$~

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

% ***Judgment reserved on: 15.01.2026***
Judgment pronounced on: 17.03.2026

\+ O.M.P. 222/2009, I.A. 2019/2025 (Stay) & I.A. 15274/2025 (For the disposal of the IA NO. 2019/2025)

UNION OF INDIA .....Petitioner
Through: Mr. Kamal Kant Jha, CGSC with Mr. Avinash Singh, Mr. Aishwarya Deep Singh and Ms. Aakriti, Advocates.

versus

M/S G.D. TEWARI & CO .....Respondent
Through: Mr. Shrey Chathly and Ms. Vinita Sharma, 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, under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], has been filed assailing the Arbitral **Award dated 13.08.2008 read with the Modified Award dated 15.12.2008**[2], passed by the learned Sole Arbitrator.

2. By way of the Impugned Award, the learned Arbitrator has allowed 6 out of the 7 claims of the Respondent herein arising out of the disputes *inter alia* pertaining to the delay and hindrances caused to

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

the Respondent herein during the pendency of the works to be carried out by the Respondent, attributing such delays and hindrances to the Petitioner herein.

3. At the outset, it is clarified that although the present petition contains several averments challenging different aspects of the Impugned Award, during the course of arguments the learned counsel appearing on behalf of the Petitioner confined his submissions only to Claims Nos. 1 to 3. In particular, the learned counsel emphasized that the Petitioner's strongest challenge in the present proceedings pertains to Claim No. 3. In support of this contention, reliance was specifically placed upon Annexure R-11 forming part of the Statement of Defence, wherein it is recorded on behalf of the Claimant/Respondent that *"we will not claim any damages on account of delay".* According to the learned counsel for the Petitioner, the aforesaid statement assumes material significance in the context of the adjudication of Claim No. 3 and directly bears upon the sustainability of the findings returned by the learned Arbitrator in respect thereof.

BRIEF FACTS:

4. Shorn of unnecessary details, the facts germane to the institution of the present Petition are as follows:

I. The Petitioner herein invited tenders for the execution of the work named and styled as "Providing Independent W.C. & Bathroom (300 Nos.) to the Existing Type-I, General Pool Quarters at Sector-2, R.K. Puram, New Delhi".

II. The Respondent herein submitted its quotation/tender and the same came to be accepted. Subsequent thereto, the work was

awarded to the Respondent herein *vide* letter dated 19.12.2001, along with the **Agreement containing the terms and conditions dated 19.12.2001**[3].

III. The Award letter laid down the timeline that was to be followed and stipulated that the work was to be completed within a period of 12 months. The timeline so laid is reproduced below:

S.No.	Particulars	Date
1.	Date of Tender	06.11.2001
2.	Date of Award of Tender	19.12.2001
3.	Date of start	03.01.2002
4.	Stipulated Date of Completion	02.01.2003
5.	Stipulated Time for Competition	12 months
6.	Actual Date of Completion	20.01.2004
7.	Estimated Cost	Rs. 1,32,75,277/-
8.	Tendered Amount	Rs. 1,20,63,244/-
9.	Percentage	9.13% below
10.	Date of Final Bill	30.11.2005

IV. It is stated that various correspondences were exchanged between the parties throughout the pendency of the Project. However, due to certain hindrances faced by the Respondent, the work on the Project got delayed. It was the case of the Respondent herein that the hindrances that were faced by it were not resolved in a timely manner by the Petitioner herein, which ultimately caused the delay.

V. It was further the case of the Respondent that certain extra work items cropped up during the pendency of the Project, which the Petitioner needed the Respondent to resolve and execute, and accordingly, the Respondent submitted its rate analysis in

[3] Agreement

respect of the same. In addition to this, there were certain deviations beyond the schedule of the quantities as mentioned in the Agreement, as between the parties, the rate analysis of which was also enclosed by the Respondent in its letter. More particularly, the Respondent contends that the additional items included a rate analysis for providing and laying cement concrete in the ratio of 1:5:10 in the depressed portion of the superstructure, along with an extra item pertaining to cutting and making good holes in brickwork, which was also submitted by the Respondent *vide* its letter dated 31.10.2002.

VI. It is stated that thereafter, the Executive Engineer of the Petitioner reverted to the letter addressed by the Respondent informing that the payment for extra items and deviation quantities shall be made as envisaged in the terms of the Agreement, and the extra items are under process.

VII. Further, as mentioned hereinabove, the stipulated time for completion of the Project was 02.01.2003. However, the Respondent was unable to finish and deliver the project in the said stipulated time due to the hindrances faced by it, which it alleged was caused by the Petitioner. Accordingly, the Respondent, *vide* letter dated 02.01.2003 and 06.01.2003, requested closing of the contract amicably.

VIII. It is stated that the Respondent could only execute the work of the value of Rs, 43,28,952/- as on the dates due to the hinderances and defaults stated to have been committed by the Petitioner and the Respondent *vide* letter dated 06.01.2003 informed the Petitioner that they would be liable for the

payment of 20% increase over and above the tendered rates in respect of the work executed after the stipulated date of completion of the Project.

IX. It is stated that letters were written by the Respondent regarding the work completed for the baths and WCs and for handing over of the same, as also for the completion of work on 20.01.2004. The Respondent, *vide* letter dated 25.06.2004 also requested for payments and for the preparation of the final bill and for the finalisation of the rate of extra, substituted and deviated items, which were not finalised till that time. The Respondent also claimed damages for the prolongation of work.

X. Thereafter, it is stated that, an undertaking came to be signed that the Respondent will not claim any damages on account of the delay; however, Respondent, *vide* letter dated 26.05.2005, to the Petitioner stated that the said undertaking was given under coercion and the same was not binding. It is stated that the payment came to be made by the Petitioner only on 30.11.2005.

XI. Thereafter, various correspondences are stated to have been addressed on behalf of the Respondent to the Petitioner, seeking the release of the payments liable to be paid to the Respondent. Consequently, the Respondent, *vide* letter dated 28.07.2006 addressed to the Chief Engineer of the Petitioner, sought the appointment of an arbitrator, and upon the Petitioner's failure to do so, filed a Petition under Section 11 and this Court, *vide* Order dated 22.02.2007, appointed the learned Arbitrator for the adjudication of the disputes *inter se* the parties.

XII. The Statement of Claim on behalf of the Respondent herein was filed before the learned Arbitrator on 01.05.2007, and the counter statement of facts was filed on behalf of the Petitioner herein on 12.09.2007. Both parties, with consent, stated that they do not wish to file their evidence by way of affidavit and that the arbitral proceedings can be decided on the basis of the documents already on record.

XIII. Upon consideration of the pleadings and material placed on record, and after hearing the parties, the learned Sole Arbitrator rendered the Impugned Award dated 13.08.2008. Thereafter, pursuant to an application filed by the Respondent herein seeking correction of a minor typographical error, the learned Arbitrator passed a modified/corrigendum award dated 15.12.2008, whereby the earlier award was corrected in a very limited and narrow compass.

XIV. *Brevitatis causa*, the claims raised by the Respondent, before the learned Arbitrator, are tabulated herein below:

S.NO.	AMOUNT OF CLAIMS	PARTICULARS
1.	Rs. 3,71,466/-	On account of less payment in the alleged final bill under the head extra and substituted items of work.
2.	Rs. 8,48,081/-	On account of additional payment in respect of agreement items that had deviated beyond the deviation limit as laid out in the agreement.
3.	Rs. 15,21,994/-	On account of escalation/ damages suffered during the prolongation of the

		contract beyond the stipulated date of completion.
4.	Rs. 1,52,400/-	On account of establishment/overhead charges for the extended period.
5.	Rs. 15000/-	On account of refund of withheld amount lying in the form of FDR.
6.	interest @ 18% P.A	On the aforesaid amounts from due date till the date of payment.
7.	Rs. 1,50,000	On account of cost of arbitration proceedings.

XV. Out of the aforesaid claims, the learned Arbitrator rejected Claim No. 4, while allowing the remaining claims. In the Impugned Award, the learned Arbitrator arrived at, *inter alia*, the following claim-wise conclusions:

S. NO.	**CLAIM AS MADE BEFORE THE LD. TRIBUNAL**	**FINDINGS OF THE LD. TRIBUNAL**
1.	Claim No. 1: For Rs. 3,71,466/- on account of less paid in the alleged final bill under the head extra and substituted items of work.	The rates claimed by the Claimant were refuted by the Respondent [*The Petitioner herein*]. The Respondent [*The Petitioner herein*] did not fix and convey any other rates. As per Respondents own case, the rates of the extra/ substituted items are yet to be sanctioned by the competent authority. Thus, claim No. 1 - allowed.
2.	Claim No 2: Rs. 8,48,081/- on account	Claimant has been consistently writing to the

	additional payment respect of agreement items that had deviated beyond the deviation limit	Respondents [*The Petitioner herein*] for payment at the market rate for the deviated items. The Respondents [*The Petitioner herein*] had never disputed the rates and therefore, the department is deemed to have accepted the rates demanded by the claimant from the time to time. Thus, claim 2 - allowed.
3.	Claim No. 3: Rs. 15,21,994/- on account of escalation/ damages suffered during prolongation of the contract beyond stipulated date of completion	The Claimant demanded 20% increase over and above tendered rates *vide* letter dated 06.01.2003. The Claimant has been able to prove the delay on the part of the Respondent [*The Petitioner herein*] in the completion of work. Thus, claim 3 - allowed.
4.	Claim No. 4: Rs. 1,52,400/0 on account of establishment/ overheard charges for the extended period	Claim rejected.
5.	Claim No.5: Rs. 15,000/- on account of refund of withheld amount lying in the form of FDR	Allowed, keeping in view of the findings concerning claims 1 to 3.
6.	Claim No. 6: Interest @ 18%	Awarded 12%
7.	Claim No. 7: Cost	Rs. 50,000/ - awarded.

5. Essentially, the findings in respect of Claims Nos. 1 to 3 constitute the principal determinations in the Impugned Award, whereas Claims Nos. 5 to 6 are largely consequential in nature and flow from the adjudication of Claims Nos. 1 to 3. As noted earlier, Claim No. 4 was rejected by the learned Arbitrator.

6. Being aggrieved by the findings returned in respect of these claims, primarily Claims Nos. 1 to 3, the Petitioner has instituted the present Petition before this Court.

SUBMISSIONS OF THE PARTIES:

7. While raising contentions in respect of Claims Nos. 1 to 3, learned counsel appearing for the Petitioner contended that the findings returned by the learned Arbitrator are liable to be set aside as being contrary to the public policy of India within the meaning of Section 34(2)(b)(ii) of the A&C Act.

8. In relation to these claims, both parties advanced their respective submissions before this Court. For the sake of clarity and convenience, the claim-wise submissions made on behalf of the parties are recorded hereinafter:

A. CLAIM 1

(a). The Petitioner herein would challenge the finding of the learned Arbitrator wherein the entire amount so claimed by the Respondent was awarded.

(b). Learned counsel would state that the learned Arbitrator has failed to take into consideration Clause 12.1.2, wherein it is stated that the rate of altered, additional or substituted item of work cannot be determined in the manner specified in the

Agreement, then such item of works will have to be carried out at the rate entered in Schedule of Rates mentioned in the Schedule F, plus/minus the percentage by which the tendered amount of the works actually awarded is higher or lower than the corresponding estimated amount of the works actually awarded.

(c). He would further argue that the learned Arbitrator has failed to take into consideration that the rate analysis as submitted by the Respondent herein was refuted by the Petitioner.

(d). He would also submit that the learned Arbitrator failed to appreciate that the Respondent failed to place on record any document/evidence to substantiate the rate analysis submitted by it.

(e). ***Per Contra,*** learned counsel for the Respondent would support the findings returned by the learned Arbitrator and submit that the selective reliance placed by the learned counsel for the Petitioner on Clause 12 is misconceived. It would be contended that the learned Arbitrator had duly considered all the material placed on record by the Petitioner, including the relevant contractual arrangements as well as the admissions made by the officials of the Petitioner during the course of the arbitral proceedings, before arriving at the impugned findings.

B. CLAIM 2

(a). Learned counsel for the Petitioner would assail the finding of the learned Arbitrator in the present claim on the ground that the same has been allowed without giving any reasoning.

(b). He would also state that the Respondent herein had accepted the amounts released by the Petitioner, without any challenge to the same.

(c). He would also submit that the learned Arbitrator has erred in not taking into consideration that for all items beyond the deviation limit, payment had been paid, and since the Respondent had accepted the payment, the claim as per the market rates cannot be permissible.

(d). Learned counsel for the Petitioner would also contend that the modification permitted through the correction/corrigendum award dated 15.12.2008, which pertained to Claim No. 2, was in violation of Section 33 of the A&C Act. It would be submitted that the said modification travelled beyond the time prescribed under the statutory framework and, therefore, exceeded the bounds prescribed under Section 33 of the A&C Act.

(e). ***Per Contra,*** learned counsel for the Respondent would rely upon the various letters addressed from time to time to the Petitioner, as well as the relevant contractual arrangements, to contend that the learned Arbitrator was justified in awarding the amount in favour of the Respondent.

(f). It would further be submitted that until the completion of the work and the preparation of the final bill, the Engineer-in-Charge of the Petitioner had not taken any definitive decision regarding the applicable rates and had merely issued evasive or non-committal responses. In these circumstances, the market rates claimed by the Respondent were deemed to have been

accepted, and the learned Arbitrator was therefore correct in granting the claim on that basis.

C. CLAIM 3

(a). Learned counsel for the Petitioner would submit that the primary ground of challenge to the finding of the learned Arbitrator in the present claim is that the Respondent had given an undertaking, being Annexure R-11 forming part of the Statement of Defence, that no damages would be claimed in furtherance of the same.

(b). He would contend that upon the acceptance of the payment by the Respondent and giving such an undertaking that no claims will be raised by the Respondent, a challenge or claim to this effect thereafter cannot be raised.

(c). ***Per Contra,*** learned counsel for the Respondent would draw the attention of this Court to the letter dated 26.05.2005 issued by the Respondent to the Petitioner, which was sent well prior to the release of any payment by the Petitioner, which was made only on 30.11.2005.

(d). It would be submitted that through the said communication, the Respondent had expressly withdrawn the aforesaid undertaking, contending that the same had been furnished under duress.

(e). Learned counsel for the Respondent would further rely on the Hinderance Register as prepared by the Petitioner, which formed part of the record before the learned Arbitrator, to show that the Petitioner herein admitted to the delay on its part.

ANALYSIS:

9. This Court has heard the learned counsel appearing for the parties and, with their able assistance, perused the paperbook and other materials placed on record.

10. 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.

11. 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.***[4], while dealing with the grounds, *inter-alia*, of conflict with the public policy of India, the ground which has primarily been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

> *"**Relevant legal principles governing a challenge to an arbitral award***
> **30.** Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) 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.

[4] (2025) 2 SCC 417

Public policy

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

*****

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

*****

37. What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.

*****

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

illustratively referred to three fundamental juristic principles, namely:

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

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

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

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

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

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

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

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

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

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

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

The 2015 Amendment in Sections 34 and 48

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

*****

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

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted/added Explanations would apply [***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.

*****

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

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

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

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

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

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

*****

Patent illegality

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

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

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

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

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

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

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

68. In ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the

1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to "public policy" or "public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality [See ***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.

*****

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)

12. A careful perusal of the Impugned Award demonstrates that the learned Arbitrator has duly considered the relevant material, facts, and circumstances placed on record while adjudicating upon the claims raised by the Respondent herein. In particular, the findings recorded by the learned Arbitrator in respect of those claims of the Impugned Award, against which the learned counsel for the Petitioner has specifically raised objections before this Court, are set out as follows:

"Claim No. 1

****

The rates claimed by the Claimant were refuted by the respondent. The respondent did not fix and convey any other rates. As per the respondent's own case, the rates of the extra/substituted items are yet to be sanctioned by the competent authority. During arguments, the counsel for the respondent conceded with the consent and in the presence of the officers of the respondent, that till date no other rates have been sanctioned by the competent authority. Mr. Sharma had filed an extract from G.T. Gajaria's Book on page 419

"....under the variation clause in..... it is only the engineer-in-charge or the Divisional Engineer who is mentioned as the authority to determine or settle the rates and not any other officer of competent authority. the rates fixed and sanctioned by the s-called 'competent authority' will not be binding upon the contractor as they will have no sanctity according to the variation clause in the contract. accordingly and a clear provision about the finality of the rates sanctioned by the 'competent authority' should be made"

Considering all the facts, I am therefore, of the opinion and hold that the rates submitted by the claimant for extra and substituted items based on the market rates have to be accepted. Even after four years of completion of work, no other rates were sanctioned by the competent authority of the respondent. The respondent without any basis rejected the claim and delayed the payments to the claimant of their justifiable dues. I, therefore, award a sum of Rs. 3,71,466/- in favour of the Claimant and against the respondent under this claim.

Claim No. 2

****

After perusal of the pleadings and documents on record it seems that the claimant have been consistently writing to the respondent for payment at the market rate for the deviated items. Out of the many letters exchanged by the parties, I am referring to one particular letter to reach my conclusion. The claimant in the letter dated 10.01.2006 (Ex. C-43] addressed to Chief Engineer, CPWD has clearly stated that the respondent department required them to executed various extra and substitute items for which they had demanded the payments at market rate duly supported by rate analysis and quotations. That the respondent has never disputed the rates and therefore, the department is deemed to have accepted the rates demanded by the claimant from time to time.

In the said letter, it was alleged by the Claimant that despite this while making payment in the final bill, the extra and substituted items have been paid to the Claimant in a provisional manner as per the rates given in the bill of quantities and not market rates as recorded in terms of the clause/proviso at page 141 of the agreement under the head Special Conditions. That against the execution of work of extra and substituted items of the value of Rs. *7.17,954/-*, the respondent had made payment of Rs. *3,46,488/-*. Therefore, the Claimant was claiming the balance sum of Rs. 3,71,466/-

In the said letter the claimant had also claimed a sum of Rs. 15,94,167/- It has been stated that beyond the stipulated date of completion the claimant executed the work of the value of Rs. *97,13,1451-* and the value of work included the stipulated materials of the value of Rs. 17,42,312/-. So after deducting this value the escalation is payable on the amount of Rs. *78,70,8331-* at 20%. It may also be stated that had clause 10 CC been there, have been paid to the claimant whereas the claimant are demanding the payment of Rs. 15,94,167 /- on the work executed beyond the stipulated date of completion less the value of stipulated materials

supplied by the department. The claimant thus requested for payment within three weeks with interest.

A perusal of the records shows that in the every letter written by the Claimant, the claimant has prayed for payment, but the respondent had always been evasive. The claimant had written letter dated 10.10.2002 (C-13) to the respondent for been conveyed the decision for the deviated quantities and finalization of their rates as per the terms of the agreement i.e. at market rate. The respondent remains silent without taking and conveying any decision to the Claimant.

I have perused the provisions of the agreement at page 141 provides for payment of extra/substitute and deviated items at market rate. A portion of it is extracted below for ready reference.

> "The rate of extra items till now was being derived as per Clause 12 of the agreement (general conditions of contract, 2001). Hence forth the payment of extra item and deviation item beyond the permissible limit as given in the agreement will be worked out at market rates prevailing at the time of Commencement of execution of these items"

The claimant has submitted the rate analysis as per Annexure-BB to confront the Annexure-B submitted by the respondent. No forceful reasons have been given by the respondent to negate the claim of the Claimant. I have no hesitation in accepting the claim. I am therefore, of the opinion and hold that the claimant is entitled to the payment Rs. 8.48.811- as claimed under this head.

Claim No. 3

****

A perusal on the pleadings, documents on record and the judgments cited and the oral and written submissions submitted by the parties, I am of the opinion that the claimant has been able to prove the delay on the part of the respondent in completion of the work. The contents of the hindrance register submitted by the respondent confirm the facts that the respondent took there own sweat time to complete the various tasks which were attributable to them. The respondent failed to fulfill their contractual obligations under the contract. This is evident from hindrance register and also from the fact that the extension of time granted to the claimant by the respondent was without levy of any compensation. The Claimant has explained why and how they were made to give undertaking that they will not claim damages on any account of delay (Ref. R-11). That they had subsequently withdrawn and explained how the said undertaking was written.

The Claimant has calculated the escalation on the basis of cost indices as circulated b CPWD from time to time after the stipulated date of completion. Accordingly to the Claimant, their loss is assessed on the basis of the difference between the cost indices at the time of submission of tender and after stipulated date of completion on the value of work of Rs. 93,52,283/- less the value of stipulated material supplied by the respondent for execution of this value of work. The Claimant cited the following judgments:

i. Metro Electirc Vs. DDA [AIR 1980 Delhi 266J
ii. Rawala Construction V. Vs. UOI [1982 RLR 20]
iii. Ircon International Ltd. Vs. Shri Krishna Trading Co. [2007 X AD Delhi 309]
iv. Mecon Ltd. Vs. Pioneer Fabrications (P) Ltd. [2007 (4) ALR 323 (Delhi)
v. Utam Singh Duggarl Vs. UOI [1988 (2) Arb. L.R. 225
vi. M/s. Salwan Construction Vs. UOI [AIL 1977) II DELHI 748
vii. P.M. Paul Vs. UOI [AIR 1989 SC 1034]

The judgment in the matter of General Manager, Northern Railways Vs. Sarvesh Chopra 2002 (1) Arb. L.R. 506 cited by the respondent's counsel is clearly distinguishable and not applicable to the facts of the present case. I am, therefore, the opinion that the claimant is entitled to the payment Rs. 15,21,994/- as claimed under this head."

13. 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*).

14. 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.

15. A perusal of the present Petition and arguments made by the learned 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.

16. As regards Claim No. 1, a perusal of the Impugned Award demonstrates that the learned Arbitrator has carefully examined the pleadings, documents, and the relevant provisions governing the dispute. The reasoning adopted by the learned Arbitrator clearly reflects that the conclusions arrived at are rooted in the terms of the Agreement and the material placed on record, and do not travel beyond the jurisdiction vested in the learned Arbitrator under the contract.

17. A closer examination of the contractual provisions would also show that in circumstances where the Petitioner fails to specify or determine the applicable rates for extra or substituted items, the rates claimed by the Respondent herein, if supported by material, may justifiably be accepted. In the present case, the learned Arbitrator has specifically recorded that although the Petitioner disputed the rates claimed by the Respondent for extra and substituted items, it failed to

determine, fix, or communicate any alternative rates.

18. In fact, it was the Petitioner's own case that the rates for such items were yet to be sanctioned by the competent authority. During the course of the arbitral proceedings, it was candidly admitted by the officials of the Petitioner that even after the lapse of nearly four years from the completion of the work, no such rates had been sanctioned. This admission has been specifically noted and recorded in the Impugned Award.

19. Despite repeated communications and assertions by the Respondent seeking finalization of the rates for extra and substituted items, no decision was taken by the concerned authority for several years. In such circumstances, the learned Arbitrator found that the rejection of the Respondent's claimed rates by the Petitioner lacked any contractual or factual basis. Since no valid or duly sanctioned rates were determined by the Petitioner, even long after completion of the work, the market rates submitted by the Respondent, which were supported by the material on record, were reasonably accepted by the learned Arbitrator.

20. This Court finds that the aforesaid conclusions of the learned Arbitrator are based on a proper appreciation of the contractual provisions and the evidence on record. The Petitioner has failed to demonstrate any error or violation of the limited grounds available under Section 34 of the A&C Act that would warrant interference with the findings so returned. The view taken by the learned Arbitrator is clearly a plausible and reasoned view arising from the material on record. Accordingly, the challenge raised by the Petitioner to the findings of the learned Arbitrator in respect of Claim No. 1 is devoid

of merit and is therefore rejected, as this Court finds no infirmity in the said findings.

21. With respect to the challenge raised by the Petitioner to the findings pertaining to Claim No. 2, a careful perusal of the Impugned Award reveals that the learned Arbitrator has allowed the said claim on the basis of a proper appreciation of the material placed on record. The learned Arbitrator took into account the contemporaneous correspondence issued by the Respondent, wherein the Respondent had specifically claimed payment at prevailing market rates for the extra and substituted items and had supported the same with quotations and detailed rate analysis.

22. Significantly, the rates so claimed were never disputed or effectively challenged by the competent authority of the Petitioner at the relevant time through any contemporaneous communication. In these circumstances, the conclusion arrived at by the learned Arbitrator cannot be said to suffer from perversity or arbitrariness. This Court, therefore, finds no infirmity either in the reasoning adopted or in the manner in which the learned Arbitrator has reached the impugned finding.

23. From a perusal of the findings recorded by the learned Arbitrator in respect of this claim, it is evident that the Respondent herein had consistently addressed letters to the Petitioner seeking payment for extra, substituted, and deviated items at prevailing market rates. In particular, reliance was placed on the Respondent's letter dated 10.01.2006 addressed to the Chief Engineer, wherein it was asserted that although the Respondent herein had executed various extra and substituted items and had supported its demand with rate

analysis and quotations, the Petitioner had never disputed the claimed rates. However, while preparing the final bill, the Petitioner made only payments as per the rates contained in the Bill of Quantities rather than the applicable market rates, resulting in a substantial balance claimed by the Respondent herein.

24. The learned Arbitrator further observed that the record revealed a consistent pattern wherein the Respondent herein repeatedly requested the Petitioner to finalize and communicate the rates for deviated quantities in accordance with the terms of the agreement. Notwithstanding such requests, including the letter dated 10.10.2002, the Petitioner failed to take any definitive decision and continued to remain evasive. The contractual provisions, particularly those contained in the Special Conditions of the Agreement, clearly provided that payment for extra, substituted, and deviated items beyond the permissible limits was to be determined on the basis of the prevailing market rates at the time of execution.

25. In these circumstances, the learned Arbitrator concluded that the Respondent herein had furnished detailed rate analysis in support of its claim, whereas the Petitioner failed to provide any cogent or persuasive material to rebut the same. In the absence of any substantive challenge to the rates claimed and considering the contractual framework mandating payment at market rates, the Arbitrator found merit in the Respondent's claim and held that the Respondent was entitled to payment under the said head.

26. From the aforesaid findings, it is evident that the entire analysis undertaken by the learned Arbitrator is based upon the documentary evidence on record and the contemporaneous communications

exchanged between the parties. In proceedings under Section 34 of the A&C Act, the scope of judicial interference is extremely limited and this Court is not permitted to re-appreciate evidence or re-examine factual determinations rendered by the arbitral tribunal. The Petitioner has failed to demonstrate how the said findings suffer from perversity or how they would amount to a violation of the public policy of India within the meaning of Section 34 of the A&C Act. Consequently, the challenge raised by the Petitioner on the merits of Claim No. 2 cannot be sustained.

27. Insofar as the argument of the Petitioner with respect to the correction award dated 15.12.2008 is concerned, whereby a clerical change was made in the award pertaining to Claim No. 2, this Court finds no merit in the said contention. The issue stands squarely covered by the decision of the Division Bench of this Court in ***Human Behaviour and Allied Sciences (IHBAS) vs. MI2C Securities and Facilities Pvt Ltd.***[5], wherein the scope and application of Section 33 of the A&C Act relating to correction of clerical, typographical, or computational errors has been explained. The relevant observations of the Division Bench in the said judgement are reproduced hereinbelow:

> "**9.** From a perusal of the pleadings on record, it cannot be disputed that the respondent had indeed filed its application on 02.04.2024 under Section 33(1)(a) of the Act, which is beyond a period of 30 days from the date of the award dated 26.02.2024. The arbitral tribunal, relying upon the provisions of Section 33(1)(a) of the Act, dismissed the said application on 13.05.2024. Though the application was indeed filed beyond a period of 30 days as prescribed in the said section, what we have to consider is whether such an application would be completely barred in respect of the relief sought by the respondent. In that context, it would be apposite to extract Section 33(1)(a) of the Act hereunder:
>
> *"**33. Correction and interpretation of award; additional***

[5] 2025:DHC:9818:DB

> ***award-*** *(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties-*
> *(a) A party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors, or any other errors of a similar nature occurring in the award;"*
>
> (emphasis supplied)

10. Having regard to the submissions made by learned counsel for the appellant, and the narration of facts encapsulated by the learned Single Judge in para 11 of the impugned order, we need to appreciate this conundrum by considering whether the passing of the award in the wrong name/title of the respondent would amount to a typographical error in the award at all. In our considered opinion, the said error occurred at the end of the arbitral tribunal, and as such could not be deemed to be an error in the award in the sense requiring correction by any of the parties. In fact, according to us, correction of the said error would fall within the Latin maxim "actus curiae neminem gravabit" which means an act of a Court can prejudice no one. Undoubtedly, right from the time of appointment of an arbitrator by this Court, as well as filing of the statement of the claim, and other pleadings up till the culmination of the arbitral proceedings, were in the name of M/s. MI2C Security and Facilities Pvt. Ltd. Additionally, learned counsel for the appellant fairly admitted that the contract, too, was awarded in the name of M/s. MI2C Security and Facilities Pvt. Ltd. It is very likely that all the payments before such disputes arose also must have been tendered into the account of M/s. MI2C Security and Facilities Pvt. Ltd.

11. In that view of the matter, in case while passing the final award, the arbitral tribunal committed a mistake or a typographical error in entering the correct name of the respondent, the said error would clearly fall within the aforesaid maxim. Applied on all fours, it is manifest that the respondent cannot be held responsible for the error committed by the arbitral tribunal. Thus, the argument of learned counsel for the appellant, to our mind, is hypertechnical and is unmerited. Only to buttress and substantiate as to how Courts have interpreted and applied the aforesaid maxim, we refer to the judgment of the Hon'ble Supreme Court in ***Neeraj Kumar Sainy & Ors. Vs. State of Uttar Pradesh & Ors., (2017) 14 SCC 135*** and in particular to para 26, which is extracted hereunder:

> *"**26.** The seminal question that is required to be posed is* whether *the maxim actus curiae neminem gravabit would apply to such a case. In Jang Singh v. Brij Lal [Jang Singh v. Brij Lal, AIR 1966 SC 1631], a three-Judge Bench noted that there was error on the part of the court and the officers of the court had contributed to the said error.*

Appreciating the fact situation, the Court held: (AIR p. 1633, para 6)

"6. ... It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of courts should harm a litigant and it is the bounden duty of courts to see that if a person is harmed by a mistake of the court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: Actus curiae neminem gravabit."

[emphasis supplied]

12. Predicated on the analysis, and the observations made above, we are of the considered opinion that the emphasis of the learned counsel for the appellant on the 30-day time period prescribed in Section 33(1)(a) of the Act would not strictu senso bar the respondent from filing and maintaining an application for correction in the factual scenario noted by us. This is for the reason that the error appears to be clearly on the part of the arbitral tribunal and not attributable to any of the parties. It would be onerous and absurd to deprive a party of a lawful decree, and an entitlement to the benefits contained therein merely for the reason that the court or the arbitral tribunal itself has committed an error of such a nature. Even otherwise, the corrections sought have no nexus or correlation to the merits of the case. We are not laying down a proposition that in all cases the bar or limitation prescribed in Section 33(1) of the Act is to be relaxed or diluted, but that it may be only in exceptional circumstances like the one in the present case, that the rigors may be relaxed. Clearly, it would depend on a case to case basis.

13. Mr. Sannu, learned counsel for the appellant also argues that the petition under Section 34 of the Act filed by the respondent challenging the order of the tribunal on the application under Section 33(1)(a) of the Act would not be maintainable, especially in the absence of any challenge to the award dated 26.02.2024 itself. We fail to see how this argument is sustainable. Clearly, any order passed under Section 33 of the Act is deemed to be an additional award, and if so, the invocation of Section 34 of the Act

> to challenge such additional award or refusal thereto would surely fall within the ambit of challenge under Section 34 of the Act.
> **14.** In view of the above, apart from the opinion rendered by the learned Single Judge with which we concur, for the additional reasons rendered above, we find no merit in the present appeal. In fact, we are of the considered opinion that the present appeal is misconceived and vexatious and could have been easily avoided by an instrumentality of the State like the appellant. After all, the appellant never filed any petition challenging the award dated 26.02.2024 on merits. In other words, no party can be deprived of the benefits of an award passed by an arbitral tribunal, except in accordance with law."
>
> ***(emphasis supplied)***

28. This Court is of the considered opinion that the principle governing Section 33 of the A&C Act, as elucidated in the aforesaid judgment, would apply with equal force in the present case. The Respondent cannot be deprived of the benefit flowing from the Award merely on account of a minor clerical omission occurring in the concluding line of the Award relating to Claim No. 2. It is pertinent to note that under the head of "*Claim No. 2*" in the Impugned Award, the learned Arbitrator had clearly recorded the amount actually claimed by the Respondent. However, while recording the operative conclusion, the learned Arbitrator observed that *"I am therefore, of the opinion and hold that the claimant is entitled to the payment Rs. 8,48,81/- as claimed under this head."*

29. It is also significant that immediately following the numerical figure, the expression *"as claimed under this head"* has been expressly recorded, which clearly indicates that the amount awarded corresponds to the amount claimed by the Respondent under the said head and not otherwise. Thus, the context in which the operative line was recorded makes it evident that the figure mentioned therein contained a minor typographical or clerical omission and did not

reflect any alteration of the claim or the reasoning of the learned Arbitrator. In such circumstances, the subsequent correction only served to rectify the inadvertent clerical error in the numerical figure and did not, in any manner, affect the substance, reasoning, or merits of the Award.

30. The correction made is therefore purely ministerial in nature, inconsequential to the adjudicatory reasoning of the Award, and squarely falls within the scope of permissible corrections contemplated under Section 33 of the A&C Act, particularly in light of the law laid down in ***Human Behaviour and Allied Sciences*** *(supra)*. Consequently, this Court finds no material error or illegality in the learned Arbitrator permitting rectification of the said clerical mistake, and the objection raised by the Petitioner in this regard is therefore liable to be rejected.

31. Adverting now to Claim No. 3, the principal challenge raised by the learned counsel for the Petitioner does not withstand scrutiny in light of the material placed on record. The primary ground urged by the Petitioner to assail the findings of the learned Arbitrator is that the Respondent had furnished an undertaking, reflected in *Annexure R-11 forming part of the Statement of Defence*, to the effect that no damages would be claimed.

32. On the basis of the said undertaking, it was contended by the Petitioner that once the Respondent had accepted payment and had given an assurance that no further claims would be raised, it was not open for the Respondent thereafter to raise a claim for damages. According to the Petitioner, the undertaking operated as a bar against the Respondent seeking any additional amounts under this head.

33. However, the aforesaid contention stands completely negated upon a perusal of the contemporaneous record, particularly the letter dated 26.05.2005 addressed by the Respondent to the Petitioner. The said letter assumes considerable significance as it was issued shortly after the alleged undertaking relied upon by the Petitioner. A reading of the said communication makes it evident that the Respondent had expressly withdrawn or clarified the earlier undertaking and had asserted that the same had been furnished under circumstances which did not reflect the true intent of the Respondent. Thus, the very foundation of the Petitioner's argument, that the Respondent had unequivocally waived its right to claim damages, stands seriously undermined by the subsequent communication placed on record.

34. This Court also finds merit in the submission advanced by the learned counsel for the Respondent that the letter dated 26.05.2005 was issued well prior to the release of any payment by the Petitioner. The record indicates that the payment relied upon by the Petitioner was in fact released much later, i.e., on 30.11.2005. Consequently, the alleged undertaking contained in *Annexure R-11 forming part of the Statement of Defence*, which is sought to be relied upon by the Petitioner to contend that the Respondent had waived its claims, was rendered inconsequential.

35. In other words, when the payment was eventually released by the Petitioner, the Respondent had already placed on record its clear position through the letter dated 26.05.2005. In these circumstances, the Petitioner cannot legitimately rely upon the earlier undertaking to defeat the Respondent's claim, and the said argument is therefore liable to be rejected.

36. Insofar as the issue of delay is concerned, the same has been duly examined by the learned Arbitrator in the Impugned Award on the basis of the material placed before the arbitral tribunal. The findings recorded by the learned Arbitrator are supported by the documentary record, including the Hindrance Register maintained by the Petitioner itself, which formed part of the evidence before the learned Arbitrator.

37. The said record reflects that the delays in execution of the work were attributable to the Petitioner. In view of the aforesaid material and the reasoning recorded in the Impugned Award, and in the absence of any other substantive ground of challenge raised by the Petitioner in respect of Claim No. 3, this Court finds no infirmity in the findings returned by the learned Arbitrator. Accordingly, the limited challenge raised by the Petitioner in respect of this claim does not merit interference under Section 34 of the A&C Act.

CONCLUSION:

38. In view of the foregoing discussion and the reasons recorded hereinabove, this Court finds no ground to interfere with the Impugned Award passed by the learned Arbitrator insofar as it pertains to Claims Nos. 1 to 3. Consequently, Claims Nos. 5 to 6, which are purely consequential and flow from the findings returned in respect of Claims Nos. 1 to 3, also do not warrant any interference. Claim 7 relates to the Costs and this Court is of the opinion that the same appears to be fairly reasonable and no interference is warranted.

39. The Petitioner has failed to demonstrate that the Impugned Award suffers from any infirmity falling within the limited and well-

defined grounds for judicial interference under Section 34 of the A&C Act. Accordingly, the present Petition stands dismissed.

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

41. No Order as to Costs.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 17, 2026/sm/va