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

Date of Decision: 23.02.2026

\+ O.M.P. (COMM) 367/2016

MAHANAGAR TELEPHONE NIGAM LIMITED

....Petitioner

Through: Ms. Vidhi Jain and Mr. Madhur Mittal, Advocates.

versus

NOKIA SOLUTIONS & NETWORK INDIA PVT. LTD.

.....Respondent

Through: Mr. Abhishek Tewari and Mr. Utkarsh Trivedi, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been instituted under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], read with Section 151 of the Code of Civil Procedure, 1908, seeking setting aside of the **Arbitral Award dated 11.03.2016**[2] passed by the learned Sole Arbitrator.

2. The challenge in the present proceedings is directed primarily against the findings recorded in the Impugned Award, in particular those relating to the adjudication of Claims A to E. The Petitioner

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

seeks to assail the conclusions arrived at by the learned Arbitrator under these heads. The relevant extract of the Impugned Award pertaining to Claims A to E is reproduced hereunder:

> "**Claims A to E**
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> The main question before the Tribunal, therefore, is whether the claimant is entitled to be paid @ Rs.4273 per line on account of it having completed the supplies by 28" February 1995 or it is entitled to be paid @ Rs.4145 per line due to its having not completed the supplies by 28th February 1995 because of GD Tubes having been supplied only in July, 1995. The question is as to whether by non-supply of GD tubes of the value of Rs.19,15,552 out of the total contract of more than Rs.39 crore, the supplies were not complete in all respects up to 28" February 1995 and even assuming, supplies were not completed, because of non-supply of GD tubes, whether the claimant has suffered any loss so as to entitle it not to make payment @ Rs.4273 per line.
>
> As already mentioned above, supplies were complete in all respects except that a small item of GD tubes of the value of Rs.19,15,552 were not supplied for Delhi MTNL. The supplies were to be made in Mumbai as well as in Delhi. MTNL on 29th March 1996 had issued a letter to the DGM (Engg.) Mumbai as well as DGM (ETF) Delhi referring to the purchase order and stating that consequent upon a reduction in the customs duty, the Department of Telecommunications had finalized prices on the basis of per line cost @ Rs.4273 for supplies made up to 31st March 1995 and Rs.4145 for supplies made after 31st March 1995. While the Mumbai office of MTNL by its letter dated 12th June 1996 confirmed that all supplies of 50,000 lines to Mumbai were completed by 31st March 1995, the Delhi office by its letter dated 12 March 1997 wrote that supply of the entire 50,000 line equipment was received before 31 March 1995 except Gas Discharge (GD) tubes valued at Rs. 19,15,552 which were supplied on 12" July 1995. The amended clause 10.0(b) of the purchase order provided that the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, sales tax or on account of any other tax or duty which takes place after
> the expiry of the initial delivery period mentioned in the purchase order. It was in these circumstances that a letter was written to the Delhi and Mumbai offices of MTNL to inform whether complete supplies had been received by 31st March 1995. The rationale was that in case complete supplies were not made and in the meantime customs duty had been reduced, the respondent would be entitled

to the benefit of such decrease in the customs duty, Both Delhi and Mumbai offices wrote that supplies in all respects were complete by 31st March 1995 except that in case of supplies to Delhi, a small item of GD tubes of the value of Rs. 19,15,552 was received in July 1995. Any decrease in customs duty during the extended delivery period would entitle MTNL to claim reduction only in the price of that item of which the customs duty had been reduced and which had not been supplied by the extended date. In my view, it cannot be said that just because a small item of the value of Rs.19,15,552 had not been supplied by the expiry of the extended period, the claimant would not be entitled to be paid the price even in respect of those items which had been supplied before the extended period. I am, therefore, clearly of the opinion that the claimant would be entitled to be paid @ Rs.4273 per line as supplies in all respects except GD tubes had been completed by 28" February 1995. I am fortified in my opinion by the fact that the witness of the respondent has stated that the entire material expect GD tubes was supplied prior to 28th February 1995 and GD tubes were supplied on 12th July 1995. This witness also admitted a note made by him on the file on 7th November 2002 that GD tubes was a minor item. On 1st December 1995, DGM (SI) wrote a letter to the Accounts Officer that delayed position of supply did not hamper the installation and commission of the system and that no loss was suffered by the respondent. In this view of the matter, the respondent cannot, in my opinion, claim that supplies in all respects were not complete by 28" February 1995 or that the claimant would not be entitled to be paid @ Rs.4273 per line and would be entitled to be paid @ Rs.4145 per line. The stand of the respondent, in my view, is totally illegal and the claimant is to be paid @ Rs.4273 per line. At best, the respondent could adjust the reduction in excise/custom duty on the value of GD tubes which were supplied after 31st March 1995 There is, however, nothing on record to show as to whether there was any reduction in excise/custom duty on GD tubes and what will be the total amount of such duty benefit of which could be given to the respondent. In the absence of anything on record about reduction of excise/custom duty on GD tubes, I hold that claimant would be entitled to the price of Rs.4273 per line."

3. Learned counsel appearing on behalf of the Petitioner contends that the learned Arbitral Tribunal has erred in failing to appreciate that the gas discharge tubes constituted an essential component of the supplies to be effected by the Respondent. It is submitted that, in

overlooking the essentiality of the said tubes, the learned Arbitrator has arrived at an erroneous conclusion that the supplies were complete in all respects, which, according to the Petitioner, runs contrary to the terms and conditions of the contract.

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

5. 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.

6. 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.***[3], while dealing with the grounds of conflict with the public policy of India, perversity, patent illegality, made certain pertinent observations, which are reproduced hereunder: 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

[3] (2025) 2 SCC 417

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 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**].
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> **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:
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> (*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**].
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> ***(emphasis supplied)***

7. A careful perusal of the extracted portion from the Impugned Award, as set out in Paragraph 2 of this Judgment, clearly demonstrates that the learned Arbitrator, upon a detailed examination of materials placed on record, has arrived at, *inter alia*, certain categorical factual conclusions. These conclusions, which are as follows, constitute the core findings underpinning the adjudication of Claims A to E and form the foundation of the reasoning adopted in the Impugned Award:

(a) The principal issue before the learned Arbitrator was whether the Claimant was entitled to payment at the rate of Rs. 4273 per line on the basis that supplies were completed by 28.02.1995, or whether the reduced rate of Rs. 4145 per line was applicable on the ground that supplies were not complete until July 1995 due to the delayed delivery of GD tubes.

(b) It was undisputed that, except for GD tubes valued at Rs. 19,15,552, all other materials under the contract, worth more than Rs. 39 crore, had been supplied within the stipulated period. The GD tubes constituted only a very small fraction of the total contract value.

(c) The Mumbai office confirmed that all 50,000 lines meant for Mumbai were supplied by 31.03.1995. Similarly, the Delhi office confirmed that the entire 50,000 line equipment was received before 31.03.1995, except for GD tubes, which were supplied on 12.03.1995.

(d) Under the amended Clause 10.0(b) of the purchase order, the purchaser was entitled to the benefit of any reduction in customs or excise duty occurring after the expiry of the initial delivery period. However, such benefit could logically extend only to those specific items supplied after the extended delivery date and not to the entirety of the supplies already completed.

(e) The learned Arbitrator reasoned that the non-supply of a minor component like GD tubes could not justify treating the entire contract as incomplete, particularly when a substantial portion of the supplies had been delivered within time and were otherwise complete in all respects.

(f) The Respondent's (*the Petitioner in the present Petition*) own witness admitted that all materials except GD tubes were supplied before 28.02.1995 and further acknowledged that GD tubes were a minor item. This admission reinforced the Claimant's case that the supplies were substantially complete within the prescribed period.

(g) A contemporaneous communication dated 01.12.1995 confirmed that the delay in supplying GD tubes did not hamper installation or commissioning of the system and that no loss was suffered by the Respondent (*the Petitioner in the present Petition*) on account of such delay.

(h) In these circumstances, the learned Arbitrator held that the Respondent (*the Petitioner in the present Petition*) was not justified in denying payment at Rs. 4273 per line for the entire supply merely because of the delayed delivery of GD tubes.

(i) At best, the Respondent (*the Petitioner in the present Petition*) could have claimed the benefit of any reduction in customs or excise duty specifically applicable to GD tubes supplied after 31.03.1995, but such adjustment could only relate to that particular item.

(j) Since there was no material on record demonstrating any actual reduction in customs or excise duty on GD tubes or quantifying any such benefit, the learned Arbitrator concluded that the claimant was entitled to payment at the rate of Rs. 4273 per line.

8. This Court is of the considered opinion that the submissions advanced by the Petitioner in the present case, upon close scrutiny, essentially amount to a challenge to the factual findings returned by the learned Arbitrator and to the interpretation placed by the learned Arbitrator upon the relevant contractual clauses. The grievance projected is not essentially one of jurisdictional error, patent illegality, or violation of public policy, but is fundamentally directed against the

conclusions drawn by the Arbitral Tribunal on appreciation of evidence and construction of the terms of the contract.

9. The learned Arbitrator, as noted earlier, after a detailed examination of the pleadings, documentary material, contractual stipulations, and the evidence led by the parties, has returned a categorical finding on the core issue as to whether the supplies stood completed in all respects as on the stipulated cut-off date, i.e., 28.02.1995. Such a determination is essentially a finding of fact coupled with an interpretative exercise of the contractual provisions governing delivery, pricing, and consequences of delay.

10. These findings are demonstrably rooted in an assessment of the evidentiary record and a reasoned construction of the contract between the parties. In the considered view of this Court, findings of this nature fall squarely within the domain of the Arbitral Tribunal and do not invite interference under Section 34 of the A&C Act, unless they are shown to be perverse, based on no evidence, vitiated by patent illegality, or so irrational that no reasonable person could have arrived at such conclusions. No such infirmity has been demonstrated in the present case.

11. It is trite law, as reiterated by the Hon'ble Supreme Court in ***OPG Power Generation*** (*supra*), wherein, after considering a catena of earlier precedents, the scope of judicial interference under Section 34 of the A&C Act has been authoritatively delineated, that a court exercising jurisdiction under Section 34 does not sit in appeal over the arbitral award. The supervisory role of the Court is narrowly circumscribed.

12. The Court further held that it is impermissible for the Court to

re-appreciate evidence, reassess the probative value of material on record, or substitute its own interpretation of contractual clauses merely because another view may be possible. Interference is warranted only where the award is based on no evidence, or where the Arbitral Tribunal has taken into account matters wholly irrelevant to the decision, or has ignored vital evidence which goes to the root of the matter, or where the award suffers from patent illegality apparent on the face of the record.

13. In the present petition, the Petitioner has neither established that the findings are unsupported by evidence nor demonstrated that any material evidence has been disregarded or that irrelevant considerations have weighed with the learned Arbitrator.

14. In light of the detailed evaluation undertaken by the learned Arbitrator of the material placed on record, and considering that the reasoning in the Impugned Award is plausible, coherent, and legally sustainable, this Court finds no ground to exercise its limited jurisdiction under Section 34 of the A&C Act. The view adopted by the learned Arbitrator is a possible and reasonable one based on the evidence and the contractual provisions. In such circumstances, no judicial interference is warranted. Accordingly, the present petition, being devoid of merit, stands dismissed.

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

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 23, 2026/nd/va