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

% ***Judgment reserved on: 16.03.2026***
Judgment pronounced on: 21.04.2026

\+ O.M.P. (COMM) 531/2016

DELHI TOURISM & TRANSPORTATION DEVELOPMENT CORPORATION .....Petitioner

Through: Mr. Prashanto Chandra Sen, Sr. Adv. with Mr. Sriharsha Peechara, Mr. Soumit Ganguli, Ms. Rajlakshmi Singh, Ms. Vanisha Mehta, Ms. Ravicha Sharma, Ms. Shruti Agarwal & Mr. Akash Sharma, Advs.

versus

M/S GAMMON INDIA LTD .....Respondent

Through: Mr. Ashish Dholakia, Sr Adv. with Mr. Saurabh Suman Sinha, Mr. Gautam Prabhakar, Mr. Yash Bhatnagar & Ms. Ananya Narain, Advs.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], seeks to set aside the **Majority Arbitral Award dated 12.12.2013**[2], passed in the Arbitral proceeding undertaken by a three-member Arbitral Tribunal.

[1] Act
[2] Impugned Award

2. The said Arbitral Tribunal comprised of Er. Basab Majumdar, learned presiding Arbitrator, along with Er. K.N. Agrawal and Er. K.K. Varma, learned Arbitrators, in the Arbitral proceeding titled "*M/s Gammon India Limited and Delhi Tourism and Transport Development Corporation*".

3. The Impugned Award has been rendered by a majority of the **Arbitral Tribunal comprising Sh. Er. Basab Majumdar and Sh. Er. K.N. Agrawal**[3]. The third member of the Arbitral Tribunal, Sh. Er. K.K. Varma has rendered a separate dissenting opinion.

4. The controversy before the learned Arbitral Tribunal centred primarily on the interpretation of contractual clauses governing the parties, along with ancillary monetary claims, including claims for interest, which were consequential to such interpretation.

BRIEF FACTS:

5. The **Delhi Tourism and Transportation Development Corporation ["DTTDC"]**[4], an Undertaking of the Government of the National Capital Territory of Delhi, issued a **Notice inviting Tender**[5] for the **construction of bridge and its approaches, over the Yamuna River downstream of existing Bridge at Wazirabad, Delhi**[6].

6. **M/s Gammon India Limited**[7], a civil construction company, submitted its bid, in pursuance of the said NIT, on 10.03.2008.

[3] Learned Majority Tribunal
[4] Petitioner
[5] NIT
[6] Project
[7] Respondent

7. The Respondent emerged as the successful bidder and was accordingly issued an Acceptance Letter for the Tender *vide* **Letter No. DTTDC/23(202)/Engg./WB/2008/1887 dated 27.05.2008**[8], pursuant to which **Agreement dated 19.06.2008, bearing No. 03/DTTDC/Engg./WB/2008-09**[9], came to be executed between the Petitioner and the Respondent.

8. The Contract comprised four volumes, including Conditions of the Contract contained therein, particularly, Section D, **Chapter 2 of Volume 1 of the Tender Documents ["General Conditions of the Contract"]**[10], which sets out the definitional framework. Definition No. 1 categorically enumerates the various documents forming part of the contract, *inter alia*, the documents forming part of the Tender and the Acceptance Letter.

9. It is the case of the Petitioner that the said project was structured into distinct components, and each component was further divided into three milestones, each component having a fixed stipulated date of completion, with overall completion of the project being fixed at 42 months from the date of start.

10. The said timelines are reflected in Clause 5 of the GCC, read along with Schedule 'F' to the GCC, which prescribes milestone-based completion periods for the various components of the project. The three components of the project, as set out, are as follows:

I. Straight flyover along the outer ring road on the Western side.
   a. Foundation-12 Months
   b. Sub-Structure- 15 Months

[8] Acceptance Letter
[9] Contract
[10] GCC

c. Super Structure- 24 Months

II. Flyover at Khajuri Khas intersection on the Eastern side.

a. Foundation-15 Months

b. Sub-Structure- 18 Months

c. Super Structure- 30 Months

III. Remaining Grade Separators.

a. Foundation - 24 Months

b. Sub-Structure - 27 Months

c. Super Structure - 42 Months

IV. Main Embankment. - The complete earthwork, including subgrade, shall be completed within 24 months.

11. It is stated that the Petitioner engaged in discussions with the Respondent with regard to the milestones as provided for in the Contract and as stated hereinabove.

12. Pursuant to discussions, the Respondent *vide* a Letter dated 19.03.2008, assured the Petitioner that the milestones for each Super-Structure as stated in Clause 5 of the GCC will be adhered to, whereas the intermediate milestones of Foundation and Sub-Structure will be modified.

13. The Contract also contains Clause 10CC, which provides for escalation on account of an increase or decrease in prices of materials and wages. The said clause stipulates that escalation is payable for work executed during the "*stipulated period of completion*", including any justified extension thereof, subject to the condition that for work executed during the extended period, the escalation would be

computed at the rates prevailing at the stipulated date of completion or the actual period of execution, whichever is lower.

14. Disputes arose between the parties with respect to the interpretation of the expression "*stipulated period of completion*" under Clause 10CC, particularly as to whether the same was to be construed with reference to the project as a whole or component-wise.

15. In order to adjudicate upon the said dispute, the Respondent *vide* Legal Notice dated 21.02.2013 invoked the Arbitration Clause as contained in Clause 25 of the GCC.

16. The Chief Engineer, DTTDC, by virtue of the powers conferred on him under Clause 25 of the said Agreement, appointed the aforementioned Arbitral Tribunal by Letter dated 04.04.2013, to adjudicate the claims/disputes between the parties.

17. The primary claim before the learned Arbitral Tribunal was Claim No. 1 of the Statement of Claims *i.e.*, Escalation payment not being paid as per Clause 10CC of the Agreement for the work done during original contract period due to difference in interpretation of Clause 10CC by DTTDC and GIL, while the other claims were ancillary claims which hinged upon the determination of the claim No. 1 itself *i.e.*, the *pendente lite* interest, future interest and the costs of Arbitration.

18. The learned Arbitral Tribunal rendered a 2:1 award, with the majority Award being in favour of the Respondent, and the dissenting opinion being in favour of the Petitioner.

19. The Majority awarded the Respondent an amount of Rs. 1,22,80,984/- along with *pendente lite* interest @10% per annum, calculated as simple interest, from 21.02.2013 till the date of the

award. In addition, the learned Arbitral Tribunal also awarded simple interest @10% per annum from the date of award till the date of payment in respect of the principal amount of the award, with the provision that no future interest would be payable if the awarded amounts are paid within three months after the date of award.

20. The Petitioner, aggrieved by the said Majority award, *i.e.*, the Impugned Award, has preferred the present Petition to set aside the Award on the grounds, *inter alia*, on the ground that the Award is contrary to the terms of the Contract and suffers from patent illegality.

CONTENTIONS ON BEHALF OF THE PETITIONER:

21. Learned senior counsel appearing on behalf of the Petitioner would, at the outset, submit that the Impugned Award is vitiated by patent illegality and perversity, inasmuch as the learned Majority Tribunal has adopted an interpretation of the contractual provisions which is contrary to the express terms of the Contract, ignores the contractual framework in its entirety, and leads to manifestly unreasonable and unworkable consequences.

22. Learned senior counsel for the Petitioner would submit that the Impugned Award, being rendered prior to the 2015 Amendment, is liable to be tested within the contours of 'public policy of India' as expansively interpreted by judicial precedents.

Erroneous Interpretation of Clause 10CC

23. Learned senior counsel would submit that the present dispute lies in a narrow compass and turns entirely upon the interpretation of Clause 10CC of the GCC, specifically the expression *"stipulated period of completion"*.

24. Learned senior counsel would submit that the learned majority Tribunal has fundamentally erred in construing the said expression to mean the overall project completion period of 42 months, instead of interpreting it component-wise, as envisaged under the Contract.

25. Learned senior counsel would submit that the interpretation adopted by the learned Majority Tribunal is not a plausible view, but one that is contrary to the contractual scheme and settled principles of contractual interpretation. It would be urged that Clause 10CC, when read harmoniously with the other provisions of the Contract, admits of only one reasonable interpretation, *namely*, that the "*stipulated period of completion"* must be understood with reference to each component of the project, and not the project as a whole.

Contractual Scheme envisages a Component-wise Structure

26. In order to substantiate the aforesaid interpretation of Clause 10CC, learned senior counsel for the Petitioner would draw the attention of this Court to various Clauses of the Contract and the Tender Documents to contend that the project was consciously structured into distinct components, each operating independently, and each envisaging a separate stipulated period of completion.

27. Learned senior counsel for the Petitioner would first draw the attention of this Court to Schedule F to the GCC. It would be contended that the Table, as set out in Clause 5 of Schedule F of the GCC, clearly delineates the project into multiple components and prescribes distinct timelines for completion of each component and its sub-stages. The relevant portion of the said table is reproduced herein under for ready reference:

	Milestones					
	Foundation		**Sub-Structure**		**Super Structure**	
Components of Work	Time Allowed in Months (from date of start)	Amount INR in Lakhs to be with-held in case of non-achievement of milestone	Time Allowed in Months (from date of start)	Amount INR in Lakhs to be with-held in case of non-achievement of milestone	Time Allowed in Months (from date of start)	Amount INR in Lakhs to be with-held in case of non-achievement of milestone
I. Straight flyover along outer Ring Road on the western side	12	30.00	15	30.00	24	60.00
II.Flyover at Khajuri Khas Intersection on the Eastern side	15	30.00	18	30.00	30	60.00
III.Remaining grade separators	24	50.00	27	50.00	42	100.00
IV.Main Embankment				The complete earth work including subgrade shall be completed within 24 months otherwise Rs.200 lakhs will be withheld.		

28. Further, learned senior counsel for the Petitioner would draw the attention of this Court to Clause 5 of the GCC, to be read with Schedule F, which, according to him, clearly prescribes separate milestones and distinct periods of completion. Learned senior counsel would draw the attention of this Court to a specific portion of Clause 5

to contend that time was the essence of this Contract and that it was not as a singular or indivisible timeline, but as a structured, component-wise obligation. The relevant portion of Clause 5 is reproduced herein under for ready reference:

> "**Clause 5**
> **Time and Extension for delay**
> The time allowed for execution of the works as specified in the Schedule 'F' or the extended time in accordance with these conditions shall be the essence of the Contract. The execution of the works shall commence from such time period as mentioned in Schedule 'F' or from the date of handing over of the site, whichever is later. If the Contractor commits default in commencing the execution of the work as aforesaid, DTTDC shall, without prejudice to any other right or remedy available in law, be at liberty to forfeit the earnest money and performance guarantee absolutely.
> **** "

29. Learned senior counsel for the Petitioner would then rely upon Paragraph No. 4 of the Acceptance letter dated 27.05.2008 to reinforce the contention that the Project was always intended to be completed component-wise in terms of the corresponding period of completion of each component. It would therefore be submitted that component-wise execution was not only contractually envisaged but also expressly communicated between the parties. Further, it would be submitted that the Acceptance Letter is also stated to form part of the Contract. The relevant portion of the Acceptance Letter, relied upon by the Petitioner, is reproduced herein under:

> "
> ***
> **4.** Please note that the time allowed for carrying out the work as entered in the tender is as under
> (a). Twenty Four Months for the main straight flyover along outer ring road on the western side
> (b). Thirty months for flyover at Khajuri Khas intersection on the Eastern side
> (c). Forty Two Months for overall completion

> Time period shall be reckoned from the **22 days** after the date of issue of this Letter."

30. Learned senior counsel for the Petitioner would then draw the attention of this Court to Clause 2 of the GCC, which provides for the compensation to the Petitioner, in the event of delay in completion of work as against the stipulated time period of completion. Learned senior counsel would contend that Clause 2 specifically contemplates delays in respect of *"items or group of items for which a separate period of completion has been specified"*. Learned senior counsel would therefore submit that compensation for delayed work was also stipulated to be calculated component-wise, as per the respective timelines provided in Schedule F.

31. Learned senior counsel for the Petitioner would next draw the attention of this Court to Clause 2A of the GCC, which provides for incentives for early completion. It would be submitted that Clause 2A also recognises independent timelines for each component by granting component-wise incentives. A component was to be considered to be completed early, as per the clause, if the relevant component is ready for traffic movement, before the stipulated timeline provided for completion of the component as per Schedule F. Learned senior counsel would contend that if early completion, and incentives thereto, is assessed component-wise then its natural corollary is that completion after the said time period of each component respectively would be belated completion *i.e.*, in extension period. The said clause is reproduced herein under for ready reference:

> "**Clause 2A**
> **Incentive for early completion**

In case the contractor completes the work ahead of scheduled completion time as indicated in Schedule 'F', a bonus shall be payable to the contractor as indicated below:

(a) Rs. one lakh fifty thousand per day for completing the main straight flyover along the Outer Ring Road on the western side earlier than 24 months from the date of start, subject to a maximum of Rs. 150 lakh.
(b) Rs. one lakh fifty thousand per day for completing the flyover at Khajuri Khas intersection on the eastern side earlier than 30 months from the date of start, subject to a maximum of Rs. 150 lakh.
The bonus, if payable, in case of (a) and (b) above shall be paid after completion of the respective flyover.
(c) Rs. two lakh per day for overall completion of the work earlier than 42 months subject to a maximum of Rs. 500 lakhs.
The amount of bonus, if payable, in case of (c) above shall be paid after completion of the work as mentioned above.

The completion for this clause shall mean that relevant portion of work is ready for traffic movement."

32. Learned senior counsel would thus submit that the contractual framework unmistakably reflects a component-wise structure, and any interpretation of Clause 10CC which ignores this framework renders the Contract internally inconsistent.

Effect of the Interpretation Adopted by the learned Majority Tribunal

33. Learned senior counsel for the Petitioner would submit that Clause 10CC provides for escalation only up to the stipulated period of completion, and for work executed during the 'justified' extended period, such escalation is stated to be capped at the rates prevailing at the stipulated date of completion or the actual period of execution, whichever is lower. The relevant portion of Clause 10CC is reproduced herein under for ready reference:

"**10CC**
Payment due to increase/decrease in prices/wages after receipt of tender for works

If the prices of materials (not being materials supplied or services rendered at fixed prices by the department in accordance with clause 10 and 34 thereof) and/or wages of labour required for execution of the work increase, the contractor shall be compensated for such increase as per provision detailed below and the amount of the contract shall accordingly be varied, subject to the condition that such compensation for escalation in prices and wages shall be available only for the work done during the stipulated period of the contract including the justified period extended under the provisions of Clause 5 of the contract without any action under the clause 2. However, for the work done during the justified period extended as above, the compensation as detailed below will be limited to prices/ wages prevailing at the time of stipulated date of completion or as prevailing for the period under consideration, which ever is less. No such compensation shall be P payable for a work for which the stipulated period of completion is equal to or less then the time as specified in Schedule -F. Such compensation for escalation in the prices of materials and labour when due, shall be worked out based on the following provisions:

i) The base date of working out such escalation shall be the last stipulated date of receipt of tender including extension, if any.

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”

34. Learned senior counsel for the Petitioner would contend that the term ‘*stipulated period of completion*’ must necessarily align with the component-wise timelines prescribed under Schedule F and as communicated between the parties in the Acceptance Letter. Any interpretation treating the entire project as having only a single completion date defeats the operation of Clause 10CC and results in the distortion of the escalation mechanism.

35. Learned senior counsel would submit that the interpretation adopted by the learned Majority Tribunal, therefore, effectively nullifies the component-wise timelines and renders Clauses 2, 5 and Schedule F otiose, which is impermissible in law, thereby rendering the award ‘patently illegal’.

Challenge to the Findings on Interpretation by the learned Majority Tribunal

36. In the aforesaid backdrop, learned senior counsel for the Petitioner would then proceed to draw the attention of this Court to the findings and interpretations adopted by the learned Majority Tribunal. It would be thus contended that the said findings, particularly those relating to the interpretation of '*stipulated period of completion*' and Clause 10CC and allied clauses, are contrary to the express terms of the Contract, disregard the contractual scheme in its entirety, and consequently suffer from patent illegality warranting interference under Section 34 of the Act.

37. Learned senior counsel for the Petitioner would, in this regard, contend that the findings recorded by the learned Majority Tribunal in Paragraphs D to F of the Impugned Award as being legally untenable and internally inconsistent. The said Paragraphs are reproduced herein under for ready reference:

> "**D**. The term 'Contract' as defined in clause 1 of Vol.1 of 4 of contract agreement is that all documents forming the tender and acceptance thereof taken together shall be deemed to form one contract. By this definition, stipulated period of the contract can only mean overall completion of 42 months and stipulated date of completion is 17.12.2011 which is 42 months after the date of commencement of 18.06.2008.
>
> **E**. Secondly, this is a Lump Sum contract with a single Lump Sum Tendered Value for whole of the contract. Contract does not provide for separate tendered values for the components. Schedule of Quantities given in the Annexure-I of the contract gives the quantities for the contract as a whole and there is no break up for the quantities of the components. The contract also provides for stage payments as percentages of lump sum cost in Annexure-III which is thus only applicable on the contract as a whole and not on components. AT has noted that the Annexure-I contains only quantities of main items and not all items of work represented by the lump sum amount. Therefore, for making interim payments within the stages set out in the billing schedule, clause 3.38 of the

Special Conditions of Contract provides that payments can be made on the basis of work assessed by the Engineer-in-charge by considering the quantum of total work involved as per Annexure-I of Vol.4 of the tender documents and the quantum of work actually executed at a particular point of time (within that stage) for such items and a formula prescribed for such assessment is (Y/X)Z. Where X is equal to value of total work involved as per main items in a particular stage of billing schedule worked out by multiplying the total quantity of main items with the rate quoted by the contractor in Annexure 2 of Vol. 4 of the tender document for all such main items in a particular stage of billing schedule. Y is equal to value of work at a point of time as per main items of work within a particular stage of billing schedule ie. quantity of main items executed at a point of time multiplied by the rate as per Annexure 2, for all such items in a particular stage of billing schedule. Z is equal to amount payable as per billing schedule in a particular stage of payment as given in Annexure-III.

F. Obviously, this contract provision for interim payments or Running Account bill payments, as it is generally referred to, is applicable to the contract as a whole and cannot be made applicable for any component. Had it been the intention of the contract to make interim payments component wise, then the contract would have either provided for separate lump sum tendered value for the two components apart from the lump sum value for the work as a whole and would also have specified separate schedule of quantities of the main items for the components or separate percentages for stage payments for the components. In absence of either of the above alternatives, it is clear that the contract does not provide for any means to make interim. payments for the components separately. In accordance with the provisions of clause 10CC, the contractor shall be compensated for any increase in prices of materials and/or wages of labour required for execution of the work and the amount of the contract shall be varied etc. As it is a lump sum contract with single tendered value, amount of contract mentioned as above in the clause may only mean the amount of the whole work and not the amount of any component."

38. Learned senior counsel, in the context of Paragraph D of the Impugned Award, would submit that the learned Majority Tribunal has erred in relying upon the definition of *"Contract"* to conclude that the "*stipulated period of completion*", and the only period for completion, is 42 months for the entire project. It would be contended

that the said definition clause merely provides that all the documents forming part of the tender and its acceptance shall be read together as constituting one composite contract. Such a provision, it would be urged, cannot be elevated to determine the substantive and operative aspects of the Contract, particularly the interpretation of *"stipulated period of completion"* under Clause 10CC.

39. Learned senior counsel would further submit that the learned Majority Tribunal has misconstrued the scope of the definition clause by reading into it a limitation that the Contract admits of only a single stipulated period of completion. It would be contended that the expression *"one contract"* cannot be equated with *"one period of completion"*, particularly when the Contract, read as a whole, expressly contemplates component-wise execution with distinct timelines.

40. While it is not disputed that the overall completion period of 42 months governs the outer limit of the project, learned senior counsel would emphasise that the learned Majority Tribunal has erred in treating the same as the sole and determinative benchmark for all purposes, including the operation of Clause 10CC. Such an interpretation, it would be submitted, disregards the component-wise milestones and timelines expressly provided under the Contract, and thereby renders those provisions otiose.

41. Learned senior counsel would then assail the findings returned in Paragraphs E and F, contending that the learned Majority tribunal has misplaced reliance on the fact that the Contract is a lump sum contract. It would be submitted that the existence of a single lump sum value of the tender does not negate the existence of component-wise

obligations, timelines, or consequences; the same has been established by way of reading of the Clauses 2, 2A, 5 and Schedule F herein before, and therefore the reasoning adopted erroneously conflates valuation with execution structure.

42. Learned senior counsel would contend that the conclusions drawn in Paragraphs E and F are untenable in law, unreasonable and arbitrary, as it is general practice in issuing tenders that the tendered value is provided for the projects as a whole, unaffected by the terms of its implementation. Therefore, it would be submitted that the absence of a separate valuation cannot be escalated to the implication of the absence of component-wise completion.

Challenge to the Findings Based on Unpleaded Submissions

43. Further, learned senior counsel for the Petitioner would contend that the findings recorded in Paragraphs G to J of the Impugned Award are vitiated on account of reliance on submissions which were not part of the Statement of Claims, as filed by the Respondent before the learned Arbitral Tribunal. The Paragraphs G to J of the Impugned Award are reproduced hereinunder for ready reference:

> "**G.** Clause 10CC prescribes the formulae to work out the compensation for escalation for various materials, labour etc. and these formulae take into account the cost of work on which escalation is payable. The cost of work done is again based on the Gross Value of work done in every quarter and as shown in the foregoing, gross value for the work as a whole can only be worked out as per the contract provision and the contract does not afford any method to work out gross value of the components separately. It may thus be safely concluded that the contract does not indicate any intention to work out the escalation amount for the components separately and Clause 10CC provisions are only applicable for the contract as a whole.
> **H.** The Respondent's arguments in this respect is that the Claimant on its own submitted escalation statements for the period beyond the stipulated date of completion of individual components in

which the Claimant worked out the gross value of each component based on the quantities executed separately for each component. Respondent also argued that 20 numbers of escalation statements over 60 months from the date of start have been submitted by the Claimant and paid by the Respondent and the same have been accepted by both parties so far. The above statement of the Respondent implies that the methodology for working out the gross value of work of each components and escalation amount of each component has been adopted by mutual consent and the amounts of escalation have been correctly paid in accordance with the contract.

I. This position has been vehemently contradicted by the Claimant who points out that from the very beginning till the period of Feb 2011, all bills of escalation were prepared on the overall gross amount and paid by the Respondent without any objection. The bill for the quarter March to May was also prepared on a similar basis and submitted for payment in July 2011. But consequent to an internal audit of the project conducted by AG (AUDIT) Delhi in July 2011 in which they raised observations holding the method of payment as improper on the ground that under clause 10CC escalation was available differently fe the three components of work with different time allowed for carrying out the work, the Respondent Engineer-in-charge in a follow up meeting with the Claimant asked for revision of all the escalation bills rained/paid till that time considering different dates of completion for the three components of work. The Claimant argued that they considered the instructions as against the provision of clause 10CC but were forced to prepare statements on the above lines from then onwards under pressure of the Respondent and in the interest of cash Bow. Claimant, however, sent written representation to the Executive Engineer of Respondent by letter dated 21.09.2011.

J. We have no difficulty in accepting the above explanation of Claimant as it is quite understandable that during progress of work the Claimant could not risk delays in payment and had to prepare hills in the manner acceptable to the Respondent. But the fact remains that soon after on 21.09.2011 the Claimant had disputed the application of clause 10CC provisions in the manner directed by the Claimant which ultimately lead to the dispute to be adjudicated by this AT. Thus we find that the escalation bills paid on the basis of gross value of three separate components is neither according to contract provisions nor by mutual consent."

44. Learned senior counsel for the Petitioner, in context of the aforestated findings, would contend that the learned Majority tribunal has accepted the Respondent's case that escalation bills were revised

to component-wise escalation, after the Audit of Petitioner in July, 2011, under compulsion and commercial pressure during the execution of the project. However, it would be contended that no such foundational plea was taken in the Statement of Claim by the Respondent.

45. Learned senior counsel would submit that the learned Majority tribunal has thus proceeded to adjudicate upon a case not pleaded in their Statement of Claim, thereby taking the Petitioner by surprise and depriving it of an opportunity to effectively respond.

46. Learned senior counsel would therefore urge that the findings in Paragraphs G to J constitute a clear violation of the principles of natural justice, rendering the said findings perverse, affecting the root of the matter and thus vulnerable under Section 34 of the Act.

The award falls within the Scope of 'Patent Illegality'

47. Learned senior counsel for the Petitioner would, in light of the foregoing grounds and contentions, submit that the findings of the learned Majority Tribunal are contrary to the material on record, inasmuch as the Tribunal has ignored the contractual documents which unequivocally demonstrate the component-wise structure of the project, and therefore the Impugned Award squarely falls within the scope of patent illegality and perversity which goes to the very root of the matter, as the learned Majority Tribunal ignored the vital evidence placed on record, and because it violates fundamental principles of natural justice.

48. In this regard, reliance is placed by the learned senior counsel on the Judgement of the Hon'ble Supreme Court in ***Delhi Metro Rail***

Corporation Limited vs. Delhi Airport Metro Express Private Limited[11], and specifically Paragraph No. 39 thereof. The same is reproduced hereunder for ready reference:

> "**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 his jurisdiction or violating a fundamental principle of natural justice."

49. Further, learned senior counsel for the Petitioner would place reliance on the Judgement of the Hon'ble Supreme Court in ***South East Asia Marine Engineering and Constructions Limited (SEAMEC Limited) vs. OIL India Limited***[12], to submit that the Hon'ble Supreme Court has interfered with the interpretation of an Arbitral Tribunal where the interpretation of the Arbitral Tribunal was considered to be too wide than what the contract stipulated it to be. In this regard, reliance would be placed on Paragraph Nos. 28 to 30 of the said Judgement, which are reproduced hereunder for ready reference:

> "**28.** In this context, the interpretation of Clause 23 of the contract by the Arbitral Tribunal, to provide a wide interpretation cannot be accepted, as the thumb rule of interpretation is that the document forming a written contract should be read as a whole and so far as possible as mutually explanatory. In the case at hand, this basic rule was ignored by the Tribunal while interpreting the clause.
> **29.** The contract was entered into between the parties in furtherance of a tender issued by the respondent herein. After considering the

[11] (2024) 6 SCC 357
[12] (2020) 5 SCC 164

> tender bids, the appellant issued a letter of intent. In furtherance of the letter of intent, the contract (Contract No. CCO/FC/0040/95) was for drilling oil wells and auxiliary operations. It is important to note that the contract price was payable to the "contractor" for full and proper performance of its contractual obligations. Further, Clauses 14.7 and 14.11 of the contract state that the rates, terms and conditions were to be in force until the completion or abandonment of the last well being drilled.
>
> **30.** From the aforesaid discussion, it can be said that the contract was based on a fixed rate. The party, before entering the tender process, entered the contract after mitigating the risk of such an increase. If the purpose of the tender was to limit the risks of price variations, then the interpretation placed by the Arbitral Tribunal cannot be said to be possible one, as it would completely defeat the explicit wordings and purpose of the contract. There is no gainsaying that there will be price fluctuations which a prudent contractor would have taken into margin, while bidding in the tender. Such price fluctuations cannot be brought under Clause 23 unless specific language points to the inclusion."

50. Learned senior counsel would submit that in the pre-2015 Amendment regime, an award which was patently illegal, contrary to the terms of the contract or based on no evidence, falls within the ambit of 'public policy of India' as elucidated in ***ONGC Ltd. v. Saw Pipes Ltd.***[13] and subsequent decisions.

51. Learned senior counsel appearing on behalf of the Petitioner, while concluding his arguments, would submit that the Impugned Award is liable to be set aside under Section 34 of the Act, as the learned Majority Tribunal has failed to interpret the Contract in accordance with its express terms, has adopted an implausible and legally untenable view, and has rendered findings which are perverse and contrary to the fundamental principles governing arbitral adjudication.

[13] (2003) 5 SCC 705

CONTENTIONS ON BEHALF OF THE RESPONDENT:

52. Learned senior counsel appearing on behalf of the Respondent would, at the outset, submit that the present Petition proceeds on an erroneous premise that the interpretation adopted by the learned Majority Tribunal is impermissible in law. It would be contended that the interpretation of Clause 10CC, as undertaken by the learned Majority Tribunal, is a plausible and reasonable view, rooted in the contractual framework and therefore does not warrant interference under Section 34 of the Act.

Correct Interpretation of Clause 10CC

53. Learned senior counsel would submit that the dispute essentially pertains to the interpretation of the expression "*stipulated period of completion*" under Clause 10CC of the GCC. It would be contended that the learned Majority Tribunal, upon a holistic reading of the Contract, has correctly construed the said expression to mean the overall completion period of the project of 42 months.

54. Learned senior counsel would urge that merely because an alternative interpretation is possible, the same would not justify interference with the Impugned Award. The limited and circumscribed scope of judicial review under Section 34, as succinctly settled by a plethora of judicial precedents, does not permit substitution of the Court's interpretation in place of that adopted by the learned Majority Tribunal, so long as the view taken is a plausible one.

55. Learned senior counsel would further contend that the burden lies on the Petitioner to demonstrate that the interpretation adopted by the learned Majority Tribunal is wholly unreasonable or perverse. The

interpretation advanced by the Petitioner, based on Clauses 2, 2A, 5, Schedule F and Clause 10CC, at best represents an alternative view, which by itself cannot form a ground for interference under Section 34 of the Act.

Plausible view of the Contractual Scheme taken by the learned Majority Tribunal

56. Learned senior counsel for the Respondent would submit that the reliance placed by the Petitioner on component-wise milestones and timelines is misplaced. It would be contended that such provisions are intended for the purposes of execution, monitoring, and incentivization, and cannot be determinative of the interpretation of Clause 10CC.

57. Learned senior counsel would contend that the Contract consciously distinguishes between provisions governing execution and those governing financial adjustments, while Clauses 2, 2A and Schedule F operate in the domain of performance, milestones and incentives, Clause 10CC operates independently as a price adjustment mechanism. The mere existence of component-wise timelines does not compel a similar interpretation for escalation, particularly in the absence of any express provision to that effect.

58. It would be further submitted that the Contract is a lump sum contract with a single tendered value and a unified structure. In such a contractual framework, the expression "*stipulated period of completion*" can reasonably be construed only with reference to the project as a whole, and not component-wise.

59. Learned senior counsel would submit that the Petitioner's attempt to read Clause 10CC in isolation, by merely importing a

component-wise interpretation from other clauses, is contrary to settled principles of contractual interpretation, which require the Contract to be read as a whole and each clause to be given its contextual meaning.

60. Learned senior counsel would contend that the component-wise timelines continue to operate for the purposes of execution and incentives, whereas Clause 10CC operates independently in the context of escalation. The two operate in distinct spheres and do not overlap in the manner suggested by the Petitioner.

61. Learned senior counsel for the Respondent would submit that the interpretation adopted by the learned Majority Tribunal does not render any provision of the Contract otiose or redundant.

62. Learned senior counsel would urge that the interpretation advanced by the Petitioner would, in fact, lead to inconsistency in the application of the escalation clause and disturb the uniformity intended under the Contract.

63. Learned senior counsel for the Respondent would further submit that even assuming *arguendo* that the Contract was capable of being interpreted in the manner canvassed by the Petitioner, *namely*, that the *"stipulated period of completion"* was to operate component-wise and not with reference to the project as a whole, the conduct of the Petitioner during the subsistence of the Contract belies such an interpretation.

64. Learned senior counsel would submit that it was only pursuant to an internal audit conducted by the office of the AG (Audit), Delhi, in July 2011, wherein an objection was raised regarding the method of computation under Clause 10CC, that the Petitioner sought to alter its

position. Thereafter, the Petitioner directed revision of the escalation bills by adopting a component-wise approach, thereby retrospectively seeking to apply a different interpretation of the clause.

65. Learned senior counsel for the Respondent would therefore contend that the conduct of the Petitioner demonstrates that the Contract was not understood or operated in the manner now sought to be canvassed. The subsequent shift in interpretation, it would be urged, is clearly an afterthought, prompted by audit observations, and cannot be permitted to unsettle the contractual understanding which governed the parties during execution.

66. Learned senior counsel would thus submit that the contemporaneous conduct of the parties not only lends support to the interpretation adopted by the learned Majority Tribunal, but, at the very least, also establishes that multiple plausible interpretations were possible, thereby preventing the Impugned Award from the limited scope of interference under Section 34 of the Act.

Plausible Findings of the learned Majority Tribunal

67. Learned senior counsel for the Respondent would submit that the findings recorded by the learned Majority Tribunal in Paragraphs D to F of the Impugned Award are based on a correct and reasonable appreciation of the contractual framework.

68. Learned senior counsel would contend that the learned Majority Tribunal has rightly relied upon the definition of *"Contract"* to conclude that all documents forming part of the tender constitute a composite Agreement, and that the *"stipulated period of completion*" must be understood in that unified context.

69. Learned senior counsel would further submit that the conclusions drawn by the learned Majority Tribunal with respect to the Lump sum nature of the Contract and the absence of any separate mechanism for component-wise valuation or computation are rational and borne out by the Contract itself.

70. Learned senior counsel would therefore contend that the said findings, as assailed by the Petitioner, are neither arbitrary nor perverse, but represent a plausible interpretation of the Contract.

Findings based on Allegedly Unpleaded Submissions

71. Learned senior counsel for the Respondent would strongly refute the contention of the Petitioner that the findings recorded in Paragraphs G to J are based on unpleaded submissions.

72. Learned senior counsel would contend that the issue relating to the manner in which escalation bills were raised and subsequently revised was very much part of the record before the learned Arbitral Tribunal. The Respondent had specifically addressed this aspect in its Re-joinder to the Statement of Defence.

73. Learned senior counsel would, in this regard, draw the attention of this Court to Paragraph No. 2.16 of the said Re-joinder, wherein it was clearly asserted that the revision of escalation bills into component-wise format was undertaken under compulsion and commercial pressure, particularly in light of the directions issued following the Audit. The relevant portion of the Re-joinder is reproduced herein under for ready reference:

> "**2.16** The Respondent's contention that the escalation statement no. 9 for the period June'10- Aug'10 onwards were supposed to be prepared after working out gross value of work done separately for 3 components of the work as per agreement provisions but M/s

> Gammon India Limited could not do so, is entirely incorrect and misrepresentation of facts. In fact the claimant has all along been maintaining that contractually there will be only one gross value of work done and no separate billing, component wise. The Respondent also never instructed the claimant for submission of separate bills for components of work until receipt of CAG report. It was only after the Respondent received the CAG report in July'2011 that they insisted upon the claimant to submit the trifurcated bill for three components of work failing which, the escalation bill would not be processed. This was an act of coercion on the part of the Respondent which, in the interest of cash flow, the claimant was compelled to submit trifurcation of the overall interim bills for the ease of verification of measurement only and not for the sake of working out escalation component wise. Thus, the department used coercive measures to achieve their goal which the contractor has never contractually admitted."

74. Learned senior counsel for the Respondent would, in order to substantiate that they were not in agreement with the way in which escalation charges were stated to operate after July, 2011, contend that the Respondent had, at the earliest opportunity, disputed the said mode of computation, including by way of a letter dated 21.09.2011 addressed to the Superintending Engineer, thereby demonstrating that such revision was neither voluntary nor reflective of the contractual position and that the change in operation of Clause 10CC was not justified and was contrary to the contract as entered into between the parties.

75. Learned senior counsel would submit that these facts were part of the pleadings and the evidentiary record, and the Petitioner was fully aware of the same. It is therefore incorrect to contend that the learned Majority Tribunal has relied upon a case not pleaded and thus would submit that no violation of Principles of Natural Justice has occurred, nor has any prejudice been caused to the Petitioner.

No Grounds for Interference under Section 34

76. Learned senior counsel for the Respondent, in light of the foregoing submissions, would submit that the scope of interference under Section 34 of the Act is very limited and circumscribed, and when an Arbitral Tribunal takes a plausible view of a case before it, interference under Section 34 of the Act would not be permissible by the Courts. Learned senior counsel would contend that the present Petition, being governed by the pre-2015 Amendment regime, must be tested within the limited contours of "public policy of India" as interpreted by various judicial precedents.

77. Learned senior counsel for the Respondent would then advert to the reliance placed by the Petitioner on the decision in ***SEAMEC Limited*** *(supra)*, and would submit that the same is wholly distinguishable on facts as well as the nature of the clause under consideration therein.

78. Learned senior counsel would contend that the clause interpreted in the said judgment was materially different from Clause 10CC in the present case. The clause therein contemplated escalation *"only in the event of a change in law or interpretation of existing law"*, and was thus in the nature of a *force majeure* or contingency based provision as opposed to Clause 10CC of the present Contract, which is a price variation clause which specifically provides for escalation on account of fluctuations in market conditions, including changes in prices of labour and materials. The scope, purpose and operation of the two clauses are therefore fundamentally distinct.

79. Learned senior counsel would submit that the ratio in ***SEAMEC Limited*** *(supra)* was rendered in the context of a clause which did not

contemplate general market-driven escalation, and therefore cannot be applied to Clause 10CC of the present Contract, which expressly provides for such variation. In these circumstances, it would be submitted that the reliance placed by the Petitioner is misplaced and does not advance their case.

80. Learned senior counsel for the Respondent would submit that the findings returned by the learned majority Tribunal are based on a plausible interpretation of the contractual provisions and appreciation of material on record, and therefore do not warrant interference under Section 34 of the Act.

81. In view of the aforesaid submissions, learned senior counsel for the Respondent would, while concluding, submit that the present Petition is devoid of merit and does not disclose any ground disclosing patent illegality or perversity going to the root of the matter, so as to warrant interference under Section 34 of the Act for being against the "*public policy of India*", and therefore would submit that the present Petition be dismissed and the Impugned Award be upheld.

ANALYSIS:

82. This Court has heard the learned senior counsel for both parties and, with their able assistance, perused the material available on record.

83. The controversy, in essence, lies in a narrow compass. The principal issue which arises for consideration is whether the interpretation accorded by the learned Majority Tribunal to the expression *"stipulated period of completion"* under Clause 10CC is so

implausible or unreasonable so as to warrant interference under Section 34 of the Act.

Scope of Interference under Section 34

84. At the outset, this Court deems it apposite to underscore that it remains acutely conscious that the jurisdiction exercised by this Court under Section 34 of the Act is merely supervisory. The Court does not sit in appeal over the findings returned by an arbitral tribunal, nor does it undertake re-appreciation of evidence or re-interpretation of contractual terms merely because an alternative view may be possible. The legislative intent underlying Section 34 is to accord finality to the arbitral adjudication, subject only to a narrow and circumscribed scope of intervention. This limitation is not merely procedural but goes to the very architecture of the arbitral regime.

85. The Impugned Award having been rendered on 12.12.2013, *i.e.*, prior to coming into force of the Arbitration and Conciliation (Amendment) Act, 2015, the challenge is required to be examined within the pre-amendment framework. Under the said regime, the expression "*public policy of India*" received an expanded interpretation, *inter alia*, in ***ONGC Ltd. v. Saw Pipes Ltd.*** *(supra)* and ***ONGC Ltd. v. Western Geco International Limited***[14], within which the concept of "patent illegality" was subsumed.

86. Further, even within this expanded understanding, it is well settled that the illegality must be of such a nature as to go to the root of the matter and not be of a trivial or debatable nature. Mere

[14] (2014) 9 SCC 263

erroneous application of law or the existence of an alternative interpretation is wholly insufficient.

87. It must be borne in mind that the threshold for interference, particularly in cases involving the interpretation of contractual clauses, is deliberately set high. Contractual interpretation is not an exact science but an exercise in discerning commercial intent. Where two views are possible, the arbitral tribunal's view is not merely to be preferred, but is, in fact, immune from judicial substitution. The Court cannot don the robes of a second arbitrator and rewrite the bargain between the parties under the guise of judicial review. To do so would be to blur the well-settled distinction between appellate and supervisory jurisdiction, an approach consistently deprecated by the Hon'ble Supreme Court. Therefore, judicial restraint in such matters is not an option, but a mandate.

88. The jurisprudential position in this regard stands comprehensively restated by the Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[15], wherein it has been reiterated that interference with arbitral awards is permissible only where the award is vitiated by fundamental infirmities such as conflict with the public policy of India, perversity and patent illegality. The Court cautioned against converting proceedings under Section 34 of the Act into a forum for rehearing on merits. The pertinent observations, in this regard, are reproduced hereunder:

[15] (2025) 2 SCC 417

*"**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.

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 [***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

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

under either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*) of the 1996 Act.

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

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

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

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

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

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

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

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

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

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

In contravention with the fundamental policy of Indian law

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

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

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

(*c*) justice or morality.

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

Perversity as a ground of challenge

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

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

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

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

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

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible

view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

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

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

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

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

Scope of interference with an arbitral award

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does

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

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

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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 interfere [See: ***SAIL* v. *Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63; *Pure Helium India (P) Ltd.* v. *ONGC*, (2003) 8 SCC 593; *McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181; *MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163**]. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference [*South East Asia Marine Engg. & Constructions Ltd.* v. *Oil India Ltd.*, (2020) 5 SCC 164**].

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

85. Ordinarily, terms of the contract are to be understood in the way the parties wanted and intended them to be. In agreements of

arbitration, where party autonomy is the *grund norm*, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions used [***BALCO* v. *Kaiser Aluminium Technical Services Inc.*, (2016) 4 SCC 126**].

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

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

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

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

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

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

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

(emphasis supplied)

89. A careful reading of the above-stated decision makes it abundantly clear that while adjudicating an Objection Petition under Section 34 of the Act, an Arbitral Award cannot be interfered with mechanically since:

a. Mere erroneous application of the law is not sufficient;

b. Re-appreciation of evidence is impermissible; and,

c. Most importantly, a possible view taken by the arbitral tribunal must be respected, even if another view is equally plausible.

Findings of the learned Majority Tribunal and their Nature

90. A perusal of the Impugned Award demonstrates that the learned Majority Tribunal 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 Tribunal arrived at the following conclusions, which, though not exhaustive, reflect the core findings underpinning the Award:

a. The contract between the parties was in the nature of a composite and indivisible agreement with a unified tendered value, thereby indicating that the project was intended to be executed as a whole and not as independent, severable components;

b. The expression "*stipulated period of completion*" as employed in Clause 10CC of the GCC was to be construed with reference to the overall contractual period of 42 months, and not component-wise, as sought to be contended by the Petitioner;

c. The conduct of the parties during the subsistence of the contract, particularly the consistent computation and acceptance of escalation on the basis of the overall completion period without protest for a considerable duration, lends credence to the interpretation adopted by the Respondent;

d. The contractual provisions, when read holistically, do not support a fragmented or component-wise application of escalation under Clause 10CC.

91. The aforesaid findings are neither conjectural nor based on surmise, but are founded upon a structured appreciation of the contractual framework and contemporaneous conduct of the parties.

The reasoning reflects a logical progression, wherein each conclusion is anchored in either the text of the contract or the surrounding circumstances. It is well settled that even if the reasoning of an arbitral tribunal is capable of improvement, so long as the ultimate conclusion is a plausible one, the award cannot be interfered with. The Court is concerned not with the elegance of reasoning, but with the legitimacy of the decision-making process.

Interpretation of Clause 10CC and 'Stipulated Period of Completion'

92. The dispute between the parties centres around the interpretation of Clause 10CC of the General Conditions of Contract, particularly the meaning to be ascribed to the expression "*stipulated period of completion*". The Petitioner has contended that the said expression must be understood component-wise, whereas the Respondent, whose contention has found favour with the learned Majority Tribunal, has asserted that it refers to the overall completion period of the project, *i.e.*, 42 months.

93. A careful reading of the Impugned Award demonstrates that the learned Majority Tribunal has not approached the issue in a perfunctory or mechanical manner. On the contrary, the learned Majority Tribunal has undertaken a comprehensive analysis of the contractual framework, including the definition clauses, the nature of the contract, the tender documents, and the interrelationship between various provisions.

94. The learned Majority Tribunal has, *inter alia*, taken note of the fact that the contract in question is a lump-sum contract with a unified tendered value, and not one which contemplates separate valuation or

independent contractual existence of each component. This aspect, in the view of the learned Majority Tribunal, was indicative of the parties' intention to treat the project as a composite whole.

95. Significantly, the learned Majority Tribunal has also relied upon the conduct of the parties during the subsistence of the contract. The material on record indicates that, for a substantial period, escalation payments under Clause 10CC were computed and accepted on the basis of the overall completion period of 42 months, without any demur from the Petitioner.

96. The relevance of the conduct of the parties as an aid to contractual interpretation is well recognised. The manner in which parties have themselves understood and implemented a contract often provides a reliable indicator of their mutual intent. The learned Majority Tribunal, therefore, cannot be faulted for placing reliance on such conduct.

97. In fact, the conduct of the parties, as borne out from the record, operates as a contemporaneous exposition of the contract itself. For a considerable period, both parties proceeded on the basis that escalation under Clause 10CC was to be computed with reference to the overall completion period. Such a consistent and unambiguous course of conduct cannot be brushed aside lightly. It would be contrary to settled principles of contractual interpretation to permit a party to approbate and reprobate, accepting a particular interpretation when it suits its commercial interests and resiling from it when circumstances change. The Petitioner, having acquiesced in such interpretation for a substantial duration, cannot now be permitted to resile therefrom to suit its shifting commercial convenience.

98. The contention of the Petitioner that the contract must necessarily be interpreted component-wise is, at best, an alternative construction. However, it cannot be said that the interpretation adopted by the learned Majority Tribunal is one that no reasonable or fair-minded person would adopt. The arbitral interpretation, thus, clearly falls within the realm of a 'possible view', thereby placing it beyond the permissible scope of interference under Section 34 of the Act.

99. It is also not possible to accept the submission that the interpretation adopted by the learned Majority Tribunal renders other contractual provisions otiose or redundant. A holistic reading of the Award reveals that the learned Majority Tribunal has harmonised the various clauses of the contract and has endeavoured to give effect to the commercial intent underlying the agreement.

100. The submission that the interpretation adopted by the learned Majority Tribunal renders certain clauses otiose is, upon closer scrutiny, more apparent than real. A contract must be read as a whole, and not in a manner that places one clause in antagonism with another. The learned Majority Tribunal has adopted a harmonious construction, ensuring that each provision operates within its designated field without encroaching upon the other. The Petitioner's interpretation, on the other hand, seeks to compartmentalise the contract in a manner that fractures its composite character. Such an approach, far from preserving contractual efficacy, would introduce artificial distinctions not contemplated by the parties.

Allegation of Reliance on Unpleaded Grounds

101. Insofar as the submission of the Petitioner that the learned Majority Tribunal has relied upon unpleaded grounds is concerned, the material on record, including the rejoinder filed before the learned Majority Tribunal, indicates that the issues relating to billing practices and the circumstances surrounding the computation of escalation were indeed placed before the learned Majority Tribunal. The findings recorded by the learned Majority Tribunal, therefore, cannot be said to have travelled beyond the pleadings. In any event, the interpretation sought to be canvassed is, in any event, based upon the terms of the contract itself, which was always available to the learned Arbitral Tribunal and which had absolute liberty to interpret the same.

102. The reliance placed by the Petitioner on ***SEAMEC Limited*** *(supra)* is misconceived. The said decision turned on a fundamentally different contractual clause and a factual matrix where the arbitral interpretation was found to be wholly divorced from the language of the contract. The present case stands on an entirely different footing, where the interpretation adopted by the learned Majority Tribunal is firmly rooted in the contractual scheme.

103. The said decision cannot be read as laying down an absolute proposition that every deviation from a literal interpretation would render an award vulnerable under Section 34 of the Act.

Scope of Judicial Review vis-à-vis Arbitral Interpretation

104. It is trite that the arbitral tribunal is the chosen forum of the parties, and its construction of the contract is entitled to a high degree of deference. The moment the Court finds that the interpretation

adopted is a "possible view", the inquiry must end there. The temptation to substitute such an interpretation with what the Court may perceive to be a "better view" must be resisted, for that would strike at the very foundation of arbitral autonomy. The law does not countenance a microscopic dissection of the award in search of error; it mandates a broad, pragmatic and deferential approach.

105. Even assuming that the interpretation advanced by the Petitioner is a possible one, that by itself would not furnish a ground for interference under Section 34 of the Act. The jurisdiction of this Court is not to choose between competing interpretations, but to ensure that the interpretation adopted does not fall foul of the limited grounds of challenge.

106. The interpretation adopted by the learned Majority Tribunal, which treats the "*stipulated period of completion*" as referable to the contract as a whole, ensures uniformity and coherence in the application of the escalation formula. This Court finds no perversity in such an approach.

107. Therefore, in the present case, the interpretation adopted by the learned Majority Tribunal cannot, by any stretch of imagination, be characterised as arbitrary, capricious, irrational, or perverse.

108. Where the interpretation of a contractual clause by an Arbitral Tribunal constitutes a plausible view based on the contractual framework and conduct of parties, such interpretation is immune from interference under Section 34 of the Act. Even within the expanded pre-amendment scope of '*public policy of India*', the Court cannot substitute its own interpretation merely because an alternative view is

possible. Interference is warranted only where the arbitral view is perverse or not even a possible view.

Whether the Impugned Award suffers from Patent Illegality?

109. Tested on the aforesaid principles, this Court is unable to hold that the interpretation adopted by the learned Majority Tribunal falls outside the realm of a possible view. The reasoning of the learned Majority Tribunal reflects a coherent and plausible construction of the contractual provisions, supported by the nature of the contract as well as the conduct of the parties.

110. Insofar as the plea of "*patent illegality*" is concerned, even if the same is construed within the framework of the pre-amendment jurisprudence, the Petitioner has failed to demonstrate that the Impugned Award suffers from any illegality which goes to the root of the matter.

111. The findings returned by the learned Majority Tribunal are based on a consideration of the contractual provisions, the material on record, and the conduct of the parties. The decision-making process does not disclose any infirmity of such magnitude as would justify interference.

112. In effect, the challenge mounted by the Petitioner does not demonstrate perversity in the Impugned Award, but merely dissatisfaction with the interpretation adopted by the learned Majority Tribunal.

113. Viewed holistically, the challenge mounted by the Petitioner is nothing but a thinly veiled attempt to re-agitate the merits under the guise of a Section 34 Petition. The submissions advanced seek a re-

evaluation of the contractual clauses, a re-assessment of the evidence, and ultimately, a substitution of the arbitral view with that of this Court.

114. Such an exercise lies clearly outside the permissible contours of judicial interference. If such challenges were to be entertained, the finality of arbitral awards would be rendered illusory, and the very object of the Act would stand defeated. The arbitral process having been consciously chosen by the parties, the finality attached to an arbitral award cannot be lightly displaced.

115. Therefore, interference in such circumstances would amount to substituting the arbitral conscience with judicial preference, an exercise impermissible in law.

CONCLUSION:

116. In view of the foregoing discussions, this Court is of the considered view that the Impugned Award does not suffer from perversity, violation of the fundamental policy of Indian law, or suffer from patently illegality.

117. The challenge mounted by the Petitioner is thus devoid of merit and does not warrant interference. Accordingly, the present petition is dismissed and thereby Impugned Award, dated 12.12.2013, is upheld.

118. The present Petition, along with pending Application(s), if any, are disposed of in the aforementioned terms.

119. There shall be no order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 21, 2026/ DJ