	*Franchise Service Charges*	*[Refer Annexure E*	*49,52,058*
	Other Reimbursement	*[Refer Annexure E*	*13,16,407*
	TDS Recoverable for FY.2018-19	*[Refer Annexure F]*	*7,98,287*
	Student Security Deposit Fee Mls Paramount refundable available at centre	*[Refer Annexure H]*	*7,73,974*
	Default/Exit in Mid-session	*Refer Franchise Agreement Article# 5 [DEFAULT]" sub- clauses 5.5 title Exit Clause (a), (b)&(C)*	*15,00,000*
	100% of the gross fee received for the number of students enrolled at the centre minus company commission paid	*[Refer Annexure I]*	*1,27,94,634*
Grand Total			*2,21,35,360*

Further to the outstanding amount calculated as mentioned above, Company reserves the right to add any other amount accumulated in due course/currently in the knowledge of the Company.

It is further to inform you that if you fail to comply with the mandate of this notice mentioned herein above, Company shall be constrained to initiate appropriate legal proceedings against you at your own risk and costs.

Please be informed.

Sincerely

Authorised Signatory

For Aakash Educational Services Limited.

ANNEXURE ATTACHED
I. ANNEXURE A Agreement scanned copy
2. ANNEXURE B List of Communications
3. ANNEXURE C Faculty Mail on Non-Payment of Salary
4. ANNEXURE D Audit Reports
5. ANNEXURE E Total Outstanding Report
6. ANNEXURE F TDS Outstanding report
7. ANNEXUREG Pathankot Payment Commitment letter to MD sir dated 08 May 2019
8. ANNEXURE H Pathankot Security Deposit Fee available
9. ANNEXURE I 100% of the gross fee received for the number of students enrolled at the centre minus company commission paid "

50. *I am not persuaded by the submission of ·the Learned Counsel for the Claimant that the letter dated 08.05.2029 of the Respondent indicates that it had expressly exited the Contract or at all. Moreover, the manner in which the Respondent could exit the contract are clearly laid down in Article 5.5 (a) and (b), which steps were not taken by the Respondent.*

51. *Undoubtedly the Respondent failed to honor its part of the obligation especially in respect of non-payment of dues but by no stretch of imagination can it be said that the Respondent existed the contract. On the default of the Respondent, the Claimant was entitled to take steps by stopping support and even by terminating the contract, which the Clamant did. The Claimant chose to terminate the contract and therefore "issued the letter dated 11.05.2020 by invoking Article 5 of the Franchisee Agreement dated 30.06.2016.*

52. *I therefore hold that the Claimant terminated the Franchisee Agreement dated 30.06.2016 between the parties on account of the breach of the obligation by the Respondents. Issue No.3 is this thus decided accordingly.*

53. *Now coming to Issues 1 and 2.*

Issue No.1.

1. Whether the Claimant is entitled to an award in a sum of Rs.66,31,787/- towards dues from the Respondent i.e. Rs. 49,74,941/- towards Franchise Service Charges and '.Rs. 16,56,845/towards other reimbursements? And if yes, whether the Claimant is entitled to interest upon such amounts and for what period and at what rate? OPC

54. The Claimant has claimed a sum ofRs.66,31,787/-from the Respondent towards dues for Franchisee Service Charges and towards reimbursements. In order to prove the said claim, the Claimant has filed a detailed statement of account from the ledger maintained in the ordinary course of business. In term of the Franchisee Agreement, the respondent paid to the Claimant Rs.42,00,000 /- as onetime non-refundable payment. The Respondent was required to pay 33% of the gross fee collected, every fortnight to the Claimant. The statement of account filed bv the Claimant as Schedule I i.e. Exhibit CW2/1 gives the details of the outstanding. The said statement has not 57 of the Amended Statement of Claim. The Claimant has placed on record the email dated 31.7.20 19 showing the quarterly balance for the period 1.4.2019 to 31.6.2019; email dated
10.10.2019 shows quarterly balance for the period 14.2019 to 30.9.2019 and email dated 13.1.2020 showing quarterly balance from 1.4.2019 to 31.12.2019. The Respondent had confirmed the account statements by email dated 19.8.2019. 29.10.2019 and 15.3.2020. With each of the emails, using the same method, the Respondent has confirmed the balance at the end of each quarter by the signed and stamped balance confirmation letter. The documents have been duly proved as Ex CW-l /X. The signed account statements are the same as schedule I for the relevant period and the balances confirmed match with the statement of account as Exhibit The last balance confirmation is as it stood on The entries have not been challenged in the pleading or otherwise proved the same to be wrong. Even before the said period, the Respondent has admitted the amounts as would be evident from emails at pages 325 to 34 J. Exhibits CW117 (Colly). The. Respondent confirmed the dues as on 201212019 and the same amount matches with the last entry before 20.2.2019 i.e. 161212019 in the statement of account.

***55**. The Charges towards Franchisee Fee are duly supported by emails containing necessary invoices Exhibit GW114 sent on fortnightly basis.*

***56**.The Respondent has not filed any counter statement of account contradicting the statement of account filed by the Claimant. Exhibits CW1 /5 being various emails from 06.07.2019 to 13.12.2019 have not been disputed by the Respondent. Although the Respondent's case is that it had paid in excess to the Claimant but no. material to substantiate the said submission has been placed on record. Not a single letter or any other document prior to the present proceedings have*
been filed to show that there was any objection to the heads under which charges are demanded or levied by the Claimant. It is only

at the state of filing the counter Claim that the Respondent has alleged that it is entitled to recover Rs. 5.5 Crore from the Claimant without any material on record.

***57**. The Respondent has tried to dispute the entries in the ledger account filed by the Claimant but there is no material filed by the Respondent to show its own statement or to show that such entries were disputed by them prior to institution of the present proceedings. On the other hand, the Respondent has never denied it's liability whenever the Claimant demanded the. Outstanding through emails but only sought time to make the payment.*

58. It is relevant to mention here that the Respondent furnished a Bank Guarantee to the Claimant in a sum of Rs. 25 Lakhs on 25/6/2019. Had no amount been due, the question of furnishing the BG would not have arisen. During the oral arguments, the Learned Counsel for the Respondent submitted that the segregation of the total amount into Franchisee charges and other charges is incorrect and the amount is actually different. However, there is no material on record to prove the same. A careful consideration of the statement of account shows that the Franchisee Fee due is Rs. 49,74,94.11- and towards service charges Rs.16,56,845 /-. Once the statement of account has been proved containing entries of Franchisee Fee and other charges including reimbursements and the Respondent having not shown how the entries are incorrect or that these were even questioned or challenged by the Respondent prior to the present proceedings, the defense of the Respondent cannot be believed.

59. Thus I have no hesitation in holding that the Claimant is entitled to an amount of Rs. 66,31,7871- from the Respondent which comprises of Rs. 49,74,941/- towards Franchisee Fee and Rs. 16,56,845 /- towards other reimbursements.

Issue No.2.

2. Whether the. Respondent is liable to clear the tax liability of Rs. 6,89,272/- towards TDS deducted from payments made to the Claimant in addition to any other incidence of tax, such as interest, penalty etc. which may be imposed on account of nondeposition of TDS in a timely fashion? OPC

***60.** In order to prove this claim, the Claimant has filed Exhibit CW2 I 3 being the chart of calculation of the TDS liability of the Respondent on the basis of Form 26-A.S. In defence the Respondent denies the liability in view of its submission that the Claimant has been paid in excess. However, as already held that*

the Respondent has not been able to prove any excess payment, the said defence cannot come to the rescue of the Respondent.

***61**. The Claimant has, in its affidavit, proved the said chart Exhibit CW2/3 being the chart of calculation of the TDS liability. The Respondent has not controverted the said calculation stated to have been based on Form 26AS.*

***62**. In view of the above, I hold that the Respondent is liable to pay the amount of Rs. 6,89.272 /- towards TDS deducted frorn the payments but not reflected in Form 26-AS or paid to the Claimant.*

Issue No.4

Whether the Respondent is liable to be restrained from operating a coaching business from the centre bearing 1st and 2nd Floor, Patel Chowk, Saili Road, Pathankot, Punjab till 07. 05.2022? OPC

***63**. The aforesaid Claim of the Claimant has become infructuous. The Claim with respect thereto is therefore dismissed*

Issue No.5
Whether the Claimant is entitled to an award in a sum of Rs.15,00, 000/- towards loss of business and reputation and Rs. 1,27,94,634/- towards student fees in accordance with Clause 5. S(b) of the Franchise Agreement? And if yes, whether the Claimant is entitled to interest upon such amounts and for what period arid at what rate? OPC

***64**. In view of my finding that the Claimant has terminated the Contract and the Respondent did not exit therefrom, the question of awarding Rs. 15,00,000/- towards loss of business and reputation and Rs. 1,27,94,634/- towards 100% students fee in terms of Clause S.S(b) does not arise. The said claim is rejected.*

***65**. The Claimant has not claimed Rs. 15,00,000 /- under Clause S.S of the in its statement of Claim but made oral/written submission for the first time that in the alternative, in case it is held that the Claimant terminated the Contract and the Respondent did not exit, the Claimant be awarded an amount of Rs. 15,00,000/- as compensation in terms of Clause of the of Article 5.5. However, no such pleading or prayer has been made in the Amended Statement of Claim and therefore the question of awarding an amount not claimed in the pleading does not arise. Even the evidence led on the quantum of compensation by CW1 and CW2 is based on the midsession by the Respondent as envisaged under Article 5.5 (b) and not of the of the Franchisee Agreement. The*

evidence for compensation for business loss and damages under Article 5.5 of the on the termination of the agreement by the Claimant has not been led by either of the Claimant's witnesses.

Issue No.6

Whether the Claimant is entitled to an award in a sum of Rs. 7,73,974/- from the Respondent towards refundable student securitly deposit fee? And if yes, whether the Claimant is entitled to interest upon such amounts and for what period and at what rate? OPC

***66**. The submission of the Learned Counsel for the Claimant is that the security deposit collected by the Respondent from the students is refundable and it ranges between Rs. 2000/- to Rs.5000/- per student. According to him, the Respondent is liable to pay the Claimant the said security deposit.*

***67**. The case set up in the Amended statement of Claim is that the cause for seeking payment of these amounts arose only upon exit of the Respondent from the Franchise Agreement. According to the Claimant, the books of account maintained by it in the ordinary course of business through the fee management software a sum of Rs. 7,73,974/- has been retained by the Respondent towards security deposit. It is not the case of the Claimant that any student has made any demand from the Claimant towards refund of security deposit. The Respondent has denied the said liability on the ground that there is to provision in the Franchisee Agreement for Refund of the security deposit to the Claimant.*

***68**. The learned Counsel for the Claimant also could not point out any provision in the Franchisee Agreement entitling it to the refund of Security deposit as claimed. Nor is there any material on record to show any such demand made by any student. The said issue is thus decided against the Claimant with the direction that In case any student makes any claim for refund of security deposit, the Respondent shall be alone liable to pay the said amount, if payable, in accordance with its inter-se contract between the student and the Respondent.*

***69**. The Counter Claim was filed belatedly by the Respondent and accordingly Issue No. 6A was framed vide common order dated 21 /09/2022 and 21/09 /2022 as follow:*

Issue No: 6A:

"Whether the Respondent is entitled to the claim in a sum of Rs.73,56,313/- as prayed for in the Counter Claims? OPR/ Counter Claimant."

Counter Claim No.1:

***70**. The Respondent/ counter Claimant claims a sum of Rs.35,754,957.00 towards loss on account of expenses incurred for infrastructure during the subsistence of the agreement. It is the case of the Respondent that the agreement does not cater to the expenses incurred towards upkeeping the infrastructure during the subsistence of the agreement. The details of the claims are provided in para 1.2 to 1.5 of the Counter Claim. The Respondent refers to email dated 26.02.2020 and 24.04.2022 to submit that the Claimant terminated the agreement before its term and therefore liable to make payment for the infrastructure etc. The Respondent also relies upon the bills for the. Period 06.08.2016 to 21.09.2016.*

***71**. Recital 3 of the Franchisee Agreement very clearly provides that the center has to be run by the Franchisee at its own costs and expenses. Article 3 of the said Franchisee Agreement envisages that the expenses incurred in meeting the obligations of the Respondent/ Counter Claimant including to provide suitable infrastructure would be borne by them. Similarly Article 2 contemplates no obligation on the part of the Claimant in this regard. Furthermore the bills filed on record by the Respondent are for the period 06.08.2016 to 21.09.2016, except for two bills of 3.10.2016 and 11.12.2016, which clearly indicates that the bills relate to the initial setting up of the center and not running /refurbishment of the center. Nor do the bills add up to the amount claimed.*
In view of the above, the said claim stands rejected.

Claim No.2

***72**. This claim relates to refund of the pro-rata Franchisee Fee. The Respondent Claims an amount of Rs.11,20,000/as proportionate refund as the agreement was terminated by the Claimant. The agreement has been rightfully terminated by the Claimant on account of breach by the Respondents of its obligation as discussed above. The Claimant was well within its rights to terminate the agreement on account of the default of the Respondent's obligation. Having defaulted in its obligation, the Respondent cannot seek refund of pro-rata Fee as claimed.*

Claim No.3:

***73**. The Respondent Claims expenses and charges levied beyond the Agreement. The record reveals that the Respondent has from time to time acknowledged its liability of Rs.74,41,533 as on 31.12.2019, which is reflected in the ledger account filed by the*

Claimant. In view of the admission of the Respondent of the outstanding amount due, the question of now claiming any excess payment allegedly charged beyond the agreement in untenable. At no time, prior to the present proceedings, did the Respondent raise any issue of any excess amount charged. The Respondent has been unable to show as to when and how the amounts charged were disputed or for which period or any details thereof. The Advertising and marketing charges were payable by the Respondent under. Article 2.6. The Audit Charges are also payable under Article 4.5 of the Agreement. The Final Audit Report is also duly signed by the Respondent. No details of the alleged additional charges have been shown from the record. The Corporate recruitment and Training Charges are also to be payable by the Respondent under Article 2.5 of the Agreement. This Claim being frivolous is Rejected.

Claim No.4

***74**. The Respondent claims damages due to arbitrary stoppage of services. The record of the correspondence clearly shows the default on the part of the Respondent in not adhering to payment schedule, amongst others. Repeated reminders by the Claimant were not complied*
with.

***75**. The Claimant was fully entitled under the agreement to stop the services and even terminate the contract for the default on the part of the Respondent. Since the Claimant exercised its rights under the said agreement, the question of payment of damages to the Respondent under this claim does not arise. Even otherwise, there is nothing on record or proved that the Respondent suffered any loss. This claim too stands rejected.*

ISSUE NO. 7

Whether the Claimant is entitled to costs of the present arbitration? OPC

***76**. In the facts and circumstances of the case, there is no order as to costs.*

Relief?''

***77**. In view of the aforesaid finding, the Claimant is entitled to a sum of Rs. 66,31,787/- along with reasonable interest at the rate of 10% p.a. from the date of termination of the Agreement on 11.05.2020 till actual payment.*

This Award is being typed on a stamp paper of Rs. 200 of, the Claimant is directed to make good the deficiency in stamp duty in Accordance with law."

14. As is evident from a perusal of the said Award, the entire factual gamut of the inter se dispute between the parties was raised and considered dispassionately by the learned Arbitrator. Upon examining the issues in detail, the learned Arbitrator painstakingly rendered an issue-wise determination on each of the contentions advanced by both sides.

15. Learned Arbitrator also considered the rival submissions advanced, bearing in mind the statement of defence & counter-claim as filed by the Appellants herein, before him. He also meticulously examined each and every correspondence as exchanged between the parties and has come to the conclusion that the Appellants herein had admitted to having entered into an agreement and also acted in terms of the same.

16. We also consider it apposite to extract the relevant portion of the Impugned Order dated 19.04.2024, particularly since the challenge mounted by the Appellants is a composite one. The relevant extract from the impugned Order dated 19.04.2024 reads as under:

21. In the instant matter, the arbitral proceedings had commenced on 29.06.2020. Entire period of covid i.e. from 15.03.2020 till 28.02.2022 is required to be excluded from the period available with Ld. Arbitrator for conclusion of proceedings. Thereby, after 01.03.2022, period of one year was available with Ld. Arbitrator to conclude the proceedings. Award had been passed on 09.02.2023 and final award was dated 06.3.2023 which was within the extended period of limitation after considering the accord of benefit provided as per judgment of Hon'ble Apex Court.

22. Ld. counsel for petitioner also submitted that ail the bills, vouchers etc. were self generated documents of respondent. Petitioners had been charged and awarded the amount which was not even part of contract. Ld. Arbitrator referred to the emails showing the quarterly balance for the respective periods which

were confirmed by the petitioner vide emails dated 19.8.2019, 29.10.2019 and 15.03.2020. It was noted that respondent/petitioner herein had confirmed the balance at the end of each quarter by signed and stamped balance confirmation letter. The last balance confirmation was dated 31.12.2019 which entries had not been challenged in the pleadings or otherwise proved to be wrong. Ld. Arbitrator also observed that respondent/petitioner herein had never denied its liability whenever the claimant/respondent demanded the outstanding through emails but only sought time to make the payment. It was noted that once the statement of account had been proved containing entries of franchisee fee and other charges and respondent had not shown how the entries were incorrect nor were ever questioned or challenged by the respondent/petitioner herein, defence of the respondent/petitioner herein could not be believed.

23. Contention of Ld. counsel for petitioner that respondent was 'God' to them who could not have been displeased, therefore, there could not have any controversion to emails etc. does not found merit with this court. Parties were in business relationship with each other. It was open for the petitioner to controvert or assert its own rights wherever required. Having admitted its liability, later on petitioner would not be in position to withdraw the same. Nevertheless, this court does not possess appellate powers and it is not open for this court to reappreciate the evidence as the objections u/s 34 have to be established on the basis of ground enumerated therein.

24. Reliance is placed upon following:

1. Associate Builders Vs. Delhi Development Authority, 2014 (4) Arb. LR 307 (SC):

"When a court is applying the 'Public Policy' test to an arbitration award, it does not act as a cou1t of appeal and consequently errors of facts cannot be corrected. A possible view by the arbitrator on the facts has necessary 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. Thus, 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 this scope. Once it is found that the arbitrator's approach is not arbitrary or capricious, then he is the last word on facts".

"An arbitral tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a terms of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do".

"The expression 'justice' when it comes to setting aside an award under the public policy ground can only mean that an award shocks the conscience of the court".

2. Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India, Judgement dated 08.05.2019, SLP(C) no. 19033 of 2017:

"it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law and secondly, that such award is against the basic notions of justice or morality. Explanation 2 to Section 34 (2) (b) (ii) and Explanation 2 to section 48 (2) (b) (ii) was added by the Amendment Act only so that Western Geco (Supra), as understood in Associate Builders (supra), and paragrpahs 28 and 29 in particular, is now done away with. In so far as domestic awards made in India are concerned, an additional ground is now available tinder sub-section (2A). added by the Amendment Act, 2015, to section 34. Her, there must be patent illegality appearing on the fact of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In sh01t, what is not subsumed within "the fundamental policy of India 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.

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

To elucidate, para 42.1 of Associate Builders (supra), namely a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), however, would remain that if an arbitrator gives no reasons for an award and contravenes section 31 (3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award. The change made in section 28 (3) by the Amendment Act really follows what is stated in paragraphs 42.3 in Associate Builders (supra), namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair minded or reasonable person would; in short take or the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under section 34

(2A)".

3. National Highway Authority of India Vs. IRB Goa Tollway Pvt. Ltd. 2022 (288) DLT 533:

"77. The position in law. as regards the scope of interference by a count, exercising jurisdiction under section 34 of the 1996 Act, with an arbitral award is, by now, fossilised through a number of judicial authorities, of which one may take due stock of the judgments in Sangyong Engineering & Construction Co. Ltd. Vs. NHAI (20 19) 15 SCC 131: 2019 LAWPACK (SC)62532:20 19 (3) R.A.J,. 323 and Delhi Airport Metro Express Pvt. Ltd. Vs. DMRC (2022) I SCC 131 : 2021 LAWPACK (SC)65432: 2021 (5) R.A.J. 54. These decisions clearly hold that the court, exercising jurisdiction under, section 34, is to interfere only in cases of "patent illegality" or perversity in the Award under challenge. Mistakes of fact or law, or the predilection of the section 34 court to incline to a view contrary to that expressed by the Arbitral Tribunal, cannot constitute a basis for interference. Section 34 Court does not substitute its subjective view in place of the view of the arbitral tribunal".

4. Technofab Engineering Ltd. Vs. Tesla Transformers Ltd. 2021 LAWPACK (DEL) 84751:

"14. .....

Construction and interpretation of the terms of the contract is primarily for the Arbitrator to decide and the legal position with respect to the exercise of jurisdiction under section 34 of the act, is now well established. This court cannot merely on an erroneous application of law, re-appreciate the evidence as it would be an encroachment upon the domain of the learned Arbitrator. The Supreme Court has also repeatedly observed that the scope of interference under section 34 of the Act is extremely narrow, and the court must be circumspect whilst dealing with cases".

25. Having discussed as above, the award passed by Ld. Arbitrator does not suffer from any patent illegality, perversity or against the public policy, calling for any interference from this court in objections u/s 34 of Arbitration and Conciliation Act. Accordingly, instant petition stands dismissed. File be consigned to record room after completion of necessary formalities.

17. We are of the view that there is no infirmity in either the Award or the Order impugned therein. We firmly believe that the learned Arbitrator has judiciously examined each and every aspect raised by the parties and has thereafter rendered in law. The law in respect of

scope of challenge to an Award & Order as rendered under Section 34 of the A&C Act is fully crystallized. It is well-known that there is an extremely limited scope within which Courts can interfere with arbitration proceedings under Section 37 of the A&C Act.

18. We have already referred to the proceedings of the Hon'ble Supreme Court in ***Cognizance for Extension of Limitation, In re*** (*supra*) and paragraph 5 thereof hereinbefore and are of the view that the main issue in the present Appeal as to whether or not the Award was vitiated by the non-compliance with the express provisions of Section 29A of the A&C Act stands fairly covered against the Appellants.

19. We are also of the view that the other arguments raised by the Appellants pertain to an equitable consideration in his favor, despite the settled principle that there is no scope for equity in *inter se* contractual relationships between private parties. Given the established clarity of law on this point, we do not consider it necessary to undertake a detailed examination of the various arguments advocating for an equitable interpretation of the contract terms in favor of the Appellants.

20. We are further of the opinion that the learned Arbitrator has comprehensively evaluated all material facts, including the correspondence exchanged between the parties and their respective conduct, and has thereafter proceeded to render the Award in a reasoned and judicious manner.

21. It would also be relevant to mention herein that the learned counsel for the Appellants admits the fact that there is no patent illegality in the present Award but what he stresses upon is that, considering the facts & circumstances especially in relation to Covid-

19 period, the Appellants' contentions should be looked upon with leniency as it would otherwise be condemned to bear what he believes is the adversity of the Award.

22. Having regard to the legal position and upon a comprehensive evaluation of the record, we are of the considered view that neither the Impugned Order nor the Arbitral Award warrants interference in the present appeal.

23. Along with the present appeal, it is pertinent to note here that, an application has also been moved seeking condonation of a delay of 360 days in re-filing the appeal. While such an inordinate delay would ordinarily not be condoned, we have not examined the merits of the condonation application, as the appeal itself has been examined and is found to be unsustainable on merits.

24. In view of the above facts and circumstances, the present Appeal, along with pending application(s), if any, stands dismissed.

ANIL KSHETARPAL
(JUDGE)

HARISH VAIDYANATHAN SHANKAR
(JUDGE)

AUGUST 7, 2025/tk/rk/ds/kr