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

Date of decision: 08.05.2026

\+ O.M.P. (COMM) 199/2025, I.A. 13085/2025 (Stay) & I.A. 13087/2025 (Seeking permission to file lengthy synopsis and list of dates)

IMRAN AHMED ANSARI & ANR. .....Petitioners

Through: Mr. Rohan Jaitley, Mr. Arun Srivastava, Mr. Yogya Bhatia, Mr. Akhil Srivastava and Mr. Prashant Srivastava, Advocates.

versus

INTEX TECHNOLOGIES (INDIA) LTD & ANR. .....Respondents

Through: Mr. Rudreshwar Singh and Mr. Amit Chadha, Senior Advocates along with Mr. Atit Jain, Mr. Shanky Jain, Mr. Harjas Singh, Ms. Tanishka, Mr. Atin Chadha, Ms. Manisha Chadha and Mr. Ayush Bhagat, Advocates along with Mr. Karmveer.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% JUDGMENT (Oral)

1. The present Petition being has been instituted under Section 34 of the **Arbitration and Conciliation Act, 1996**[1] read with Section 10 of Commercial Courts Act, 2015, challenging and seeking, *inter alia*,

[1] A&C Act

setting aside of the **Arbitral Award dated 27.01.2025**[2], passed by the Ld. Sole Arbitrator.

BRIEF FACTS:

2. Disputes between the parties arise out of an Agreement to Sell dated 28.09.2016, executed in respect of Industrial Plot bearing No. D-205, Sector-63, Noida, Gautam Budh Nagar, Uttar Pradesh admeasuring 4000 sq. metres.

3. As per the Petitioners, the Agreement to Sell recorded a sale consideration of Rs. 8 crores and various payments were made by the Petitioners towards the transaction. Subsequently, the Agreement was sought to be substituted in favour of Petitioner No. 1 and Transfer Memorandum proceedings were initiated before the NOIDA Authority.

4. Disputes thereafter arose between the parties regarding alleged encumbrances over the subject property, payment of the balance sale consideration, readiness and willingness of the parties and execution of transfer documents. The Respondents thereafter issued a **Termination Notice dated 12.09.2017**[3] purporting to terminate the Agreement to Sell.

5. Pursuant to proceedings before the Noida Authority, an order dated 15.10.2019 came to be passed directing Respondent No.1 to furnish relevant documents and directing Petitioner No.1 to make payment of the balance consideration amount simultaneously.

6. The Petitioners claim that they remained ready and willing to perform their obligations, whereas the Respondents dispute the same.

[2] Arbitral Award
[3] Termination Notice

7. In view of the disputes between the parties, arbitration was invoked and this Court *vide* Order dated 03.03.2022 appointed the learned Sole Arbitrator.

8. Before the learned Arbitral Tribunal, the Petitioners sought, *inter alia*, specific performance of the Agreement to Sell, whereas the Respondents contested the claims and also preferred counterclaims.

9. *Vide* the Impugned Arbitral Award, the learned Arbitral Tribunal declined the relief of specific performance and instead awarded a refund of Rs. 3.50 crores along with interest in favour of the Petitioners. In the same line, certain counterclaims, *namely*, counterclaims 2 and 3, of the Respondents were also allowed.

10. Aggrieved by the findings of the learned Arbitral Tribunal insofar as denial of specific performance and allowance of counterclaims 2 and 3 are concerned, the Petitioners have filed the present Petition seeking setting aside of the Impugned Arbitral Award on grounds including patent illegality, perversity and non-consideration of evidence.

SUBMISSIONS BY THE PARTIES:

11. Mr. Rohan Jaitley, learned counsel appearing on behalf of the Petitioners, contends that the Impugned Award is patently illegal and contrary to the settled principles governing the grant of specific performance in contracts relating to immovable property.

12. He submits that the learned Arbitral Tribunal has erroneously refused the relief of specific performance solely on the premise that the non-performance of the Agreement could be compensated in terms of money, while completely overlooking the statutory presumption contained in Explanation (i) to Section 10 of the **Specific Relief Act,**

1963[4], which mandates that breach of a contract pertaining to transfer of immovable property is presumed not to be adequately compensable in monetary terms unless the contrary is proved.

13. Learned counsel for the Petitioners submits that the learned Arbitral Tribunal has completely reversed the settled burden of proof by requiring the Petitioners to establish that damages would not constitute an adequate remedy, whereas the burden in law lay upon the Respondents to rebut the statutory presumption under Section 10 of the SRA.

14. He contends that the Impugned Award neither records any finding rebutting the said presumption nor discloses any reasoning as to why the refund of money would constitute adequate compensation in the facts of the present case.

15. Mr. Jaitley further submits that the learned Arbitrator has failed to consider the material evidence demonstrating the continuous readiness and willingness of the Petitioners to perform their obligations under the Agreement. In this regard, he draws attention to the payments made by the Petitioners, the purchase of stamp papers worth Rs. 40 lakhs, deposit/payment of Transfer Memorandum charges, and the preparation of a demand draft amounting to Rs. 4.42 crores pursuant to the order dated 15.10.2019 passed by the NOIDA Authority.

16. He submits that the Petitioners had throughout expressed their willingness to complete the transaction and even before the NOIDA Authority had offered to deposit the balance sale consideration.

17. Learned counsel for the Petitioners further submits that

[4] SRA

paragraph 14 of the Impugned Award, which constitutes the principal reasoning while deciding Issue No. (a), is wholly conclusory and bereft of reasons. He submits that, though reliance has been placed by the learned Arbitral Tribunal upon the judgment of the Hon'ble Supreme Court in ***M/s Siddamsetty Infra Projects Ltd. v. Katta Sujatha Reddy***[5], the ratio and factual matrix thereof have been incorrectly applied. According to him, the said judgment in fact reiterates the statutory presumption in favour of specific performance in contracts concerning immovable property and recognizes that where substantial payments have already been made and the purchaser remains ready and willing, specific performance ought ordinarily to follow. Para 14 of the Impugned Arbitral Award reads as follows:

> "**14.** The said provision has recently been examined by the Hon'ble Supreme Court in ***M/s Siddamsetty Infra Projects Ltd. Vs Katta Sujatha Reddy & Ors, (2024) SCC OnLine SC 3214*** decided on 08/11/2024 and held that a correct interpretation of the Specific Relief Act would mean that if the non-performance of the contract cannot be compensated in terms of money, then only the relief of specific performance can be granted. In the instant case, the counsel for the respondent Mr. Atit Jain has clearly and categorically stated that non-performance of the contract in this case can be compensated in terms of money. I find substance in the said submission. On the other hand, the claimants have not demonstrated as to how the non-performance of the contract cannot be compensated in terms of money/damages in the instant case. After all, the agreement under consideration is an agreement to buy a property by the claimants for which he has paid a consideration amount of Rs. 3.50 Cr in cheque and the claimants claim that they have paid an amount of Rs. 1.20 Cr in cash to the respondents. If such a transaction is not performed then undoubtedly the said transaction can be reversed by giving, reasonable compensation to the claimants. In view of the same, I decide issue (a) against the claimants and in favour of the respondents."

18. Learned counsel on behalf of the Petitioners contends that the

[5] (2024) 20 SCC 140

learned Arbitral Tribunal has failed to consider that there existed no impediment to the grant of specific performance as the alleged encumbrances over the subject property already stood cleared. Learned counsel also submits that the Respondents never pleaded or proved any hardship which would disentitle the Petitioners from seeking equitable relief.

19. Learned counsel for the Petitioners also submits that the Order dated 15.10.2019 passed by the CEO, NOIDA, having been passed with the consent of the parties, clearly demonstrated the subsistence and enforceability of the Agreement to Sell even subsequent to the alleged Termination Notice. He submits that despite the Petitioners acting in terms thereof and expressing willingness to pay the balance consideration, the Respondents failed to furnish the requisite original documents and consequently cannot now be permitted to resile from the transaction.

20. ***Per contra***, Mr. Rudreshwar Singh, learned senior counsel appearing on behalf of the Respondents, submits that the present Petition is nothing but an impermissible attempt to seek re-appreciation of evidence under Section 34 of the A&C Act. He submits that the scope of interference under Section 34 is extremely limited and the Impugned Award neither suffers from patent illegality nor contravenes the public policy of India.

21. Learned senior counsel for the Respondents submits that the Impugned Award is a reasoned Award rendered upon appreciation of pleadings, oral evidence and documentary material placed before the learned Arbitral Tribunal. He submits that the learned Arbitrator has specifically considered the conduct of the parties, the failure of the

Petitioners to make payment of the balance consideration amount within the stipulated period, as also the fact that the Petitioners failed to establish continuous readiness and willingness as contemplated under Section 16(c) of the SRA.

22. Mr. Singh further submits that readiness and willingness alone cannot *ipso facto* entitle a party to a decree of specific performance and the same continues to remain an equitable relief dependent upon the facts and circumstances of each case.

23. He further submits that the learned Arbitral Tribunal rightly exercised its discretion in declining specific performance and instead awarded a refund of the amount paid along with interest @15% per annum, which, according to him, sufficiently compensates the Petitioners.

24. Learned senior counsel for the Respondents further controverts the factual assertions regarding the quantum of payments allegedly made by the Petitioners. He submits that the Agreement to Sell recorded the total consideration as Rs. 8 crores and that only an amount of Rs. 3.50 crores was admittedly retained by the Respondents after refund of Rs. 2.50 crores. He further submits that the alleged cash payment of Rs. 1.20 crores stood specifically denied and was rightly rejected by the learned Arbitral Tribunal.

25. Learned counsel on behalf of the Respondents submits that all encumbrances over the subject property stood cleared during the subsistence of the Agreement and requisite NOCs had already been obtained from the concerned financial institutions. Learned senior counsel further submits that despite the same, the Petitioners adopted inconsistent stands, initiated criminal proceedings and defamatory

publications against the Respondents and failed to perform their reciprocal obligations under the Agreement.

26. Learned senior counsel for the Respondents lastly submits that the Agreement to Sell already stood terminated *vide* Notice dated 12.09.2017 and the Petitioners had also failed to comply with the timelines prescribed under the NOIDA Transfer Policy. He thus submits that the learned Arbitral Tribunal has rightly declined the discretionary relief of specific performance and no ground for interference under Section 34 of the A&C Act is made out.

ANALYSIS:

27. This Court has heard the learned counsel appearing for the parties at length and, with their able assistance, has carefully perused the Impugned Arbitral Award and the other material placed on record.

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

29. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier judgments, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[6], while dealing with the grounds of conflict with the public policy of India and patent illegality, grounds which have also been urged in the present Petitions, made certain

[6] (2025) 2 SCC 417

pertinent observations, which are reproduced hereunder:

> *"**Relevant legal principles governing a challenge to an arbitral award***
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> **30.** Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) is concerned, it has two sub-clauses, namely, (*i*) and (*ii*). Sub-clause (*i*) of clause (*b*) is not relevant to the controversy in hand. Sub-clause (*ii*) of clause (*b*) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.
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> ***Public policy***
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> **31.** "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.
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> **37.** What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.
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> ***The 2015 Amendment in Sections 34 and 48***
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> **42.** The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not used by the legislature in either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*). The pre-amended Section 34(2)(*b*)(*ii*) and its Explanation read:
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> **44.** By the 2015 Amendment, in place of the old Explanation to Section 34(2)(*b*)(*ii*), *Explanations 1 and 2* were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.
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> **45.** At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted/added Explanations would apply [***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

46. The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*), in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it does away with the use of words : (*a*) "*without prejudice to the generality of sub-clause (ii)*" in the opening part of the pre-amended Explanation to Section 34(2)(b)(ii); and (b) "*without prejudice to the generality of clause (b) of this section*" in the opening part of the pre-amended Explanation to Section 48(2)(*b*); secondly, it limits the expanse of public policy of India to the three specified categories by using the words "*only if*". Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*) of the 1996 Act.

47. The 2015 Amendment by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

48. *Explanation 1* to Section 34(2)(*b*)(*ii*), specifies that an arbitral award is in conflict with the public policy of India, *only if*:

(*i*) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(*ii*) it is in contravention with the fundamental policy of Indian law; or

(*iii*) it is in conflict with the most basic notions of morality or justice.

49. In the instant case, there is no allegation that the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81. Therefore, we shall confine our exercise in assessing as to whether the arbitral award is in contravention with the fundamental policy of Indian law, and/or whether it conflicts with the most basic notions of morality or justice. Additionally, in the light of the provisions of sub-section (2-A) of Section 34, we shall examine whether there is any patent illegality on the face of the award.

50. Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions:

(*a*) "in contravention with the fundamental policy of Indian law";

(*b*) "in conflict with the most basic notions of morality or justice";

and

(*c*) "patent illegality" have been construed.

In contravention with the fundamental policy of Indian law

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

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

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

(*c*) justice or morality.

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55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of *Explanation 1*. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(*a*) violation of the principles of natural justice;

(*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(*c*) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)(*b*)(*ii*).

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Patent illegality

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

by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

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

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

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

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

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

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

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

Perversity as a ground of challenge

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

perverse, it would be against the public policy of India.

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

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

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

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

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

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

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

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

> "*39.* In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the

> construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."
>
> ***Scope of interference with an arbitral award***
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> **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.
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> **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."

30. Before proceeding to examine the challenge laid to the Impugned Arbitral Award and the rival contentions advanced on behalf of the parties, this Court considers it apposite to extract the reasoning and conclusions recorded by the learned Arbitral Tribunal on the issues arising for consideration. The relevant portion of the Impugned Arbitral Award is reproduced herein below:

> "**<u>The issues</u>:**

10. On the basis of the pleadings and after hearing both the sides primarily the following broad issues arise for consideration and resolution in the present arbitration proceedings:

a) Whether in the facts and circumstances of the present case, the claimants are entitled to the specific performance of the agreement to sell dated 28/09/2016?

b) Whether in the facts and circumstances of the present case, the cancellation and forfeiture notice dated 12/09/2017 of the respondents is justified?

c) In case, the issue (a) is decided against the claimants, whether, the claimants are entitled to the refund of consideration amount paid with or without interest? Furthermore, in such eventuality, whether the claimants are entitled to any damage? If so, what amount of damage?

d) Whether the claim of cash payment of Rs. 1.20 crore falls within the ambit of the present arbitration proceedings, if so to what relief the claimants are entitled to?

On issue (a) above:

11. This issue pertains to specific performance of the agreement to sell dated 28/09/2016. This means directions to the respondents to execute the sell at the consideration for which it was agreed to. The Id. Counsel for the claimants Mr. Ashok Kumar has argued that since they were at every point of time ready to perform their part of the contract and it was because of lack of non-encumbrance certificate on the part of the respondents, the claimants could not proceed to be perform. Therefore, the claimants are entitled to a decree to specific performance.

12. On the other hand, the counsel of the respondents Mr. Atit Jain laid emphasis on the fact that inspite of being called upon and put to notice, the claimants did not come forward to make the balance sale consideration of Rs. 4.5 crore, therefore they are not entitled to the relief of specific performance. On the issue of a property being non encumbered, Mr. Atit Jain by referring to various documents as well as cross examination of witness and has pointed out that the factor of the property being encumbered was known to the claimants and inspite of that claimants have proceed to make the TM before the Noida Authority and took further steps for completion of agreement to sell. In any case, the respondents produced certificates of non-encumbrance of the aforesaid property on 12/04/2017 and served it upon the claimants. This fact is proved beyond any reasonable doubt from the documents with pleadings filed by the respondents on 26.02.2024 wherein the Claimants themselves had filed the non-encumbrance certificate of the respondents before the Hon'ble High Court of Delhi in Crl. M.C. No. 1967/2017. However, inspite of the service of the said non-encumbrance certificate, the claimants did not make payment of

balance consideration and therefore failed in discharging their obligation under the agreement. In view of the said conduct of the claimants, the factor that the property was encumbered and subsequently got non-encumbered cannot be held against the respondents. Furthermore, Mr. Atit Jain has relied upon the Section 10 of the Specific Relief Act, 1963. Relying upon the same, he has argued that specific performance can be enforced only when remedy regarding damage cannot be determined. If the remedy of damage is adequate relief, in that case specific performance is not to be insisted upon. He submits that in the instant case, damage, if any is quantifiable. Therefore, the claim regarding specific performance be declined.

13. I have considered the arguments and counter arguments on issue no.(a) regarding the claim of the claimants for specific performance of the agreement. It appears that the law is fairly well settled on this issue. The relief of specific performance can only be granted only if non-performance cannot be quantified in terms of money as damages. In this regard Section 10 of the Specific Relief Act is quoted hereunder:

> *"**10. Cases in which specific performance of contract enforceable** - Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced-*
>
> *(a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or*
>
> *(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief*
>
> ***Explanation** - Unless and until the contrary is proved, the court shall presume*
>
> *(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and*
>
> *(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:*
>
> *(a) where the property is not an ordinary article of commerce, or is of special value of interest to the plaintiff, or consists of goods which are not easily obtainable in the market;*
>
> *(b) where the property is held by the defendant as the agent or trustee of the plaintiff."*

14. The said provision has recently been examined by the Hon'ble Supreme Court in ***M/s Siddamsetty Infra Projects Ltd. Vs Katta Sujatha Reddy: 2024 SCC On Line SC 3214*** & Ors decided on 08/11/2024 and held that a correct interpretation of the Specific

Relief Act would mean that if the non-performance of the contract cannot be compensated in terms of money, then only the relief of specific performance can be granted. In the instant case, the counsel for the respondent Mr. Atit Jain has clearly and categorically stated that non-performance of the contract in this case can be compensated in terms of money. I find substance in the said submission. On the other hand, the claimants have not demonstrated as to how the non-performance of the contract cannot be compensated in terms of money/damages in the instant case. After all, the agreement under consideration is an agreement to buy a property by the claimants for which he has paid a consideration amount of Rs. 3.50 Cr in cheque and the claimants claim that they have paid an amount of Rs. 1.20 Cr in cash to the respondents. If such a transaction is not performed then undoubtedly the said transaction can be reversed by giving reasonable compensation to the claimants. In view of the same, I decide issue (a) against the claimants and in favour of the respondents.

On issue (b) above:

15. This issue is regarding cancellation of the agreement and forfeiture of consideration amount of Rs. 3.50 crore paid by the claimants. The claimants have argued that at each relevant point of time claimants were ready to make the payments and it is only because the respondents had wrongly declared in the Agreement to Sell that the property was non-encumbered, because of which proceedings etc were initiated by the claimants as well as the respondents as indicated above that the Agreement could not be performed.

16. On the other hand, the Id. Counsel for the respondents ha- argued that the factum of the property being encumbered at the time of execution of the agreement was known to the claimants. In any case, a non-encumbrance certificate of the property dated 12/04/2017 was provided to the claimants. Inspite of that the claimants did not pay the balance consideration amount inspite of being specifically called upon by legal notices as indicated in the sequential chronology of events as above. In the circumstances, the respondents had no other legal option but to cancel the agreement and forfeit the consideration amount already paid by invoking the provisions under clause 4(b) of the agreement. On the other hand, Mr. Atit Jain on behalf of respondents have pleaded that the letter of cancellation and forfeiture of the amount already paid was done only as a last resort after failing to get the balance amount of consideration inspite of his writing letters/legal notices dated 21/02/2017, 26/07/2017. The said action has been done by the respondents by invoking clause no. 11 of the agreement to sell. Thus, no fault can be found with the action of the respondents in this regard.

17. 1 have considered the rival submissions on this issue. It is an established law that a wrong doer cannot take advantage of his own wrong. A bare reading of the Agreement to Sell specifically clause 4 (b) would clearly prove that the respondents had given a wrong declaration about non-encumbrance status of the property. The same is also proved from the averments of the respondents that they produced a certificate of non-encumbrance to the claimants only on 12/04/2017. Thus, on the date of execution of the agreement, the property was not encumbrance free. One cannot give a wrong declaration in the Agreement to Sell and yet cancel the agreement unilaterally and forfeit the part consideration amount of Rs. 3.50 crore. Clause 4(b) of the agreement specifically stipulates for payment of the balance consideration amount simultaneous to execution and registration of lease cum transfer deed of the property in favour of the claimants. However, as can be seen from the sequence of events given above, the stage for execution and registration of lease cum transfer deed in favour of claimants never happened. As has been spelt out in the said provision, the balance consideration amount was to be paid simultaneous to the execution of lease cum transfer deed in favour of the claimants. Admittedly, that stage never happened. The claimants have also emphasized that not only the consideration amount of Rs. 3.50 crore but a cash amount of Rs. 1.20 crore was also paid to the respondents. The issue regarding cash payment will be analyzed and considered separately. However, in the facts of the present case, and tor the reasons noticed above, it is clearly unjustified that the respondents have invoked and cancelled the agreement and forfeited an amount of Rs. 3.50 crore. Therefore, the said action of the respondents by legal notice dated 12/09/2017 is hereby quashed and set aside with all its consequences.

18. I further take note of the specific and repeated submission of Mr. Atit Jain on behalf of the respondents during the course of present arbitration proceedings that in various proceedings as noted in sequential chronology of events above the respondents had offered to refund the consideration amount paid by the claimants to the respondents with interest as determined by the Authority/Court. Since, the said offers had been given by the respondents post 12/09/2017 before various legal fora including during hearing before the Allahabad High Court as well as during arguments during the present arbitration proceedings, in my opinion, the said letter of cancellation dated 12/09/2017 by the respondents has lost its meaning and significance. In view of this, I hold that the said letter dated 12/09/2017 has no effect whatsoever and the respondents are liable to refund the consideration amount as determined later. Thus, I decide the issue (b) in favour of the claimants and against the respondents.

On issue (c) above:

19. As far as the issue (c) is concerned, Mr. Jain has reiterated his submissions in relation to issue (a) and (b) to point out that once the letter of cancellation and forfeiture of amount paid is justified then there is no question of refund of any amount to the claimants. However, as has already been noted above, Mr. Jain has admitted as well as offered to return the receipt amount of Rs. 3.50 crore with whatever reasonable rate of interest this Tribunal thinks fit and proper to return the said amount. Mr. Jain has clearly and categorically denied to have received any amount in cash as a part of the consideration of the aforesaid agreement.

20. In view of my decision of issue (b) above, I am of the opinion that the admitted receipt of consideration amount of Rs. 3.50 Cr by the respondents be refunded to the claimants with interest. As far as the rate of interest is concerned, 1 have borne in mind that this was a commercial transaction between the parties. I have further borne in mind that in clause 4(b) both the parties have agreed at the rate of interest of 15% simple interest for breach of payment. I have also borne in mind that the respondents in their counter claim have claimed interest at the rate of 18 % as the subject matter of the dispute is of commercial nature. I have also borne in mind that the claimants both in the body of the claim as well as in the prayer have claimed interest @ 15% p.a. on the consideration amount already paid, which rate of interest is in sync with the agreed rate of interest stipulated by the parties in clause 4(b) of the agreement. Therefore, in my opinion, 15% simple interest would be the most appropriate rate of interest to be awarded to the claimants under this issue.

21. Therefore, the respondents are directed to refund the consideration amount of Rs. 3.50 Cr already received by them with simple interest @ 15% p.a from the date of receipt of each installment of payment made by the claimants till the date of actual refund. Thus, this issue is decided in favour of claimants and against the respondents.

22. Now coming to the issue of damages, it may be noted that the argument of the respondent on the issue of specific performance of the agreement was that a relief of specific performance has to be denied when the damage on account of non-performance of the agreement is quantifiable. This argument I have accepted for denying relief is specific performance to the claimants. Implicit in this is the task of quantifying the damages incurred by the claimants. One simple way of looking at the damage suffered by the claimants is the various expenditures incurred by him in applying for Transfer Memorandum before the Noida Authority and e-stamp paper purchased by the claimants for registration of sale deed. In the present proceedings, there is no dispute of the fact that the claimants had paid an amount of Rs.23,20,000/- at the time

of applying the Transfer Memorandum before the Noida Authority on 09/02/2017. The claimants have also claimed that they had purchased e-stamp paper of Rs. 40,00,000/- the photocopy of which they had annexed along with their reply dated 08/03/2017 and also with the reply dated 01/12/2017 to the Noida Authority, a fact which has already been noted in the chronology sequence of facts given above. As far as the expenditure incurred on purchase of e stamp paper is concerned, I take note of lawful provision of refund of the unused e-stamp paper and getting the consideration back. In view of this, I do not award any damage to the claimant on the count of purchase of e-stamp paper. However, on the count of payment of fees of Rs. 23,20,000/- to the Noida Authority, I'm of the opinion that the claimants have suffered this loss, therefore I direct that the respondents shall pay an amount of Rs. 23,20,000/- to the claimants forthwith without any interest thereon. It is further stipulated that once the amount directed under this issue are paid to the claimants, the claimants will have no right or claim over the property being Plot No. D-205, Sector-63, Noida, Gautam Budh Nagar situated in Noida, UP whatsoever. The respondents will be restored to their power and authority over the said property which they had before 28/09/2016 when the present agreement was executed.

Issue (d) above:

23. This issue pertains to a claim of cash payment of Rs. 1.20 Cr on 20/09/2016 i.e. before even the agreement was entered into by the parties on 28/09/2016. The claimants have also made clear and categoric averments in the claim statement that the cash payment was made on 20/09/2016 only to the respondent no. 2 who was the MD of respondent no. 1. Thus, irrespective of the fact whether the amount was paid in cash or not, it remains undisputed that the said alleged transaction took place before even the agreement to sell dated 28/09/2016 saw the light of the day. It is a well settled law that an arbitrator/arbitration is a creation of the agreement itself. The arbitrator is required to decide dispute, if any, based upon the various clauses in the agreement. It is well settled that the arbitrator cannot go beyond the four corners of the agreement between the parties. On this point reference may be made to **Bharat Cooking Coal Ltd. Vs Annapurna Construction: (2003) 8 SCC 154** (Relevant Paras 21, 22, 23, 24 and 25), **UOI VS Bharat Enterprise: (2023) SCC Online SC 369** (Relevant Para 8). Obviously, the arbitrator cannot go into transactions which took place before the agreement between the parties came into existence. Secondly, in the instant agreement dated 28/09/2016, there is no provision for any cash payment as consideration amount. On the other hand, clause 4 of the agreement, clearly states the total consideration amount to be Rs.8 Cr and also

specifies the time schedule and manner in which the said consideration amount is to be paid. The element of cash payment is neither stipulated nor implied in any of the clause of the agreement under consideration. Thirdly, it is furthermore well established that if a party enters into a transaction not stipulated in the agreement, then he does so at this own risk and cost. Fourthly, the agreement is between the claimants and a company. The averments of the claimants are that they had made cash payment to the respondent no. 2 who is not the company. The claimants have not placed any evidence on record to show that the respondent no. 2 had the authority to receive cash on behalf of the company. For the aforesaid reasons, collectively and separately, I decline the claim of the claimants of cash payment of Rs. 1.20 Cr to the respondents. Thus, this issue is decided against the claimants and in favour of the respondents.

Conclusion:
Issue (a)
Decided against the claimants and in favour of the respondents.

Issue (b)
Decided in favour of the claimants and against the respondents.

Issue (c)
Decided in favour of claimants and against the respondents.

Issue (d)
Decided against the claimants and in favour of the respondents.
In the facts of the case, the parties shall bear their own costs."

31. A perusal of the Impugned Award demonstrates that the learned Arbitrator specifically framed Issue No. (a) concerning entitlement to specific performance and thereafter undertook a detailed consideration of the rival submissions advanced by the parties.

32. The learned Arbitrator examined the contentions pertaining to readiness and willingness, the effect of the alleged encumbrances over the subject property, the conduct of the parties during the subsistence of the Agreement to Sell, the subsequent events before the NOIDA Authority and, most importantly, the applicability of Section 10, as stood at the relevant time, of the SRA.

33. The Impugned Award clearly records that the learned Arbitrator noticed the Petitioners' contention that they were continuously ready and willing to perform the agreement and that the transaction could not fructify on account of the Respondents' inability to furnish a non-encumbrance certificate at the relevant stage.

34. Equally, the learned Arbitrator also noticed the Respondents' contention that despite repeated opportunities and notices, the balance sale consideration was never tendered by the Petitioners and that the encumbrance issue stood resolved upon issuance of the non-encumbrance certificate dated 12.04.2017.

35. Significantly, the learned Arbitrator did not reject the Petitioners' claim for specific performance in a mechanical or cursory manner. Rather, the Impugned Award, if read as a whole, reflects a conscious examination of the statutory requirements governing the grant of such equitable relief.

36. The learned Arbitrator specifically extracted Section 10 of the SRA, as stood at the relevant time, and thereafter adverted to the principle that specific performance is ordinarily granted only where compensation in terms of money would not constitute an adequate remedy. The learned Arbitrator thus consciously addressed the very aspect which now forms the core challenge before this Court, *namely*, whether the breach complained of was capable of being adequately compensated monetarily or whether the facts of the case necessitated enforcement of the contract in specie.

37. It is pertinent to note that the learned Arbitrator, while considering the aforesaid aspect, also took into account the commercial nature of the transaction between the parties. The subject

agreement pertained to a commercial transfer of an industrial plot for consideration. The Impugned Award reflects that the learned Arbitrator considered the fact that the dispute fundamentally revolved around financial and commercial obligations capable of ascertainment in monetary terms.

38. It is in that context that the learned Arbitrator ultimately arrived at the conclusion that refund of the admitted consideration amount together with interest and ancillary expenditures would constitute an adequate recompense in the facts of the present case. Whether such a conclusion was the only possible conclusion or whether another adjudicatory forum may have exercised discretion differently is wholly irrelevant within the limited contours of Section 34 of the A&C Act.

39. So long as the view adopted by the learned Arbitrator is a plausible and legally sustainable view arising from the material on record, this Court cannot supplant the same with its own subjective assessment.

40. The grievance of the Petitioners substantially proceeds on the premise that the learned Arbitrator ought to have accorded greater weight to the evidence allegedly demonstrating their readiness and willingness to complete the transaction, including the payments claimed to have been made, the transfer memorandum proceedings before the NOIDA Authority, the purchase of e-stamp papers and the preparation of the demand draft towards the balance consideration.

41. However, the appreciation of such evidence squarely falls within the domain of the arbitral tribunal. Merely because the Petitioners contend that a different inference ought to have been

drawn from the same material would not justify interference under Section 34 of the A&C Act. The Impugned Award cannot be tested as if this Court were exercising appellate jurisdiction over the factual conclusions arrived at by the learned Arbitrator.

42. In fact, the Impugned Award demonstrates that the learned Arbitrator did not completely reject the Petitioners' case on the facts. On the contrary, while deciding Issue No. (b), the learned Arbitrator expressly observed that the Respondents had made an incorrect declaration regarding the encumbrance-free status of the property and consequently held that the unilateral cancellation and forfeiture notice dated 12.09.2017 could not be sustained. The learned Arbitrator thus partially accepted the Petitioners' grievance against the Respondents and proceeded to grant the relief accordingly.

43. This aspect assumes significance since it clearly establishes that the learned Arbitrator undertook a balanced appreciation of the conduct of both parties and did not proceed on any one-sided or arbitrary approach as is now sought to be contended.

44. This Court also does not find merit in the submission that the learned Arbitrator ignored the principles laid down in ***Siddamsetty Infra*** *(supra)*. The Impugned Award itself reflects that the learned Arbitrator expressly noticed the statutory framework under Section 10 of the SRA as well as the aforesaid judgment while considering the relief of specific performance. Merely because the learned Arbitrator ultimately declined the relief would not imply non-consideration of the judgment relied upon by the Petitioners.

45. The ratio of a precedent cannot be applied divorced from the factual matrix of each case. In the present case, the learned Arbitrator,

after appreciating the entirety of the material on record, exercised discretion against the grant of specific performance and instead awarded a refund with substantial commercial interest. Such exercise of discretion, founded upon appreciation of facts and equities, cannot be substituted by this Court merely because the Petitioners contend that greater weight ought to have been assigned to certain circumstances relied upon by them.

46. This Court is of the considered opinion that an arbitral award is not expected to resemble an elaborate civil court judgment discussing each and every submission advanced by the parties in minute detail. The legislative intent underlying the A&C Act is to ensure expeditious and efficient adjudication of disputes with minimal judicial interference. Consequently, the requirement embodied under Section 31(3) of the A&C Act stands satisfied so long as the award discloses, either expressly or by necessary implication, the thought process and reasoning which weighed with the learned Arbitral Tribunal while arriving at its conclusions. Mere absence of elaborate discussion or detailed reasoning on every contention raised by the parties cannot, by itself, render the award vulnerable to challenge under Section 34 of the A&C Act.

47. At this stage, this Court deems it apposite to take note of the judgment of the Hon'ble Supreme Court in ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.***[7]. The relevant observations contained therein read as under:

> "**34.** The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading

[7] (2019) 20 SCC 1

of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."

(***emphasis supplied***)

48. Applying the aforesaid principles to the facts of the present case, and upon a cumulative and holistic reading of the Impugned Award, this Court finds that the learned Arbitrator has sufficiently indicated the basis upon which the relief of specific performance came to be declined and, simultaneously, why refund of the consideration amount together with interest was considered to be the appropriate relief in the facts and circumstances of the case. The reasoning furnished in the Impugned Award may not be as elaborate or expansive as desired by the Petitioners; however, the same certainly

cannot be characterised as either absent, unintelligible, or suffering from such perversity so as to warrant interference within the limited scope of jurisdiction under Section 34 of the A&C Act.

49. This Court also cannot lose sight of the fact that the learned Arbitrator did not deny relief to the Petitioners altogether. While declining the claim for specific performance, the learned Arbitrator simultaneously directed refund of the admitted consideration amount of Rs. 3.50 crores, together with simple interest @ 15% per annum from the respective dates of payment, being the very contractual rate stipulated between the parties. It is noteworthy that such relief formed part of the Petitioners' alternative claims before the learned Arbitral Tribunal. Further, while granting the said relief, the learned Arbitrator also directed reimbursement of the transfer memorandum charges incurred by the Petitioners. The Impugned Award, therefore, unmistakably reflects a conscious exercise undertaken by the learned Arbitrator and to ensure that the Petitioners are monetarily restituted in respect of the amounts admittedly paid by them.

50. Viewed thus, this Court is unable to hold that the Impugned Award suffers from patent illegality, perversity or violation of the fundamental policy of Indian law so as to warrant interference under Section 34 of the A&C Act. The conclusions arrived at by the learned Arbitrator constitute a plausible view based upon appreciation of the contractual terms, the conduct of the parties and the evidence placed on record. The challenge raised by the Petitioners essentially seeks a re-assessment of factual findings and substitution of the discretion exercised by the learned Arbitrator with that of this Court, which is wholly impermissible in proceedings under Section 34 of the A&C

Act.

CONCLUSION:

51. In view of the foregoing discussion, this Court is of the considered opinion that the Impugned Arbitral Award dated 27.01.2025 passed by the learned Sole Arbitrator does not suffer from any infirmity warranting interference under Section 34 of the A&C Act. The findings returned by the learned Arbitral Tribunal are founded upon due appreciation of the pleadings, contractual terms, documentary material and conduct of the parties, and constitute a plausible and reasoned view of the facts of the present case. No patent illegality, perversity or conflict with the fundamental policy of Indian law has been demonstrated by the Petitioners before this Court.

52. Accordingly, *O.M.P. (COMM.) 199/2025* preferred by the Petitioners challenging the Impugned Arbitral Award stands dismissed.

53. Pending Application(s), if any, stand disposed of in the aforesaid terms.

54. There shall be no order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 08, 2026/tk/kr/ma