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

% ***Judgment reserved on: 15.01.2026***
Judgment pronounced on: 13.02.2026

\+ O.M.P. (COMM) 76/2017

RPG CABLES LIMITED .....Petitioner
Through: Mr. Jayant Bhushan, Senior Advocate along with Ms. Shreya Jain, Mr. Gaurav Tanwar, Mr. Amartya Bhushan and Mr. Yujit Mehra, Advocates.

versus

BHARAT SANCHAR NIGAM LTD. .....Respondent
Through: Mr. Dinesh Agnani, Senior Advocate along with Ms. Leena Tuteja and Ms. Ishita Kadyan, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], assailing the **Arbitral Award dated 05.11.2008**[2] passed by the learned Sole Arbitrator, to the limited extent that the said Award directs the Petitioner to pay a sum of Rs. 12.63 crores to the Respondent. In addition to challenging the aforesaid direction, the Petitioner also seeks, by way of the present

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

Petition, appropriate orders granting the reliefs which were originally claimed by the Petitioner before the learned Arbitral Tribunal.

2. By the impugned Award, the learned Arbitrator substantially rejected the claims raised by the Petitioner and also disallowed a significant portion of the counter-claims preferred by the Respondent. However, while partly allowing the Respondent's counter-claims, the learned Arbitrator held that the Petitioner is liable to pay a sum of Rs. 12.63 crores to the Respondent towards the cost of unusable **Optical Fibre Cables**[3] supplied under the contract. The learned Arbitrator further directed that, upon receipt of the said amount, the Respondent shall release all pending payments due to the Petitioner and its sister concern and shall also release the Performance Bank Guarantees furnished by the Petitioner in relation to the contract.

3. The learned Arbitrator additionally directed the Respondent to reimburse the Petitioner an amount of Rs. 1,37,500/- towards arbitration fees, upon receipt of the aforesaid sum towards the cost of unusable cables. It was further directed that each party shall bear its own respective costs of the arbitration proceedings and that no interest shall be payable by either party.

BRIEF FACTS:

4. The Respondent, **Bharat Sanchar Nigam Limited**[4], formerly functioning as the **Department of Telecommunications**[5], has been entrusted with the responsibility of establishing, operating, and maintaining telecommunication services across the country. In furtherance of this mandate, and prior to the incorporation of BSNL in

[3] OFCs
[4] BSNL
[5] DOT

October 2000, the DoT routinely invited tenders for the procurement of OFCs from approved vendors. For administrative convenience, BSNL discharges its functions through various Telecom Circles and Regional Telecom Project and Maintenance Circles for the execution of specialised projects and maintenance activities.

5. In pursuance of the aforesaid procurement policy, the DoT issued tenders dated 15.04.1998, 11.02.1999, and 13.04.1999. Based on these tenders, five Purchase Orders were placed upon the Petitioner between 09.10.1998 and 13.08.1999 for the supply of 12 Fibre and 24 Fibre OFCs. The total quantity ordered comprised 4,100 kilometers of 12 Fibre cables and 1,261 kilometers of 24 Fibre cables, out of which 1,824 kilometers of 12 Fibre cables and 815 kilometers of 24 Fibre cables were supplied to the **Southern Telecom Project Circle**[6] of the Respondent.

6. The OFCs were supplied to various circles of the Respondent, including the STPC, during the period from March 1999 to May 2000, and were thereafter commissioned for the purpose of carrying telecommunication traffic.

7. Approximately one and a half years after commissioning, the Respondent observed that, in certain stretches, the OFCs supplied by the Petitioner were exhibiting abnormally high attenuation levels, thereby adversely affecting the smooth transmission of telecommunication traffic. Consequently, commencing from 25.06.2001, the Respondent lodged complaints with the Petitioner. Upon receipt of the said complaints, the Petitioner deputed its technical personnel to inspect the sites and undertook detailed field

[6] STPC

studies to ascertain the cause of the alleged defects.

8. Based on its technical assessment, the Petitioner concluded that the observed degradation in performance was not attributable to any manufacturing defect in the OFCs, but was primarily the result of sub-standard cable laying, handling, and maintenance practices adopted by the Respondent. It is further stated that the Petitioner specifically identified several deficiencies, including the use of non-water-tight joint closures, repeated damage caused by excavation activities in close proximity to the cable routes, choking of ducts with sand and mud, and excessive tensile stress arising from improper pulling techniques during installation.

9. Simultaneously, the Respondent constituted an expert committee comprising officers from its Quality Assurance Department, under the chairmanship of a Deputy General Manager, to independently examine the issue. The committee, *inter alia,* observed that large quantities of cables from the same manufacturing batches had not exhibited any deterioration and that unused cables stored on spare drums continued to retain satisfactory optical and mechanical characteristics, with attenuation values remaining within prescribed limits. The committee further noted that the deterioration was confined exclusively to coloured fibres, whereas the natural colour fibres did not exhibit similar degradation, despite being laid under identical underground conditions.

10. In view of the continued degradation in the performance of the OFCs, and acting upon the recommendations of the STPC, the Respondent suspended the Petitioner's **Type Approval Certificate**[7]

[7] TAC

vide letter dated 14.02.2003. The suspension of the TAC effectively debarred the Petitioner from supplying any further OFCs to the Respondent. The Respondent also demanded a large-scale replacement of the cables alleged to be defective.

11. Thereafter, joint meetings were held between the parties, during which the Petitioner offered to replace approximately 5,200 fibre-kilometres equivalent cables in respect of those instances where the colouring work had been outsourced to an external agency. This proposal, however, was not accepted by the Respondent on the grounds that the offer was limited in scope and did not extend to the entire length of the cables alleged to be affected.

12. Subsequently, the Respondent, *vide* letter dated 12.12.2003, demanded replacement of the allegedly faulty cables. By a further letter dated 17.12.2003, the Respondent reiterated its demand and, in the event of non-compliance within the stipulated time, also threatened the Petitioner with blacklisting. These communications gave rise to the disputes between the parties.

13. In terms of the arbitration clause contained in the contract, Mr. J. M. Misra, former Member of the Telecom Commission, was appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The Petitioner filed its Statement of Claims on 28.01.2005, *inter alia*, seeking declarations absolving it from any liability to replace the cables, release of the bank guarantees furnished under the contract, injunctive relief restraining the Respondent from withholding payments, and consequential damages.

15. The Respondent filed its reply to the Statement of Claims on

27.07.2005 and was granted liberty to raise counter-claims. Pursuant thereto, the Respondent filed its counter-claims, primarily seeking an award for a sum of Rs. 60,15,67,935/- against the Petitioner, along with interest at the rate of 18% per annum from the date of the alleged excess payment until realisation.

16. The said counter-claims were duly contested by the Petitioner. The parties thereafter exchanged rejoinders and filed further pleadings.

17. The learned Arbitrator framed issues encompassing, *inter alia*, questions of arbitrability, compliance with contractual and technical specifications, the causes of deterioration of the OFCs, entitlement to damages and refunds, and the claim for interest.

18. The parties subsequently led evidence by way of affidavits as well as oral testimony.

19. Upon a comprehensive consideration of the pleadings, evidence on record, expert opinions, and the submissions advanced by both parties, the learned Arbitrator rendered the Impugned Award dated 05.11.2008.

20. Aggrieved by the Impugned Award, the Petitioner has preferred the present objection petition before this Court.

CONTENTIONS OF THE PETITIONER:

21. Learned senior counsel for the Petitioner would submit that all complaints relating to the alleged deterioration of the OFCs were raised only after expiry of the contractual twelve-month warranty period stipulated under the contractual terms. It would further be submitted that the first complaint in every case post-dated the warranty expiry, and therefore, the Respondent had no subsisting

contractual right to seek replacement or damages, though the Petitioner nevertheless undertook investigations purely as a matter of goodwill and commercial prudence.

22. Learned senior counsel for the Petitioner would further submit that upon receipt of the complaints, the Petitioner promptly deputed its technical experts who conducted inspections and tests in the presence of the Respondent's officials, and these investigations conclusively established that the deterioration was solely attributable to external and installation-related factors, such as repeated third-party digging, broken and choked ducts, entangled roots, non-water-tight joints, and excessive tensile stress during laying, and not to any defect in material, workmanship, or design on the part of the Petitioner.

23. Learned senior counsel for the Petitioner would further submit that the recovered cable samples, when tested in the Respondent's own Quality Assurance laboratory, were found to be compliant with specifications, that heating treatment restored original attenuation values, and that unused intact drums from the same manufacturing lot were fully compliant, while only selective laid stretches showed deterioration, thus negating any inference of inherent manufacturing defect.

24. Learned senior counsel for the Petitioner would contend that even the Respondent's own expert committee supported this conclusion, having recorded that joint closures were not water-proof due to installation deficiencies leading to water ingress, that unused and spare cables showed no deterioration in optical or mechanical properties, that large quantities from the same batch remained unaffected, and that degraded cables substantially recovered upon

heating, with moisture playing a definite role in deterioration.

25. Learned senior counsel for the Petitioner would submit that the Respondent's allegation attributing deterioration to fibre colouring is wholly baseless and founded on conjectures, since unused cables of the same colour did not deteriorate and even recovered and re-laid treated cable stretches continued to perform satisfactorily.

26. Learned senior counsel for the Petitioner would further submit that similar complaints had earlier arisen in respect of cables supplied by other manufacturers such as Sterlite Ltd. and Optel Communications Ltd., where the Respondent's own Telecom Engineering Centre attributed degradation to water penetration caused by improper splice closures during installation and issued specific recommendations for water-tight jointing, yet these reports, though placed before the learned Arbitrator, were completely ignored.

27. Learned senior counsel for the Petitioner would submit that the Respondent adopted coercive and arbitrary measures by suspending the Petitioner's TAC on 14.02.2003 despite the absence of any fault, illegally demanding large-scale replacement long after expiry of warranty, insisting on renewal of expired Performance Bank Guarantees, threatening blacklisting, and withholding payments even under unrelated contracts, including those of the Petitioner's sister concern.

28. Learned senior counsel for the Petitioner would submit that the Petitioner's offer to replace approximately 5200 fibre-kilometres of cables was merely a commercial gesture made to preserve customer relations and did not constitute any admission of defect or liability, yet the Respondent misconstrued this goodwill gesture as an

acknowledgment of fault and proceeded to demand replacement of quantities far in excess thereof.

29. Learned senior counsel for the Petitioner would submit that the Impugned Award is contrary to the contract and the evidence on record, inasmuch as the learned Arbitrator ignored the warranty clause limiting liability to twelve months and erroneously imposed liability extending to the entire alleged working life of about twenty years, despite the Respondent's own admission that no prescribed test exists to verify a twenty-year life and that only statistical mechanical life calculations were possible, with no assurance as to optical life.

30. Learned senior counsel for the Petitioner would further submit that the learned Arbitrator overlooked the tender and Purchase Order terms which nowhere contemplated a warranty co-extensive with the product's life span, ignored the fact that the Petitioner's bid costing was based strictly on the limited warranty requirement, and failed to appreciate that warranty liability could arise only upon proof of defects in material, design, or workmanship, none of which were established.

31. Learned senior counsel for the Petitioner would submit that the learned Arbitrator ignored crucial expert evidence and admissions, including the Respondent's own witness admitting water seepage into joint closures. It would further be submitted that the Award suffers from inherent contradictions, as the learned Arbitrator acknowledged the absence of any definite technical cause while nevertheless attributing deterioration to colouring material and hydrogen generation without scientific or evidentiary basis.

32. Learned senior counsel for the Petitioner would further submit

that the award of damages is arbitrary and unsustainable, having been granted without proof of actual loss, affected quantities, or causation, suffering from inconsistencies in quantum, and further ignoring the Petitioner's claim for substantial business losses arising from wrongful suspension of the TAC, which severely affected its financial standing.

33. Learned senior counsel for the Petitioner would advance an alternative contention and submit that even if the deficiencies in the OFCs are assumed to have occurred due to the fault of the Petitioner, the Respondent cannot be completely exonerated from liability. It would further be contended that since various processes were carried out from inception till completion under the supervision of the Respondent, the present case would amount to one of contributory negligence, and therefore, the Petitioner alone cannot be held liable. In support of this contention, reliance would be placed upon the judgment of the Hon'ble Supreme Court in ***Municipal Corpn., Greater Bombay v. Laxman Iyer***[8].

34. Learned senior counsel for the Petitioner would lastly submit that on a cumulative consideration of the above, the Impugned Award suffers from patent illegality, perversity, non-application of mind, and violation of the express terms of the contract and settled principles of law, and is, therefore, liable to be set aside.

CONTENTIONS OF THE RESPONDENT-BSNL:

35. Learned senior counsel for the Respondent would submit that this Court, while exercising jurisdiction under Section 34 of the A&C Act, does not sit as a court of appeal and would not be empowered to

[8](2003) 8 SCC 731

reappreciate evidence or interfere with findings of fact recorded by the learned Arbitrator, and therefore, since the Impugned Award is a well-reasoned, detailed, and speaking award passed after due consideration of the pleadings, evidence, and submissions of the parties, the present petition would be liable to be dismissed.

36. The learned senior counsel for the Respondent would further submit that, inasmuch as the Petitioner has failed to establish the existence of any illegality, perversity, patent error, or violation of the public policy of India in the Impugned Award, no ground whatsoever is made out for interference by this Court in exercise of its limited jurisdiction under Section 34 of the A&C Act.

37. Learned senior counsel for the Respondent would submit that it is an admitted position on record that the Petitioner represented the life of the OFCs as 32.8 years while the tender prescribed a minimum service life of 20 years, and accordingly, the learned Arbitrator has rightly relied upon this representation in determining liability, particularly when the cables failed much before the assured life period, and further, the Petitioner's own witness has admitted during cross-examination the willingness to replace the faulty cables, which admission clearly supports the findings recorded in the Impugned Award.

38. Learned senior counsel for the Respondent would submit that the Petitioner admittedly engaged a third-party agency for colouring of fibres and that deterioration was confined only to coloured fibres, and moreover, joint investigations conducted after recovery of a two-kilometre stretch has revealed that the coloured fibres were faulty and that the cables supplied by the Petitioner alone underwent mechanical

reaction with moisture, whereas cables of other manufacturers installed under identical conditions did not degrade, and these findings have been duly noted, analyzed, and appreciated by the learned Arbitrator.

39. Learned senior counsel for the Respondent would submit that the Petitioner never denied attenuation in the supplied cables and, on the contrary, admitted that only coloured fibres were affected, and further it is also be an admitted fact that the Petitioner offered to replace approximately 5200 fibre-kilometres of cable where colouring was carried out through an external agency, which conduct on the part of the Petitioner further supports and corroborates the findings recorded in the Impugned Award.

40. Learned senior counsel for the Respondent would submit that the Production Qualification Test and the Bulk Production Certificate are issued only for Type Approved products and that, during such testing, the Quality Assurance authorities verify the use of approved raw materials, including FRP rods, PBT for loose tubes, tube-filling compound ITC-0-210, and sheath material HD-800.

41. It would further be submitted that in compliance with Clause 1.3.2 of the **Generic Requirements No. G/QFC-01/02.APR94 issued by the DOT, Telecommunication Engineering Centre[9],** the Petitioner submitted life calculations and expressly assured a service life of 32.8 years at the time of issuance of the Bulk Production Certificate, which assurance consequently became a binding contractual commitment.

42. Learned senior counsel for the Respondent would also submit

[9] DOT's Generic Requirements

that the learned Arbitrator has passed a reasoned and speaking Award after considering all technical aspects, the tender conditions, the Purchase Orders, the documentary and oral evidence, and the admissions of the Petitioner, and that the said Award therefore calls for no interference by this Court.

ANALYSIS:

43. This Court has heard the learned senior counsel appearing on behalf of the parties at length and, with their able assistance, has carefully perused the paperbook and other material documents placed on record, including the record of the Arbitral Tribunal, as well as the written submissions filed by the respective parties.

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

45. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier decisions, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[10], while dealing with the grounds of conflict with the public policy of India and perversity, grounds which have also been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

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

[10] (2025) 2 SCC 417

30. Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) is concerned, it has two sub-clauses, namely, (*i*) and (*ii*). Sub-clause (*i*) of clause (*b*) is not relevant to the controversy in hand. Sub-clause (*ii*) of clause (*b*) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.

Public policy

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

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

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

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

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

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

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

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

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

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

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

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

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

To this a caveat was added by observing that when a court applies the "public policy test" to an arbitration award, it does not act as a court of appeal and, consequently, errors of fact cannot be corrected; and a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score. Thus, once it is found that the arbitrator's approach is not arbitrary or capricious, it is to be taken as the last word on facts.

The 2015 Amendment in Sections 34 and 48

42. The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not used by the legislature in either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*). The pre-amended Section 34(2)(*b*)(*ii*) and its Explanation read:

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44. By the 2015 Amendment, in place of the old Explanation to Section 34(2)(*b*)(*ii*), *Explanations 1 and 2* were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted/added Explanations would apply [***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

46. The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*), in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it does away with the use of words : (*a*) "*without prejudice to the generality of sub-clause (ii)*" in the opening part of the pre-amended Explanation to Section 34(2)(b)(ii); and (b) "*without prejudice to the generality of clause (b) of this section*" in the opening part of the pre-amended Explanation to Section 48(2)(*b*); secondly, it limits the expanse of public policy of India to the three specified categories by using the words "*only if*". Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of

Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*) of the 1996 Act.

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

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

(*i*) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or
(*ii*) it is in contravention with the fundamental policy of Indian law; or
(*iii*) it is in conflict with the most basic notions of morality or justice.

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

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

(*a*) "in contravention with the fundamental policy of Indian law";
(*b*) "in conflict with the most basic notions of morality or justice"; and
(*c*) "patent illegality" have been construed.

In contravention with the fundamental policy of Indian law

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

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

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

(*c*) justice or morality.

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

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

(*a*) violation of the principles of natural justice;
(*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and
(*c*) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

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

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Patent illegality

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

66. In ***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public

interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

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

(*a*) substantive provisions of law of India;
(*b*) provisions of the 1996 Act; and
(*c*) terms of the contract [See also three-Judge Bench decision of this Court in ***State of Chhattisgarh* v. *SAL Udyog (P) Ltd.*, (2022) 2 SCC 275**].

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

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

Perversity as a ground of challenge

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

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

(*i*) a finding is based on no evidence; or
(*ii*) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
(*iii*) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

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

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

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

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

> "*39.* In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital

> evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."

Scope of interference with an arbitral award

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

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

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

84. An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an Arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not intefere [See: ***SAIL* v. *Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63; *Pure Helium India (P) Ltd.* v. *ONGC*, (2003) 8 SCC 593; *McDermott International***

***Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181; *MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163**]. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference [*South* ***East Asia Marine Engg. & Constructions Ltd.* v. *Oil India Ltd.*, (2020) 5 SCC 164**].

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

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

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

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

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

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

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

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

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

(emphasis supplied)

46. A careful perusal of the Impugned Award demonstrates that the learned Arbitrator has duly considered all relevant material, facts, and

circumstances while adjudicating upon the claims and counter-claims raised by the parties. Upon such examination, the learned Arbitrator arrived at, *inter alia*, the following conclusions, which, though not exhaustive, reflect the core findings underpinning the Award:

(a) The OFCs supplied by the Petitioner were manufactured under the continuous supervision of the Respondent-BSNL's Quality Assurance personnel.

(b) All cables conformed to the mandatory TEC-GR specifications and successfully passed the prescribed quality and performance tests prior to dispatch.

(c) At the time of supply, the attenuation levels of the cables were well within the prescribed limits.

(d) Complaints relating to increased attenuation arose only after the cables had been installed and commissioned for field use.

(e) Reports of deterioration were predominantly received from the STPC, whereas unused cables lying on drums did not exhibit any defects.

(f) While the Petitioner attributed the deterioration to improper laying practices and moisture ingress, the learned Arbitrator rejected this explanation on the ground that cables supplied by other manufacturers, laid along the same routes and under identical conditions, did not suffer similar deterioration, and further because complaints were reported from multiple regions across the country, thereby negating the theory of defective installation or external environmental factors as the cause of selective failure.

(g) It was found that only coloured fibres exhibited deterioration, whereas natural-coloured fibres remained unaffected, which strongly suggested that the root cause lay in the colouring material used during manufacture.

(h) The evidence further revealed that the Petitioner had outsourced the colouring process for certain consignments and had, at an earlier stage, even offered to replace a portion of the affected cables, thereby reflecting apprehensions regarding the quality of the colouring agents employed.

(i) It was also noted that there were no specific technical specifications governing the composition or performance of the colouring compounds.

(j) On the basis of expert evidence and technical material, the learned Arbitrator concluded that the deterioration occurred due to defective colouring material, which underwent chemical degradation over time, resulting in increased attenuation levels.

(k) Consequently, the fault was held to be attributable to deficiencies in the Petitioner's manufacturing process rather than to any lapse in handling or maintenance by the Respondent.

(l) Although the Petitioner contended that its liability stood extinguished upon expiry of the 12-month warranty period, the learned Arbitrator held that the tender conditions mandated a minimum service life of 20 years for the OFCs and that such assurance constituted a substantive contractual obligation.

(m) It was accordingly held that the expiry of the warranty period did not absolve the Petitioner of its responsibility for the defective cables.

(n) While the Respondent had sought refund in respect of cables supplied across India, the learned Arbitrator restricted the Respondent's entitlement only to those cables that were proven to have deteriorated within the STPC.

(o) Replacement or refund was thus allowed by the learned Arbitrator strictly in respect of the proven defective quantity and not for the entire supply.

(p) The Respondent's claims towards trenching, pipe laying, pulling charges, and other consequential expenses were rejected on the ground that such costs were not contemplated under the contract and no contractual provision entitled the Respondent to recover the same from the supplier.

(q) The Petitioner's claim for damages on account of alleged loss of business arising from suspension of the TAC was also rejected, with the learned Arbitrator holding that both parties had suffered business losses and that no compensation was payable to either side on this account.

(r) The Respondent's claims for interest and consequential loss of revenue were similarly disallowed; it being held that recovery was limited strictly to the value of the defective cables and that no additional damages were contractually or legally sustainable.

(s) The Petitioner was held liable only to refund the value of the unusable cables, and the Respondent was accordingly directed

to release all pending payments and the Performance Bank Guarantees upon receipt of the said amount.

(t) Finally, each party was directed to bear its own costs of the arbitral proceedings, and no interest was awarded to either party.

47. This Court now proceeds to examine the aforesaid findings returned by the learned Arbitrator on the anvil of the limited and circumscribed jurisdiction available under Section 34 of the A&C Act, and in the light of the principles authoritatively laid down by the Hon'ble Supreme Court in ***OPG Power Generation*** (*supra*).

48. Upon a careful consideration of the findings recorded in the Impugned Award, as well as the rival submissions advanced by the learned counsel appearing for the parties, this Court is of the considered view that no infirmity can be discerned in the approach adopted by the learned Arbitrator. Having due regard to the narrow scope of judicial interference permissible under Section 34 of the A&C Act, this Court finds no reason to depart from, or interfere with, the conclusions arrived at by the learned Arbitrator and accordingly concurs with the same.

49. A perusal of the present petition and arguments made by the learned senior counsel appearing for the Petitioner makes it abundantly clear that the Petitioner is, in effect, seeking a re-appreciation and re-evaluation of the evidence led by the parties before the learned Arbitrator and is further inviting this Court to substitute its own interpretation of the contractual terms governing the parties. Such an exercise is wholly impermissible in proceedings under Section 34 of the A&C Act, which does not confer appellate

jurisdiction upon this Court.

50. One of the principal contentions advanced on behalf of the Petitioner is that no liability could have been fastened upon it beyond the warranty period stipulated under Clause 10.1 of the **General (Commercial) Conditions of the Contract**[11], which provided for a warranty period of twelve months.

51. However, it is an undisputed and admitted position that the DOT's Generic Requirements specifically mandated, under Clause 1.3.2, that the minimum life of the cable shall be at least twenty years. The relevant clause reads as follows:

> "**1.3.2** Life of cable shall be at least 20 years. Necessary statistical calculations may be submitted by the manufacturer."

52. It is also a matter of record that, pursuant to the aforesaid clause, the Petitioner itself furnished an assurance, by way of a certificate submitted to the Respondent authorities, stating that the life of the OFCs supplied by it was 32.8 years.

53. The learned Arbitrator, in paragraphs 11.6 and 14 of the Impugned Award, has undertaken a detailed and careful examination of the relevant contractual stipulations, the applicable tender conditions, and the specific representations made by the Petitioner. In addition thereto, the learned Arbitrator has also placed limited and cautious reliance on the oral testimony of Mr. P.D. Kulkarni, the Unit Head of the Petitioner, to the extent that such testimony corroborated the documentary and contractual material already on record.

54. Upon a holistic and comprehensive appreciation of the aforesaid documentary and oral evidence, the learned Arbitrator arrived at the

[11] GCCC

conclusion that, notwithstanding the Petitioner's contention that its liability stood extinguished upon the expiry of the twelve-month warranty period, the DOT's Generic Requirements, which is inherent part of the tender conditions, clearly and unequivocally mandated a minimum service life of twenty years for the OFCs. The learned Arbitrator further held that the assurance furnished by the Petitioner in this regard was not merely incidental but constituted a substantive, enforceable, and binding contractual obligation, which continued to operate independent of, and beyond, the stipulated warranty period.

55. In the considered opinion of this Court, it was, therefore, rightly held that the mere expiry of the warranty period could not absolve the Petitioner of its responsibility in respect of the defective cables, particularly when the failure occurred much prior to the assured life period. The Petitioner's reliance solely on Clause 10.1 of the GCCC relating to warranty cannot be accepted in isolation. Acceptance of such a contention would run directly contrary to Clause 1.3.2 of the DOT's Generic Requirements, as well as the Petitioner's own representation and the admissions made by its witness. In the considered view of this Court, the interpretation adopted by the learned Arbitrator reflects a harmonious construction of the various terms and conditions set out in the Agreement and clearly falls within the realm of a plausible view that may reasonably be ascribed to the contractual provisions.

56. The learned Arbitrator, after considering all the material on record, including both documentary evidence and oral testimony, has adopted a view which is not only a possible view but also a plausible and reasonable one. Such a view cannot, by any stretch of

imagination, be characterized as perverse so as to warrant interference under Section 34 of the A&C Act.

57. It is not the Petitioner's case that it was denied a reasonable opportunity to present its case before the learned Arbitrator. Nor has it been contended that the findings recorded are based on no evidence, or that the learned Arbitrator has taken into account irrelevant material, or ignored vital evidence on record. In the absence of any such grounds, the decision rendered by the learned Arbitrator on the issue of the Petitioner's liability beyond the warranty period cannot be said to be vitiated by perversity.

58. Considering all the aforesaid aspects cumulatively, this Court is satisfied that the findings recorded in the Impugned Award are neither arbitrary nor perverse. This Court accordingly affirms that the learned Arbitrator was fully justified in relying upon the representation made by the Petitioner while determining its liability, particularly when the cables failed well before the assured life period.

59. The Court now turns to the other principal issue raised by the learned senior counsel appearing for the Petitioner, *namely*, the vehement denial of any deterioration in the OFCs attributable to any fault on the part of the Petitioner.

60. The learned Arbitrator has examined this issue in considerable depth and detail in paragraphs 11.3 to 11.5, 12.2, 12.3, and 13 of the Impugned Award, and has returned a clear and categorical finding that the Petitioner cannot be exonerated of responsibility for the deterioration observed in the OFCs. In arriving at this conclusion, the learned Arbitrator undertook a comprehensive evaluation of multiple interrelated factors, including the sources from which the OFCs and

their constituent components were procured, the diverse geographical locations where the cables were installed, and the nature and extent of the offer made by the Petitioner to replace a limited portion of the affected OFCs.

61. The learned Arbitrator further took note of the inherent inconsistencies and contradictions in the Petitioner's stand, particularly its assertion that the OFCs had successfully passed the prescribed water penetration tests, while simultaneously contending that deterioration had nonetheless occurred due to environmental factors. Due weight was also accorded to the fact that the OFCs were installed in coastal and saline environments, a condition expressly contemplated and addressed under Clause 1.1.2 of the DOT's Generic Requirements, which reads as follows:

> "**1.1.2** The optical fibre cable shall be able to work in a saline atmosphere in coastal areas and should be protected against corrosion."

62. The learned Arbitrator also recorded that no similar complaints were received in respect of other ongoing projects along the same routes where cables supplied by different manufacturers were laid under identical environmental and installation conditions. It was further observed that attenuation losses were predominantly reported in coloured fibres, whereas natural-coloured fibres remained largely unaffected, a distinction of considerable technical relevance.

63. Upon examining the rival explanations and the evidentiary material placed on record, the learned Arbitrator specifically rejected the Petitioner's contention that the deterioration was attributable to improper laying practices or moisture ingress. It was reasoned that if such factors were indeed the root cause, cables supplied by other

manufacturers, laid along the same routes and subjected to the same environmental and installation conditions, would have exhibited similar deterioration, which was demonstrably not the case.

64. In addition, complaints regarding deterioration were reported from multiple regions across the country in respect of cables supplied by the Petitioner. This geographical spread effectively ruled out the possibility of isolated installation defects or localised environmental conditions being the cause of selective failure. The fact that deterioration was confined almost exclusively to coloured fibres, while natural-coloured fibres remained unaffected, strongly indicated that the root cause lay in the colouring material employed during the manufacturing process.

65. The learned Arbitrator also took cognizance of the evidence demonstrating that the Petitioner had outsourced the colouring process for certain consignments and had offered to replace a portion of the defective cables. This conduct, viewed in the context of the technical evidence, reflected the Petitioner's own apprehensions regarding the quality, stability, and long-term performance of the colouring agents used.

66. On the basis of evidence, technical reports, and the material placed on record, the learned Arbitrator concluded that the deterioration was attributable to defective colouring material, which underwent chemical degradation over time, resulting in increased attenuation levels. Consequently, the fault was held to arise from deficiencies in the Petitioner's manufacturing process, rather than from any lapse in installation, handling, or maintenance on the part of the Respondent.

67. This Court finds no infirmity in the findings returned by the learned Arbitrator, particularly in relation to the technical aspects governing the deterioration of the OFCs. While the learned Arbitrator correctly observed that the technical reports and materials produced by the parties did not furnish absolute or mathematically conclusive proof establishing, beyond all conceivable doubt, that the deterioration was exclusively attributable to defective colouring material, the standard of proof in arbitral proceedings, especially in matters involving complex technical causation, does not demand such unattainable certainty.

68. Acting well within his domain as the final arbiter of facts, the learned Arbitrator undertook a comparative, critical, and reasoned evaluation of the competing technical reports and expert opinions, and thereafter arrived at a scientifically plausible conclusion that the most probable cause of deterioration was chemical degradation of the colouring material, progressively resulting in increased attenuation. Such a conclusion, rooted in established principles of material science and fibre-optic performance, cannot be characterised as speculative or conjectural.

69. Significantly, the learned Arbitrator also took into account the inherent design parameters and operational environment of underground OFCs. Cables intended for underground deployment are, by their very nature, engineered to withstand predictable and routine exposure to moisture, and the applicable manufacturing and performance standards expressly factor in such conditions. The DOT's Generic Requirements mandate that the cables must successfully pass stringent water ingress and water penetration tests prior to acceptance,

thereby recognising that interaction with moisture is a normal and anticipated operating condition rather than an abnormal event. Once such compliance is established, any technical explanation attributing attenuation solely to moisture ingress must necessarily demonstrate the existence of extraordinary, abnormal, or unforeseen conditions exceeding the design tolerance of the cable.

70. This Court is of the view that the Petitioner failed to discharge this technical burden. No credible evidence was adduced to establish that the moisture exposure in the present case was excessive, atypical, or beyond the environmental parameters contemplated under the applicable standards. In the absence of such proof, the contention that moisture ingress alone constituted the decisive cause of deterioration remains a bare assertion. Conversely, the learned Arbitrator's finding that chemical degradation of the colouring material triggered progressive attenuation is fully consistent with the technical evidence on record.

71. Viewed thus, the technical conclusions reached by the learned Arbitrator represent a reasoned synthesis of engineering principles, contractual standards, and evidentiary material, and clearly fall within the realm of a possible, plausible, and well-founded view. This Court cannot, in the exercise of its limited jurisdiction under Section 34 of the A&C Act, supplant such technical findings with its own assessment, particularly in the absence of perversity, patent illegality, or manifest disregard of evidence. The findings, therefore, warrant judicial deference and call for no interference.

72. It is well settled that the learned Arbitrator is the final authority on questions of fact and appreciation of evidence. In the present case,

the findings returned are not shown to be perverse or based on no evidence. This Court is also mindful of the fact that the learned Arbitrator is a former Member of the Telecom Commission and, therefore, a subject-matter expert. His conclusions, drawn upon technical expertise, practical experience, and the material on record, do not warrant interference. It is equally significant that the learned Arbitrator examined and rejected a substantial portion of the Respondent's counterclaims on other considerations.

73. It is trite law that the scope of judicial interference is extremely narrow, particularly where the arbitral tribunal comprises technical experts. Where a reasoned and plausible view adopted by an expert arbitrator, drawing upon specialised knowledge and practical experience, supports a particular factual or contractual conclusion, courts ought not to substitute their own views merely because an alternative interpretation is possible. This position has been reiterated by the Hon'ble Supreme Court in ***Hindustan Construction Co. Ltd. v. NHAI***[12], wherein it was emphasised that when technical experts acting as arbitrators adopt a plausible view based on their specialised knowledge and experience, courts must adopt the path of least interference. The relevant portion of the said judgment is extracted hereinbelow:

> "**24.** It is quite evident that in most cases, the view of DRPs and tribunals, and in two cases, majority awards of tribunals, favoured the arguments of contractors, that composite embankment construction took place, as a result of which measurement was to be done in a composite, or unified manner. Dissenting or minority views, wherever expressed, were premised on separate measurements. This opinion was of technical experts constituted as arbitrators, who were versed in contractual interpretation of the type of work involved; they also had first-hand experience as

[12](2024) 2 SCC 613

engineers who supervised such contracts. When the predominant view of these experts pointed to one direction i.e. a composite measurement, the question is what really is the role of the court under Section 34 of the Act.

25. This Court in ***Voestalpine Schienen GmbH* v. *DMRC*, (2017) 4 SCC 665** commenting on the value of having expert personnel as arbitrators, emphasised that "*technical aspects of the dispute are suitably resolved by utilising their expertise when they act as arbitrators*". Such an approach was commended also in***Delhi Airport Metro Express (P) Ltd.* v. *DMRC*, (2022) 1 SCC 131** wherein this Court held that: (***Delhi Airport Metro Express case***, SCC p. 155, para 41)

> "*41.* … The members of the Arbitral Tribunal, nominated in accordance with the agreed procedure between the parties, are engineers and their award is not meant to be scrutinised in the same manner as one prepared by legally trained minds. In any event, it cannot be said that the view of the Tribunal is perverse. Therefore, we do not concur with the High Court's opinion [***DMRC* v. *Delhi Airport Metro Express (P) Ltd.*, 2019 SCC OnLine Del 6562**] that the award of the Tribunal on the legality of the termination notice is vitiated due to the vice of perversity."

26. The prevailing view about the standard of scrutiny — *not judicial review*, of an award, by persons of the disputants' choice being that of their decisions to stand — and not interfered with, (save a small area where it is established that such a view is premised on patent illegality or their interpretation of the facts or terms, *perverse*, as to qualify for interference, courts have to necessarily choose the path of *least interference, except when absolutely necessary*). By training, inclination and experience, Judges tend to adopt a corrective lens; usually, commended for appellate review. However, that lens is unavailable when exercising jurisdiction under Section 34 of the Act. Courts *cannot, through process of primary contract interpretation*, thus, *create pathways to the kind of review which is forbidden under Section 34*. So viewed, the Division Bench's approach, of appellate review, twice removed, so to say (under Section 37), and conclusions drawn by it, resulted in displacing the majority view of the tribunal, and in many cases, the unanimous view, of other tribunals, *and substitution of another view*. As long as the view adopted by the majority was plausible — and this Court finds no reason to hold otherwise (because concededly the work was completed and the finished embankment was made of composite, *compacted* matter, comprising both soil and fly ash), such a substitution was impermissible.

27. For a long time, it is the settled jurisprudence of the courts in the country that awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with,

lightly. The proposition was placed in ***State of U.P.* v. *Allied Constructions*, (2003) 7 SCC 396**: (SCC p. 398, para 4)

> "*4.* … It was within his jurisdiction to interpret Clause 47 of the Agreement having regard to the fact-situation obtaining therein. It is submitted that an award made by an arbitrator may be wrong either on law or on fact and error of law on the face of it could not nullify an award. The award is a speaking one. The arbitrator has assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for the arbitrator to determine (see ***Sudarsan Trading Co.* v. *State of Kerala*, (1989) 2 SCC 38**). Section 30 of the Arbitration Act, 1940 providing for setting aside an award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an award cannot be set aside. The arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law."

28. This enunciation has been endorsed in several cases (Ref. ***McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181**). In ***MSK Projects (I) (JV) Ltd.* v. *State of Rajasthan*, (2011) 10 SCC 573** it was held that an error in interpretation of a contract by an arbitrator is "*an error within his jurisdiction*". The position was spelt out even more clearly in ***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, where the Court said that: (***Associate Builders case***, SCC p. 81, para 42)

> "*42.* … *42.3.* … if an arbitrator construes a term 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."

(emphasis supplied)

74. The Court now turns to the submission advanced on behalf of the Petitioner that similar complaints had, in the past, arisen in respect of cables supplied by other manufacturers, for instance, Sterlite Ltd. and Optel Communications Ltd. It has been contended that, in those cases, the Respondent's own Telecom Engineering Centre had

attributed degradation to water penetration caused by improper splice closures during installation and had issued specific recommendations for water-tight jointing. According to the Petitioner, although these reports were placed before the learned Arbitrator, they were allegedly ignored.

75. In support of this contention, the learned senior counsel for the Petitioner relied upon an extract from such report, the relevant portion of which reads as under:

> "**8.0 Conclusion:**
>
> **8.1 On Optical Fibre Cables manufactured and supplied by M/S Sterlite Industries Ltd.**
>
> It may be concluded from the various tests taken and the results obtained that the penetration of water and the moisture in the splice closure have degraded the optical fibres in which the colored fibres were effected more than the natural fibres because the coloring ink is more susceptible to moisture and the OH ions have traveled along the length of fibre below the colour coating and above the primary coating of the fibres and it might have applied excessive pressure on the glass fibres resulting in micro bending etc. leading to more attenuation along the length.
>
> The detailed report and the observation taken by OTDR has been sent to Southern Telecom Region Chennai."

76. This Court has carefully considered the aforesaid submission and the extract relied upon. Even on a plain reading of the conclusion contained in the said report, it is evident that the findings recorded therein are tentative and inferential in nature, and do not conclusively establish, with any degree of certainty, the precise cause of deterioration. Significantly, the learned Arbitrator has himself taken note of the existence of such reports and has recorded a finding that none of them conclusively established the cause of degradation.

77. Mere reliance on an isolated portion of a prior technical report, divorced from the contractual framework, tender conditions, and the

totality of evidence on record, cannot alter the material conclusions reached in the Impugned Award. Particularly in proceedings under Section 34 of the A&C Act, this Court finds no reason to take a view different from that already arrived at by the learned Arbitrator after considering all relevant factors, as discussed in the preceding paragraphs.

78. This Court next considers the Petitioner's assertion that its offer to replace approximately 5,200 fibre-kilometres of cables was merely a commercial or goodwill gesture intended to preserve customer relations and did not amount to any admission of defect or liability. It was contended that the Respondent misconstrued this gesture as an acknowledgment of fault and proceeded to demand replacement of quantities far in excess thereof.

79. In the considered opinion of this Court, this submission carries little weight. The Impugned Award does not proceed on the basis of this offer in isolation. The learned Arbitrator has taken into account a multitude of factors, including contractual provisions, technical evidence, and expert reports, while arriving at the findings in question. In that view of the matter, it is neither necessary nor appropriate to delve into the subjective intent behind the said offer or to characterise it as a goodwill gesture or otherwise.

80. The Court now turns to the alternative submission advanced by the learned senior counsel for the Petitioner that, even assuming that deficiencies in the OFCs occurred due to the Petitioner's fault, the Respondent cannot be completely exonerated from liability. It was argued that since various processes, from inception to completion, were carried out under the supervision of the Respondent, the present

case would be one of contributory negligence, and therefore, the Petitioner alone could not have been held liable.

81. This Court is unable to accept the aforesaid submission. At the outset, it is noted that this contention does not form part of the grounds raised in the present petition under Section 34 of the A&C Act. In any event, the plea of contributory negligence involves a mixed question of law and fact, requiring detailed examination of evidence and factual adjudication, which is wholly impermissible within the narrow confines of jurisdiction under Section 34 of the A&C Act. The argument, therefore, appears to be an afterthought and is clearly beyond the permissible scope of interference available to this Court.

82. So far as the reliance placed on an isolated portion of the judgment of the Hon'ble Supreme Court in ***Laxman Iyer*** (*supra*) is concerned, the said decision was rendered in the context of motor accident claims under the Motor Vehicles Act, 1939, and arose from a completely different statutory framework and factual matrix. The principles enunciated therein have no application to the present case, which arises out of a commercial contract and arbitral adjudication. Accordingly, the said judgment does not advance the Petitioner's case in any manner.

CONCLUSION:

83. In view of the foregoing discussion and the reasons recorded hereinabove, this Court finds no ground whatsoever to interfere with the Impugned Award passed by the learned Arbitrator. The Petitioner has failed to make out any case falling within the limited and well-defined grounds of interference permissible in law under Section 34 of

the A&C Act. Accordingly, the present petition is dismissed.

84. The present petition, along with pending application(s), if any, stands disposed of in the above terms.

85. No Order as to Costs.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 13, 2026/sm/her