



2026:DHC:1619



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

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*Judgment reserved on: 17.01.2026*  
*Judgment pronounced on: 24.02.2026*

+ O.M.P. (COMM) 184/2017

TDI INTERNATIONAL INDIA LTD .....Petitioner

Through: Mr. Ashish Mohan, Senior  
Advocate with Mr. Akshit  
Mago and Mr. Auritro  
Mukherjee, Advocates.

versus

DELHI METRO RAIL CORPORATION .....Respondent

Through: Mr. Manish Kr. Srivastava and  
Mr. Ankit Bhushan, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN**  
**SHANKAR**

## **J U D G M E N T**

### **HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Petition has been instituted under Section 34 of the **Arbitration and Conciliation Act, 1996**<sup>1</sup>, challenging the **Arbitral Award dated 26.02.2010**<sup>2</sup> rendered by the learned Sole Arbitrator in the matter titled "*M/s TDI International India Ltd. vs. Delhi Metro Rail Corporation Ltd.*". In addition to assailing the Impugned Award,

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<sup>1</sup> A&C Act

<sup>2</sup> Impugned Award



the Petitioner has, in the present Petition, also sought multiple reliefs in respect of various Claims.

2. It is relevant to note that, during the course of arguments before this Court, the Petitioner confined its challenge primarily to four claims, *namely*, Claim Nos. 1, 2, 3 and 6, as decided by the learned Arbitrator.

**BRIEF FACTS:**

3. The Petitioner (Claimant in the Arbitral Proceedings) is a company engaged in the business of outdoor, indoor and transit advertising.

4. The Respondent herein (Respondent in the Arbitral Proceedings), invited tenders *vide* Tender document dated 19.01.2004 for Advertising Rights inside stations and circulating areas located between Kanahiya Nagar - Rithala Section (eight stations), for a period of five (05) years.

5. The Petitioner emerged as the highest bidder in the tender, and a **Letter of Acceptance dated 19.02.2004<sup>3</sup>** was issued in its favour.

6. Thereafter, several correspondences took place, and the Respondent *vide* letter dated 01.04.2004 informed the Petitioner that the latest date of submitting the plans for approval will be 12.04.2004, and in addition, acceding to the Petitioners' request, provided four weeks from the date of approval, i.e., 06.05.2005, for fabrication, etc. and mentioned that no further extension will be provided.

7. Pursuant thereto, a formal **License Agreement dated 01.06.2004<sup>4</sup>** was executed between the parties, wherein Clause 3 of

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<sup>3</sup> LoA

<sup>4</sup> License Agreement



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the Agreement stipulated that the licence would commence from the date of signing the agreement and continue for five years from the date of handing over of possession, while Clause 4 of the License Agreement specifically dealt with the date of start of the licence with reference to approval of plans or issuance of take-over notice, whichever was earlier.

8. However, *vide* letter dated 03.06.2004, which was signed by both the parties, advertising sites were handed over to the Petitioner while mentioning that the lease out will be activated from 01.06.2004, and the Respondents were obliged to provide the electricity supply.

9. Thereafter, between July 2004 and March 2005, several letters were exchanged between the parties regarding the electricity supply for the advertising panels to start the commercial exploitation of the advertising sites.

10. On 18.03.2005, the electrical layout plans were approved. The Petitioner was permitted to commence commercial exploitation on 07.04.2005, pursuant where to the Petitioner commenced operations and sought recognition of the said date as the licence commencement date.

11. During the subsistence of the contract, the Petitioner alleges that, due to a short circuit that occurred at one of its advertising boards at Kanhaiya Nagar Station, the Respondent, citing safety concerns, disconnected the electricity supply to all licensed advertising panels across stations for the period from 28.02.2007 to 12.05.2007, rendering the advertising sites non-operational during the said period.

12. Similarly, *inter alia*, it is stated that due to a fire incident at the Netaji Subhash Place Metro Station, there was a disruption in the



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electricity supply, which adversely affected the work being carried out by the Petitioner.

13. In the *interregnum*, pursuant to directions issued by this Court in W.P. (C) No. 165165/2006, titled as “*Court on Its Motion v. Union of India*” dated 26.03.2007, the Respondent, *vide* letter dated 13.04.2007, directed the Petitioner to remove hoardings located on the main roads of Delhi. In compliance thereof, the Petitioner removed the said hoardings during the period from 25.04.2007 to 15.08.2007.

14. In the backdrop of, *inter alia*, the aforesaid facts, disputes arose between the parties concerning the scope of the advertising rights granted under the License Agreement and the permissibility of displaying advertisements thereunder.

15. In view of the disputes, the Petitioner sought the initiation of conciliation proceedings in terms of the License Agreement. Correspondence ensued regarding the furnishing of a bank guarantee in connection with the proposed conciliation.

16. Thereafter, in terms of Clause 44 contained in the License Agreement, a sole Arbitrator was appointed to adjudicate the disputes that had arisen between the parties.

17. The Petitioner filed its Statement of Claims before the learned Arbitrator. In response thereto, the Respondent submitted its Reply to the Statement of Claims along with its Counter-Claims. Thereafter, both parties adduced their respective evidence before the learned Arbitrator.

18. It is stated that during the pendency of the arbitral proceedings, the licence granted under the Agreement was terminated with effect from 31.05.2009.



19. After hearing the parties, the learned Arbitrator rendered the Impugned Award dated 26.02.2010, adjudicating upon the claims and counter-claims raised by the parties. Upon consideration of the pleadings, evidence, and material placed on record, the learned Arbitrator summarized the findings in respect of the claims and counter-claims in the Impugned Award, in the following terms:

**“AWARD BY ARBITRATION TRIBUNAL**

The Awards given, after due analysis and determination, in respect of each Claim and Counter Claim above, are listed together below along with the respective Claims and Counter-Claims:

**Claim 1.**

Date of Commencement of License be Reckoned as 08.04.2005 instead of 01.06.2004 Rs. 3,27,46,634/-1:

Respondents, in spite of meeting their contractual obligations of "Providing" the "Advertising Spaces" for "Carrying Out the Business of Placement of Advertisements" as provided in Clauses A), B) & 2. read with Cl. 15 only on 07.04.2005, as conveyed vide their letter dt. 07.04.2005 (Ann. E) wherein it clearly states that "You may commence your commercial activities immediately", has been insisting on unfairly charging the license fee from the date of signing the agreement i.e. 01.06.2004.

***Award***

(a) M/s TDI's claim in respect of date of commencement of license is rejected. The date of start of license fee will remain. 01.06.2006 and the 5-year/License Period will be reckoned from 01.06.2004.

(b) However, for the period 01.10.2004 upto 31.01.2005, only 75% of the License Fee otherwise due maybe charged on account of the delays in completing the work of electrification of the advertising panels attributable to the delay in clear-cut directions being given by DMRC soon after receipt of M/s TDI's letter dt. 21.09.2004.

**Claim 2.**

Arbitrary Disconnection of Electricity Supply by the Respondents to the Licensed Advertising Spaces Licensed to the Claimants [Rs. 1,12,35,014/-):

Respondents resorted to arbitrarily disconnecting the electric supplies in contravention to its contractual obligations as provided in Clauses 2 & 15 of the agreement to the Claimants' licensed and installed Advertising Spaces as follows:

(d) At all the Eight Metro Stations (Kanhaiya Nagar to Rithala) from 28.02.2007 to 12.05.2007;



(e) At Rohini (WEST) Metro Station from 20.08.2007 to 19.12.2007;

(f) At Netaji Subash Place (Wazirpur) Metro Station from 03.01.2008 to 18.03.2008

These arbitrary disconnections of electric supplies had resulted in "Non Provision" of "Advertising Spaces" for "Carrying out the Business of Placement of Advertisements" and therefore not liable for levy of License Fee.

***Award***

DMRC is not considered to have violated any contractual obligation in these cases, hence Claims 2(a), (b), and (c) are rejected.

**Claim 3.**

Removal of Advertisement Panels from all Main Roads of Delhi [Rs. 54,94,421/-]:

Respondents by a specifically written communication dated 13.04.2007 suspended the display of advertisements on all the licensed and installed advertisement spaces facing the main roads of Delhi in accordance with the directives of the Hon'ble Supreme Court/High Court for the period 25.04.2007 to 15.08.2007 (113 days). Claimants have been seeking relief in payment of License fee for this period whereas Respondents have been insisting on levying it.

***Award***

In terms of the provisions of the License Agreement, the Claim is rejected.

**Claim 4.**

Obstructed Advertising Space [Rs. 34,07,807/-]:

Respondents caused to completely block the visibility of the Licensed, Approved & Installed Advertising Spaces (Panels) of the Claimants by permitting various retail kiosks to put up their establishments at these Eight Metro Stations. This deliberate act resulted in "Non Provision" of "Advertising Spaces" for "Carrying out the Business of Placement of Advertisements" in case of 9 advt. spaces (area 360 sq.ft or 33.45 sq.m) and therefore made them liable to give relief in License Fee on a proportionate basis.

***Award***

Considering that the viewability of the nine advertising panels got partially obstructed, 50% remission in license fee for the affected 33.44 Sq.m area is allowed from 01.12.2007 to 31.05.2009.

**Claim 5.**

Cost of Extra Contractual Additional Bank Guarantee Obtained by the Respondents [Rs.5.52,840/-]:



Respondents obtained an additional Bank Guarantee of Rs. 2.00 Crores in July 2008 as a precondition to appointment of a "Sole Conciliator" under Clause 44 of the agreement, and have continued to hold it till date.

***Award***

Claim towards the cost of obtaining the Bank Guarantee of Rs. 2 crores is rejected.

**Claim 6.**

**Infringement of Claimants' Licensed Rights due to the Respondents Resorting to Parallel Advertising [Rs. 10.50.000/-]:**

Respondents all along the effective period of agreement resorted to "Parallel advertising" at all the Eight Metro Stations by allowing mass scale advertising on Retail Outlets, thereby causing a serious breach of spirit and purpose of the agreement. This intentional act by Respondents have grossly disadvantaged the Claimants' position, and caused huge loss of Business Opportunity to the Claimants.

***Award***

Considering the terms and conditions of the License Agreement, the Claim is rejected.

**Claim 7.**

**Cost of Arbitration proceedings.**

***Award***

Under the provisions of the License Agreement, this Claim is rejected.

**Counter-Claims No. 1,2. and 3.**

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|--|-------------|
| <b>1. Outstanding License Fee and Service Tax of M/s TDI as on 28.02.2009</b>                | 5,60,84,559 |
| <b>2. Interest on late payment on account of license fee and service tax upto 28.02.2009</b> | 6,25,92,043 |
| <b>3. Electricity dues (Flat charges + meter rate charges)</b>                               | 3,01,706    |

***Award***

The Arbitration Tribunal considers that Counter-Claim nos. 1. and 2. are entirely consequential to and dependent on the Award which has been given in respect of the Claims I.to 6, and do not constitute as an independent Counter-Claim, Further, based on the Award which has been given in respect of Claims 1. to 6., the amounts of the chargeable license fee and the interest for delayed payment, if any, are fully determined by the terms and conditions of the License Agreement itself.



Counter-Claim no. 3. concerns payment of electricity dues about which there is no dispute, and hence, this is not a matter for arbitration and should be dealt with in the normal course.

**Counter-Claims No. 4.**

*Penalty for late payment (@5,000/- for 9 times)  
(December 04, 05, 06; 07, 08 & June 05, 06, 07, 08)*

**Rs. 45,000**

***Award***

This issue is fully determined under Cl. 9 (Lic. Agt.) within the provisions of the License Agreement itself and is not an issue under dispute for determination through Arbitration.

**Counter-Claims No. 5.**

*Penalty for violating norms vide letters di. 20.08.07, 27.10.08 & 14.01.08*

**Rs. 15,000**

***Award***

The issue of imposing such Penalty is fully determined under Cl 9 & Cl. 18 of the Lic. Agt, itself and is not an issue under dispute for determination through Arbitration.

**Counter-Claims No. 6.**

*Cost of litigation*

**Rs. 1,50,000**

***Award***

In view of the clear stipulation in the License Agreement, this Counter-Claim is rejected.

**Counter-Claims No. 7.**

*Miscellaneous expenses etc.*

**25,000**

***Award***

For lack of any supporting evidence or record or provision in the License Agreement, this Counter-Claim is rejected.

**Counter-Claims No. 8.**

*Defamation of DMRC due to non-adherence to the standards that DMRC maintenance*

**5,00,000**

***Award***

For lack of any supporting evidence or record or provision in the License Agreement, this Counter-Claim is rejected.

**Operation of the AWARD:**

The above 'AWARD' by the Arbitration Tribunal will be taken as operative from the date of the AWARD.

Since the duration of the License Agreement has ended on 31.05.2009, taking due notice of thic AWARD, DMRC shall work out the net payments which may fall as due on 31.05.2009 In DMRC or to M/s TDI, as the case may be, review the Invoices



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already issued and issue revised final Invoices as necessary, keeping in view the various provisions of the License Agreement, within one month of the date of the AWARD. The payments thus worked out as due, along with interest @12% for the period from 01.06.2009 to the date of the Award, shall be cleared within one month of the revised final Invoices being issued. If these payments are not cleared within one month of the revised final Invoices being issued, then interest @ 15% shall be payable for the extra time taken beyond this period to clear the payments.

The Award has been passed and signed on the 26<sup>th</sup> day of February 2010.”

20. A tabulated account of the Claims preferred by the Petitioner, as adjudicated by the learned Arbitrator, along with the findings returned thereon, is set out hereunder:

<b>Claims before the learned Arbitrator</b>	<b>Claim Amount (In Rs.)</b>	<b>Findings of the learned Arbitrator</b>
1.) Date of commencement of the license to be reckoned as 08 April 2005 instead of 01 June 2004.	3,27,46,634/-	(a) M/s TDI's claim in respect of date of commencement of the license is rejected. The date of the start of the license fee will remain. 01.06.2006 and the 5-year/License Period will be reckoned from 01.06.2004. (b) However, for the period 01.10.2004 upto 31.01.2005, only 75% of the License Fee otherwise due may be charged on account of the delays in completing the work of electrification of the advertising panels attributable to the delay in clear-cut directions being given by DMRC soon after receipt of M/s TDI's letter dt. 21.09.2004.
2.) Arbitrary disconnection of the electricity supply by the Respondent to the licensed advertising	1,12,35,014/-	DMRC is not considered to have violated any contractual obligation in these cases. Hence, Claims 2 (a), (b), and (c) are rejected.



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spaces licensed to the Claimant		
3.) Remission in license fee for the period 25.04.2007 to 15.08.2007 (113 days) due to the removal of advertising boards on all main roads of Delhi in compliance with Respondent's direction dated 13.04.2007.	54,94,421/-	In terms of the provisions of the License Agreement, the Claim is rejected.
4.) Obstructed Advertising Space	34,07,807/-	Considering that the viewability of the nine advertising panels got partially obstructed, 50% remission in license fee for the affected 33.44 Sq.m. area is allowed from 01.12.2007 to 31.05.2009
5.) Cost of Extra Contractual Additional Bank Guarantee Obtained by the Respondents	5,52,840/-	Claim towards the cost of obtaining, the Bank Guarantee of Rs. 2 crores is rejected.
6.) Infringement of Claimants' Licensed Rights due to the Respondents Resorting to Parallel Advertising.	10,50,000/-	Considering the terms and conditions of the License Agreement, the Claim is rejected.
7.) Cost of Arbitration proceedings.		Under the provisions or the License Agreement, this Claim is rejected.

21. Aggrieved by the said award, the Petitioner has filed the present Petition under Section 34 of the A&C Act.



**CONTENTIONS OF THE PETITIONER:**

22. Learned senior counsel appearing on behalf of the Petitioner would submit that the claims awarded in favour of the Respondent have been allowed without due consideration of the evidence on record and are contrary to the terms and conditions of the Agreement executed between the parties.

23. With respect to *Claim No.1*, learned senior counsel appearing for the Petitioner would contend that the learned Arbitrator erred in holding that the date of commencement of the Licence Agreement was 01.06.2004, i.e., the date of execution of the License Agreement.

24. It would be submitted by the learned senior counsel that under Clause 3 of the License Agreement, the licence was to run for a period of five years from the date of handing over the possession for commercial exploitation, and that possession of the advertising sites was not handed over for commercial exploitation until 07.04.2005.

25. Learned senior counsel appearing for the Petitioner would contend that Clause 4 of the License Agreement, which refers to approval of “plans”, could not be read in isolation and must be construed conjointly with Clause 3. Therefore, in the absence of approval of electrical layout plans and provision of electricity, the advertising sites could not be commercially exploited.

26. It would further be contended by learned senior counsel that the electrical layout plans were only approved by the Respondent *via* its letter dated 18.03.2005, and electricity supply was provided thereafter. Consequently, even if approval of plans was taken as the determinative factor, the commencement date could not be earlier than 18.03.2005.



27. Learned senior counsel appearing for the Petitioner would submit that charging a licence fee from 01.06.2004 while permitting commercial exploitation only from April 2005 results in an anomalous situation whereby the licence period is effectively reduced.

28. Learned senior counsel appearing for the Petitioner would further submit that any ambiguity between Clauses 3 and 4 ought to have been resolved against the Respondent as the author of the contract, in accordance with the principle of *contra proferentem* and for the same, he would place reliance upon the judgment of this Court in ***Bharat Sanchar Nigam Ltd. v. Haryana Telecom Ltd.***<sup>5</sup>.

29. It would further be submitted by learned senior counsel appearing for the Petitioner that the learned Arbitrator did not consider the inconsistency or ambiguity between Clause 3 and Clause 4 of the License Agreement, as between the parties, and therefore, he would contend that the learned Arbitrator, while rejecting this claim of the Petitioner, allowed the Respondent to charge 75% of the license fee from 06.04.2004, which is arbitrary, unconscionable, contrary to settled principles of contract law, and suffers from the patent illegality.

30. Insofar as *Claim No.2* is concerned, learned senior counsel appearing for the Petitioner would contend that the Respondent arbitrarily disconnected the electricity supply to all licensed advertising panels from 28.02.2007 to 12.05.2007, rendering the sites completely unusable.

31. It would be submitted that Clause 15 of the License Agreement did not permit the disconnection of electricity to all sites due to an

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<sup>5</sup> 2010 SCC OnLine Del 1060



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alleged issue at one location, particularly when electrical systems at different stations were independent.

32. It would also be submitted that Clause 9 of the said agreement only allows punitive action in the form of a penalty of Rs. 5,000/- in case of any offence committed by the Petitioner, and *via* a letter dated 20.08.2007, the said fine of Rs. 5,000/- was also imposed on the Petitioner by the Respondent.

33. Learned senior counsel appearing for the Petitioner would contend that the learned Arbitrator accepted the Respondent's explanation without adequate consideration of the contractual provisions and evidence on record.

34. Insofar as Claim No. 3 is concerned, learned senior counsel appearing for the Petitioner would submit that, pursuant to written directions dated 13.04.2007 issued by the Respondent citing this Court's order dated 26.03.2007 passed in W.P. (C) No. 165165/2006 titled "*Court on Its Motion v. Union of India*", the advertisement panels facing the main roads were removed by the Petitioner. It would, therefore, be contended that for the period during which the licence could not be effectively operated on account of such removal, the Petitioner was entitled to a proportionate remission of the licence fee.

35. Learned senior counsel appearing for the Petitioner would submit that Clause 41 of the License Agreement, dealing with *force majeure*, was misconstrued, and that principles of *quantum meruit* and Section 56 of the **Indian Contract Act, 1872**<sup>6</sup> were applicable.

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<sup>6</sup> IC Act



36. It would further be submitted that the learned Arbitrator completely overlooked the said principles of law and failed to consider the provisions of the Agreement. Therefore, the learned senior counsel would contend that the Impugned Award is liable to be set aside in light of the judgment of the Hon'ble Supreme Court in *ONGC v. Saw Pipes Ltd.*<sup>7</sup>.

37. While assailing *Claim No.6*, learned senior counsel appearing for the Petitioner would contend that the License Agreement granted exclusivity in respect of advertising rights, subject only to limited exceptions relating to signage of retail outlets.

38. It would be submitted by learned senior counsel that the Respondent permitted brand advertisements under the guise of retail signage, which amounted to infringement of the Petitioner's licensed rights.

**CONTENTIONS OF THE RESPONDENT:**

39. *Per contra*, learned counsel for the Respondent would submit that the Arbitral Award is well-reasoned and does not merit any interference.

40. Learned counsel for the Respondent would contend that the objections filed under Section 34 of the A&C Act seek re-appreciation of evidence and re-agitation of facts already adjudicated upon by the learned Arbitrator.

41. It would be submitted that the Award is a reasoned Award based on contractual provisions, pleadings, and evidence, and does not suffer from patent illegality or conflict with public policy.

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<sup>7</sup> (2003) 5 SCC 705



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42. For *Claim No.1*, learned counsel for the Respondent would contend that the date of commencement of the licence was unambiguously fixed as 01.06.2004 in terms of the License Agreement and contemporaneous documents.

43. It would be submitted that the Letter of Acceptance, office notes, invoices raised, and correspondence exchanged between the parties demonstrate that the licence fee was payable from 01.06.2004. Further, learned counsel for the Respondent would rely on correspondence wherein the Petitioner acknowledged payment obligations with reference to June 2004.

44. It would be contended that the execution of work or installation of electrical systems was not determinative of the commencement of the licence period.

45. Learned counsel for the Respondent would submit that the learned Arbitrator granted partial relief by allowing only 75% of the licence fee for a limited period and that such determination was reasonable.

46. With respect to *Claim No.2*, learned counsel for the Respondent would contend that electricity was disconnected due to safety concerns and in accordance with the contractual provisions. It would be submitted that the learned Arbitrator has already examined the issue and rejected the claim, and the said finding is purely factual.

47. With respect to Claim No. 3, learned counsel appearing for the Respondent would submit that the removal of the advertisement panels was necessitated pursuant to the directions issued by this Court in W.P. (C) No. 165165/2006 titled "*Court on Its Motion v. Union of India*". It would be contended that, under the terms of the License



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Agreement, the licence fee was payable irrespective of the actual utilisation of the advertising spaces, and therefore, the Respondent cannot be held liable for any alleged non-utilisation thereof.

48. For *Claim No.6*, learned counsel for the Respondent would contend that Clause 43 of the License Agreement expressly permitted display of advertisements/ signage in property development and circulation areas. It would be submitted that no exclusivity was violated and the learned Arbitrator rightly rejected the claim.

**ANALYSIS:**

49. 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.

50. 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.

51. 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. Enxio Power Cooling Solutions (India) (P) Ltd.*<sup>8</sup>, while dealing with the grounds of conflict with the public policy of India and perversity, grounds which

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<sup>8</sup> (2025) 2 SCC 417



have also been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

***“Relevant legal principles governing a challenge to an arbitral award***

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

***Public policy***

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

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



not attract the bar of public policy, and something more than contravention of law is required.

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

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

- (a) that in every determination that affects the rights of a citizen or leads to any civil consequences, the court or authority or quasi-judicial body must adopt a judicial approach, that is, it must act bona fide and deal with the subject in a fair, reasonable and objective manner and not actuated by any extraneous consideration;
- (b) that while determining the rights and obligations of parties the court or Tribunal or authority must act in accordance with the principles of natural justice and must apply its mind to the attendant facts and circumstances while taking a view one way or the other; and
- (c) that its decision must not be perverse or so irrational that no reasonable person would have arrived at the same.

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

- (a) orders of superior courts in India; and
- (b) the binding effect of the judgment of a superior court would also be regarded as being contrary to the fundamental policy of Indian law.

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

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



- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or  
(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse [Associate Builders case, (2015) 3 SCC 49, para 31].

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

***The 2015 Amendment in Sections 34 and 48***

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

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

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

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



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

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

52. A careful and comprehensive perusal of the Impugned Award demonstrates that the learned Arbitrator has examined the pleadings, documentary material, correspondence exchanged between the parties, and the evidence led in support of their respective claims and counter-claims. The Impugned Award reflects due consideration of the relevant facts and surrounding circumstances germane to the disputes. Upon such evaluation, the learned Arbitrator arrived at the conclusions summarized in the preceding paragraphs. To the limited



extent that the findings have been assailed before this Court, the same are examined hereinafter.

**Claim 1**

53. The principal challenge under Claim No. 1 pertains to the determination of the date of commencement of the licence and the corresponding liability of the Petitioner to pay the licence fee. The learned Arbitrator, upon an examination of the contractual terms and the contemporaneous correspondence exchanged between the parties, concluded that the licence fee was contractually payable with effect from 01.06.2004 and that the five-year licence period was liable to be reckoned from the said date. At the same time, having found that a part of the delay in electrification was attributable to the Respondent, the learned Arbitrator granted partial and equitable relief to the Petitioner by directing that only 75% of the licence fee would be payable for the period from 01.10.2004 to 31.01.2005.

54. A careful reading of the Award in respect of Claim No. 1 reveals that the learned Arbitrator recorded a categorical finding that the plans submitted by the Petitioner stood approved by the Respondent *vide* letter dated 06.05.2004. In view of such approval, and in the absence of any contractual stipulation postponing the commencement date, the learned Arbitrator held that the date of commencement of the licence would remain 01.06.2004. This finding is based on documentary material forming part of the record.

55. It is now well settled that the interpretation of contractual terms squarely falls within the domain of the Arbitral Tribunal. Where the learned Arbitrator adopts a plausible and reasonable interpretation of the contract, the Court, while exercising jurisdiction under Section 34



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of the A&C Act, cannot interfere merely because another view is possible or even preferable. The supervisory jurisdiction under Section 34 of the A&C Act does not permit re-appreciation of evidence or substitution of the Court's interpretation for that adopted by the learned Arbitrator.

56. Further, the Petitioner's reliance upon the doctrine of *contra proferentem* is equally unavailing. The Impugned Award in respect of Claim No. 1 is not founded upon any unresolved ambiguity in the contractual terms but upon contemporaneous correspondence between the parties. The Respondent, *vide* letter dated 06.05.2004, approved the plans submitted by the Petitioner and granted an additional period of four weeks from that date for activation of the Licence Agreement at the Petitioner's request. Subsequently, *vide* letter dated 03.06.2004, it was expressly recorded that the lease stood activated with effect from 01.06.2004. Significantly, these foundational facts were not controverted by the Petitioner and, therefore, stand admitted. For ready reference, the relevant portion of the letter dated 03.06.2004 is reproduced hereunder:

**“3rd June 2004**

**Sub: Handing over and taking over of Advertising sites inside stations and their traffic integration areas (Khanya Nagar – Rithala Section of MRTS Phase-I)**

M/s. TDI International India Ltd., a company incorporated under the Companies Act 1956 and having its Registered office at B-4/62, Safdarjung Enclave, New Delhi – 110 029 have been allotted the license for advertising rights inside all stations and their traffic integration areas in the Khanya Nagar – Rithala section of MRTS phase-I, after approval of the competent authority.

The authorized representative of TDI International India Ltd., Shri Vijay Bajaj, whose signature is attested below, will take over possession of the sites. They may be given access to the sites after due verification of his/their credentials and as per procedures followed by O&M for the purpose of installation, maintenance, placement of advertisements panels and advertisements after



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approval by GM (O&M)'s office. A copy of the agreement is also enclosed for your reference.

The lease out is activated from the 1st of June 2004. One set of plans have been approved by the undersigned (copy enclosed). They shall in future be submitting their plans for placement of advertisement panels etc., for which they shall seek approval from GM (O&M)'s office.

They are to be provided electric power supply as required, subject to availability and technical feasibility after taking refundable electricity consumption deposit @ Rs.1500 per Kva.

Please notify this office after handover, along with details.

Sd/-

**Chief Urban Planner**

Shri Vijay Bajaj  
Director, M/s. TDI International India Ltd.  
Attested"

57. In these circumstances, the doctrine of *contra proferentem* cannot be invoked to displace a reasoned contractual interpretation arrived at by the learned Arbitrator on the basis of admitted correspondence. Once the learned Arbitrator has undertaken the interpretative exercise and arrived at a plausible and contractually sustainable conclusion, it is not open to this Court to substitute its own construction. The conclusion that the licence commenced from 01.06.2004 is both plausible and supported by the material on record.

58. The Impugned Award, in the present case, neither rewrites the contract nor disregards its essential stipulations. On the contrary, the learned Arbitrator has harmonised the contractual terms with the factual matrix and granted limited equitable relief in respect of delayed electrification attributable to the Respondent. The determination of the commencement date, coupled with partial remission of the licence fee, represents a commercially reasonable and legally permissible outcome, well within the jurisdiction of the Arbitral Tribunal.



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59. The reliance placed by the Petitioner on *ONGC v. Saw Pipes Ltd.* (*supra*) is misplaced. The reasoning of the learned Arbitrator under Claim No. 1 cannot be characterised as perverse, patently illegal, or contrary to the fundamental policy of Indian law. As reiterated by the Hon'ble Supreme Court in *Associate Builders v. DDA*<sup>9</sup>, interference under Section 34 of the A&C Act is warranted only where the illegality goes to the root of the matter or the decision-making process is so irrational that no reasonable person would have arrived at such a conclusion. Re-appreciation of evidence or substitution of the Court's view is impermissible. The finding of the learned Arbitrator on the commencement of the licence does not suffer from patent illegality and, therefore, warrants no interference.

### Claim 2

60. Under Claim No. 2, the grievance of the Petitioner arises from the disconnection of the electricity supply to the licensed advertising sites for the period from 28.02.2007 to 13.05.2007, purportedly on account of a short circuit incident at one location. The Petitioner has contended that such disconnection adversely affected its ability to operate the licensed sites and seeks relief on that basis.

61. The learned Arbitrator, while adjudicating this claim, examined the relevant provisions of the Licence Agreement, particularly Clause Nos. 10 and 15. Upon appreciation of the material placed on record, the learned Arbitrator recorded a finding that the disconnection was occasioned by a safety concern arising from a short circuit and that electricity had, in fact, been disconnected only at Kanhaiya Nagar Station.

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<sup>9</sup> (2015) 3 SCC 49



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62. This finding was supported by the circumstance that the Petitioner continued to pay electricity charges in respect of the other stations during the relevant period, thereby indicating that supply at those locations had not been interrupted. The learned Arbitrator further noted that the requisite assurance report, in conformity with the Respondent's specifications and safety requirements, was submitted by the Petitioner only on 10.05.2007, and electricity supply was restored shortly thereafter on 13.05.2007. Accepting the Respondent's justification founded on public safety considerations and contractual compliance, the learned Arbitrator rejected the Petitioner's claim.

63. As authoritatively elucidated in *Associate Builders (supra)* and *OPG Power Generation (supra)*, the scope of interference under Section 34 of the A&C Act on the ground of patent illegality does not extend to mere errors in the appreciation of evidence or to an alternative interpretation of contractual clauses. Interference is warranted only where the award is in contravention of an express contractual provision, is perverse, or effectively rewrites the contract between the parties.

64. In the present case, in the considered opinion of this Court, the learned Arbitrator has adopted a plausible and reasonable interpretation of the contractual framework, read in conjunction with the factual matrix and safety considerations. Such an approach squarely falls within the arbitral domain and does not invite interference.

65. The contention advanced by the Petitioner that, in the absence of an express contractual clause specifically authorising disconnection



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of electricity, the Impugned Award is rendered patently illegal is wholly untenable. The ground of patent illegality under Section 34 of the A&C Act does not extend to every alleged omission, arguable interpretation, or debatable construction of contractual provisions. It is well settled that patent illegality must go to the root of the matter and cannot be invoked to challenge a plausible interpretation adopted by the arbitral tribunal.

66. Even assuming that the Agreement does not expressly stipulate the precise contingencies in which electricity supply may be disconnected, the determinative question is whether the view adopted by the learned Arbitrator is a possible and reasonable one based on the material on record.

67. So long as the interpretation falls within the bounds of reasonableness and does not rewrite or disregard the contract, this Court, while exercising jurisdiction under Section 34 of the A&C Act, cannot substitute its own interpretation in place of that of the Arbitrator. In the present case, the learned Arbitrator has consciously taken into account considerations of public safety, the occurrence of a short circuit, and the necessity of compliance with requisite technical assurances prior to restoration of supply. The conclusion arrived at is founded upon a rational evaluation of the contractual framework and factual circumstances. The decision cannot be characterised as arbitrary, perverse, or contrary to the fundamental policy of Indian law, and therefore does not warrant interference by this Court.

### **Claim 3**

68. Claim No. 3 arises from the removal of advertisement panels pursuant to the Respondent's letter dated 13.04.2007, whereby the



Petitioner was restrained from utilising approximately 1,000 sq. ft. of licensed advertising space for the period from 24.04.2007 to 15.08.2007. The learned Arbitrator rejected the said claim primarily by placing reliance upon Clause 41 of the Licence Agreement, which deals with *force majeure*. The said Clause 41 provides as follows:

**“41. Force Majeure:**

Neither DMRC nor the LICENSEE shall be liable for any inability to fulfill their commitments and obligations hereunder occasioned in whole or in part by *Force Majeure*, fire, war, or any other cause beyond their reasonable control. Such Force Majeure occurrence shall be notified to the other party within 15 days of such occurrence. If such Force Majeure continues for a period of three months, the other party may be entitled to, through not being obliged to terminate this agreement.”

69. A plain and meaningful reading of Clause 41 unequivocally indicates that the parties consciously agreed that performance of their respective contractual obligations would stand excused, in whole or in part, upon the occurrence of a *force majeure* event or any circumstance beyond their reasonable control. The clause embodies a clear allocation of risk and recognises that, in specified contingencies, strict performance may neither be feasible nor enforceable.

70. However, the Impugned Award does not sufficiently analyse the legal consequences that flow from the invocation of such a clause, particularly in relation to the continuing obligation to pay the licence fee during a period when the licensed area was admittedly rendered unusable. Where reciprocal obligations under a contract are interdependent, and performance on one side becomes impossible or commercially impracticable due to supervening events beyond the control of the parties, the corresponding obligation to pay consideration cannot be enforced in a purely mechanical or isolated



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manner. The principle of reciprocity inherent in contractual arrangements requires that the rights and obligations of the parties be construed harmoniously and contextually.

71. In this regard, the Impugned Award does not meaningfully engage with the foundational principles embodied in Section 56 of the IC Act, which addresses frustration or impossibility of performance arising from supervening events. Nor does it advert to the doctrine of restitution enshrined in Section 65 of the IC Act, which mandates restoration of advantage received under a contract that becomes void or unenforceable, thereby preventing unjust enrichment. The absence of any discussion on these aspects results in an incomplete legal analysis of the consequences of a *force majeure* event on the obligation to pay licence fee.

72. Furthermore, as per Clause 41 of the Licence Agreement, the contractual scheme appears to contemplate suspension, adjustment, or recalibration of obligations in circumstances beyond the parties' control. By nevertheless holding that the licence fee remained fully payable despite the admitted non-usability of the licensed sites for the relevant period, the learned Arbitrator failed to adequately reconcile the suspension of the Petitioner's right to commercially exploit the licensed premises with the Respondent's insistence on continued payment.

73. The Impugned Award does not disclose a clear, cogent, or reasoned basis explaining how the obligation to pay licence fee could survive in its entirety, notwithstanding the suspension of the very right for which such fee constituted consideration.



74. Such an approach, in the considered view of this Court, departs from settled principles of contractual interpretation and substantive law. An Arbitral Award that overlooks material contractual provisions or fails to furnish intelligible reasoning supporting its conclusions may fall within the limited but recognised ground of patent illegality. As clarified by the Hon'ble Supreme Court in *Associate Builders* (*supra*) and *OPG Power Generation* (*supra*), judicial interference is warranted where the reasoning is so deficient, inconsistent, or legally untenable that the conclusion becomes unsustainable.

75. In light of the foregoing, the finding of the learned Arbitrator in respect of Claim No. 3 cannot be sustained and is liable to be set aside to that limited extent.

#### **Claim 6**

76. Claim No. 6 pertains to the allegation of infringement of the Petitioner's licensed advertising rights on account of what has been described as "parallel advertising", allegedly permitted by the Respondent during the subsistence of the Licence Agreement. The Petitioner has contended that such permission diluted the commercial value of its licence and amounted to a breach of the contractual arrangement.

77. The learned Arbitrator has examined this claim in the context of the contractual framework governing the parties and the documentary material placed on record. The Impugned Award demonstrates that the learned Tribunal undertook a detailed scrutiny of the relevant provisions of the Licence Agreement, including Clause Nos. 3, 11, 33, 38 and, in particular, Clause 43.



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78. Clause 43 expressly reserves to the Respondent the right to permit signage and advertisements of retail outlets and toilet blocks within the property development and circulating areas of the metro stations. The Impugned Award reflects that these provisions were read harmoniously in order to ascertain the true scope and extent of the advertising rights granted to the Petitioner.

79. Upon such examination, the learned Arbitrator returned a categorical finding that the Licence Agreement did not confer any exclusive advertising rights upon the Petitioner. It was specifically observed that the Agreement did not contain any clause prohibiting the Respondent from allowing advertisements of the nature complained of, nor did it vest exclusivity in favour of the Petitioner in respect of all advertising spaces within the station premises. The learned Arbitrator further noted that, despite being afforded the opportunity, the Petitioner was unable to identify any express contractual stipulation that barred the Respondent from permitting such advertisements.

80. The Impugned Award also records that although the Petitioner relied upon extensive correspondence asserting commercial prejudice and loss of business, it failed to substantiate its claim by demonstrating the precise or quantifiable impact of the alleged parallel advertising on its licensed operations. No cogent evidence was placed on record to establish actual financial loss or diminution in revenue attributable to the Respondent's actions. The learned Arbitrator treated this absence of concrete and measurable evidence as a significant factor in rejecting the claim.



81. In view of the detailed consideration of the contractual provisions, the evaluation of the material on record, and the plausible and cogent reasoning recorded by the learned Arbitrator, this Court finds no ground for interference under Section 34 of the A&C Act. As consistently held by the Hon'ble Supreme Court, a court exercising limited supervisory jurisdiction cannot re-appreciate evidence or substitute its own interpretation of contractual clauses where the arbitral view is a possible and reasonable one. The findings rendered in respect of Claim No. 6 do not suffer from patent illegality, perversity, or contravention of the fundamental policy of Indian law and, therefore, warrant no interference.

**CONCLUSION:**

82. Viewed in its entirety, the Impugned Award reflects a reasoned and structured adjudication of the disputes by the learned Arbitrator within the confines of the contractual terms agreed upon by the parties, the material placed on record, and the jurisdiction vested in the Arbitral Tribunal. The Award demonstrates due application of mind to the pleadings, evidence, and relevant contractual provisions.

83. This Court is of the considered view that, in respect of Claim Nos. 1, 2 and 6, the learned Arbitrator has adopted a plausible and legally sustainable interpretation of the Licence Agreement, duly appreciated the evidence and correspondence on record, and furnished intelligible and cogent reasons in support of the conclusions arrived at. In relation to these claims, no perversity, patent illegality, contravention of the contract, or violation of public policy has been established so as to warrant interference under Section 34 of the A&C Act.



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84. However, insofar as Claim No. 3 is concerned, this Court finds that the Arbitral Award does not adequately address the legal consequences arising from the admitted non-usability of the licensed advertising sites pursuant to binding court directions. While invoking Clause 41 of the Licence Agreement relating to *force majeure*, the learned Arbitrator has not sufficiently examined the effect of such supervening circumstances on the reciprocal obligation to pay licence fees. Nor has due consideration been accorded to the principles embodied in Sections 56 and 65 of the IC Act. The reasoning in respect of Claim No. 3, therefore, discloses a flaw in the decision and attracts interference on the limited ground of patent illegality, as explained in the precedents of the Hon'ble Supreme Court referred to hereinabove.

85. In view of the foregoing discussion, the Impugned Award dated 26.02.2010 is upheld insofar as it pertains to Claim Nos. 1, 2 and 6. However, the Award is set aside to the limited extent relating to Claim No. 3.

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

87. No Order as to costs.

**HARISH VAIDYANATHAN SHANKAR, J.**  
**FEBRUARY 24, 2026/sm/jk**