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

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

\+ O.M.P. (COMM) 69/2017

TDI INTERNATIONAL INDIA LTD .....Petitioner
Through: Mr. Ashish Mohan, Senior Advocate along with Mr. Akshit Mago and Mr. Auritro Mukherjee, Advocates.

versus

DELHI METRO RAIL CORPORATION .....Respondent
Through: Mr. Manish Kumar 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 filed under Section 34 of the Arbitration and Conciliation Act, 1996 **Arbitration and Conciliation Act, 1996**[1], challenging the **Award dated 19.02.2010**[2] passed by the learned Sole Arbitrator in the matter titled *"M/s TDI International India Ltd. v. Delhi Metro Rail Corporation Ltd."*

2. At the outset, it is pertinent to note that the challenge in the present Petition is confined only to Claim Nos. 1 and 3. The findings rendered by the learned Arbitrator in respect of the remaining claims have attained finality and are not under challenge before this Court.

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

BRIEF FACTS:

3. The Petitioner, who was the Claimant in the arbitral proceedings, is a company engaged in the business of outdoor, indoor, and transit advertising. In October 2006, the Respondent herein (Respondent in the arbitral proceedings) invited tenders for the grant of advertisement rights in Line 3 (East Extension) of MRTS Phase-I, covering Mandi House, Pragati Maidan, and Indraprastha Metro Stations.

4. The Petitioner participated in the tender process and was declared the successful bidder. Accordingly, a **Letter of Acceptance dated 09.11.2006 (revised on 15.11.2006)**[3] was issued in its favour. Thereafter, a **Licence Agreement dated 27.11.2006**[4] was executed between the parties.

5. Under the terms of the Licence Agreement, the Respondent was to provide prefabricated advertising panels inside Mandi House Metro Station and bare advertising spaces inside Pragati Maidan and Indraprastha Metro Stations. The bare spaces were to be identified and developed by the Petitioner, subject to the Respondent's approval. The licence period was stipulated to be four years from the date of handover or from the date of notice for takeover of the first panel, whichever was earlier, subject to the provision of electricity to the concerned panel.

6. Pursuant to the LoA, the Petitioner submitted the required location layout plans on 16.11.2006 and the electrical routing plans on

[3] LoA
[4] License Agreement

22.01.2007. The Respondent approved both the location layout plans and the electrical plans on 03.03.2007.

7. However, by letter dated 07.03.2007, the Respondent withdrew its approval in respect of two advertising sites, namely Site Nos. 29 and 30, admeasuring 800 sq. ft. (74.50 sq. m.), situated on the Foot Over Bridge at Indraprastha Metro Station.

8. It is stated that the Petitioner objected to the withdrawal of the aforesaid sites and sought their restoration, contending that the Foot Over Bridge formed an integral part of the station premises and that no viable alternate locations were available. The Respondent, on the other hand, maintained that advertising was permissible only within the station premises and called upon the Petitioner to propose alternate sites.

9. It is further stated that despite the withdrawal of the said sites, the Respondent continued to raise invoices towards the licence fee, including charges attributable to the withdrawn area. The Petitioner disputed such billing and claimed remission of the licence fee corresponding to the withdrawn advertising space. The Respondent, however, asserted that the licence fee remained payable strictly in terms of the Licence Agreement.

10. At Mandi House Metro Station, twenty-four prefabricated advertising panels were handed over to and taken over by the Petitioner following a joint inspection conducted on 06.12.2006. Approximately one year later, by letter dated 29.12.2007, the Petitioner raised a grievance that eleven of these panels, admeasuring 352 sq. ft. (31.68 sq. m.), were not marketable, as they were allegedly located beyond the normal train stopping limits and marked “out of

bounds" for passengers. The Respondent permitted relocation of these panels only as an additional area, chargeable on a *pro rata* basis, an arrangement disputed by the Petitioner.

11. In view of the disputes that arose between the parties, the Petitioner invoked the arbitration clause contained in the Licence Agreement and sought the appointment of an arbitrator. Consequently, the Respondent appointed a Sole Arbitrator by letter dated 05.09.2008.

12. The Petitioner filed its Statement of Claims, *inter alia*, raising Claim No. 1 concerning withdrawal of the advertising sites at Indraprastha Metro Station and Claim No. 3 seeking remission of licence fee in respect of the eleven panels at Mandi House Metro Station. The Respondent filed its reply and counter-claims. Both parties led evidence in support of their respective cases.

13. Upon conclusion of the arbitral proceedings, the learned Sole Arbitrator rendered the Impugned Award dated 19.02.2010. By the said Award, Claim No. 1 was partly allowed with limited relief, whereas Claim No. 3 was rejected.

14. The findings of the learned Arbitrator in respect of the claims raised by the Petitioner are summarised hereinbelow:

Claim No.	**Claims before the Ld. Arbitrator**	**Conclusions of the learned Arbitrator**
1.	Non-availability of 800 Sq. ft (74.50 sq.mt) Advertising Area at Indraprastha Metro Station	a) In the case of the withdrawal of the approval by DMRC for Site nos. 29 & 30 (total area= 800 Sq. ft. or 74.50 sq.mt.) at Indraprastha Metro station and non-proposal of any alternate sites by M/s TDI, on an ad hoc basis, only 50% of

		the normal rate of License Fee may be charged w.e.f. 10.03.2007. Normal License Fee may be charged from 7 days after the date an alternative proposal (if any) made by M/s TDI is approved by DMRC. b) M/s TDI's claim in respect of Security Deposit being governed by the advertising area made available is rejected. Security Deposit shall remain payable as being invoiced by DMRC as per CI. 16 and CI. 4.4 and CI. 4.6 of License Agreement.
2.	Non-availability of the Thirteen (13) Prefabricated Recessed Advertising Panels at Mandi House Metro Station	The claim that there was delay in provision of electricity for the 24 pre-fabricated handed over/taken inside Mandi House Metro station and hence no License fee should be payable for these panels for the period 06.12.2006 to 31.10.2007 is rejected.
3.	Not Marketable Eleven (11) nos. prefabricated Recessed advertising Panels of the size of 2400 mm (8 ft)*1200 mm (4 ft) each lying in "Out of Bounds" at Mandi House Metro Station. Total area 352 sq. ft. (31.68 sq. mt)	The Claim that no Licence fee should be payable from 06.12.2006 for the eleven (11) nos. Prefabricated Recessed Advertising Panels (total area 352 sa.ft = 31.68 sq.mt) inside Mandi House Metro Station for being not marketable because of lying in 'Out of Bounds Area', is rejected.
4.	Depreciation in Marketable Value Due to Delays Caused by "DMRC" in	The Claim that there was delay in provision of electricity by DMRC for the advertising panels

	Facilitating" Claimant for Carrying Out the Electrical Cabling Work at Indraprastha Metro station	inside Indraprastha Metro station, and hence there should be 75% remission in the License fee payable for these panels for the period 10.03.2006 to 31.07.2008, is rejected.
5.	Substantial Curtailment in the Marketability of the Licensed Advertising Space Due to Rampant Parallel Advertising Resorted by the Respondents	The Claim that M/s TDI are entitled to any compensation on account of the stated 'substantial curtailment in the marketability of the licensed advertising space due to rampant parallel advertising resorted by the Respondent', is rejected.
6.	Original Contracted Period of Four (4) Years should be Redefined and Extended by 18 Months due to the Respondent having failed to make available full Quantity of Licensed Advertising Rights as detailed under Claims 1.,2.,3., and 4., OR IN THE ALTERNATE, the Claimant should be compensated' for a sum of Rs. One Crore for the resultant loss of business' opportunities on account of non-availability of the contracted advertisement space'.	The Claim for extension of license period by 18 months beyond the four-year term of 06.12.2006 to 05.12.2010. or in the alternate for compensation "for the loss of business opportunities on account of non-availability of the contracted advertisement space", is rejected.
7.	Cost of Arbitration Proceedings.	The Claim for 'Cost of Arbitration Proceedings' is rejected.

15. Aggrieved by the aforesaid Award, the Petitioner has instituted the present petition under Section 34 of the A&C Act before this

Court, challenging the Impugned Award only insofar as it relates to Claim Nos. 1 and 3.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

16. Learned Senior Counsel for the Petitioner would submit that the rejection of Claim Nos. 1 and 3 by the learned Arbitrator is contrary to the settled parameters governing interference under Section 34 of the A&C Act.

17. Insofar as Claim No. 1 is concerned, learned Senior Counsel would contend that the Petitioner structured its bid and financial commitments on the basis of the advertising sites approved under the layout plans, including Site Nos. 29 and 30 admeasuring 800 sq. ft. on the Foot Over Bridge at Indraprastha Metro Station. It is further contended that the Respondent, having initially granted approval after due examination of the layout and electrical plans, could not have subsequently withdrawn such approval without assigning reasons, as such withdrawal amounts to an arbitrary departure from the contractual arrangement.

18. It would further be submitted that the Foot Over Bridge forms an integral part of the station premises and that similarly situated sites on the same structure, as well as at other stations, was approved for advertising, yet the Respondent insisted upon alternate sites despite one platform at Indraprastha Metro Station being non-operational, thereby rendering relocation commercially impracticable and disentitling the Respondent from levying licence fee for the withdrawn area.

19. Learned Senior Counsel would further submit that the learned Arbitrator erred in directing recovery of 50% of the licence fee for the

withdrawn sites, as such determination is *ad hoc* in nature and contrary to the express terms of the Licence Agreement, which does not contemplate payment of the licence fee for advertising space admittedly not made available.

20. It would also be contended that the learned Arbitrator could not have granted relief on equitable considerations in the absence of express authorisation under Section 28(2) of the A&C Act, to decide the dispute *ex aequo et bono*, and that in the absence of such consent, the Arbitrator was bound to adjudicate strictly in accordance with the contractual terms.

21. In relation to Claim No. 3, learned Senior Counsel would submit that eleven prefabricated advertising panels at Mandi House Metro Station were rendered commercially unusable due to restrictions on passenger movement, marking of the area as "out of bounds", erection of temporary barriers, and inadequate lighting, and that such operational constraints were introduced subsequent to the award of the tender without disclosure to the Petitioner at the time of bidding.

22. It would further be argued that although the panels were physically handed over, their placement beyond the normal train stopping limits deprived them of visibility and passenger footfall, thereby frustrating the commercial purpose of the licence, yet the learned Arbitrator erroneously relied upon Clause 14 of the Licence Agreement to hold the Petitioner bound by acceptance of business viability, even though such acceptance could only relate to circumstances existing at the time of execution of the contract and not to subsequent operational changes.

23. Learned Senior Counsel would also submit that the Respondent, by approving relocation of the said panels, effectively acknowledged their non-viability, yet by treating the relocated panels as additional area chargeable on a *pro rata* basis rather than as substitute sites in lieu of the unusable panels, the Respondent has unjustly enriched itself and acted contrary to a fair and reasonable interpretation of the contractual framework.

24. In support of these submissions concerning Claim Nos. 1 and 3, learned Senior Counsel would place reliance upon the judgment of the Hon'ble Supreme Court in ***ONGC v. Saw Pipes Ltd.***[5], to contend that an arbitral award that travels beyond the terms of the contract or permits recovery contrary to the contractual framework is vitiated by patent illegality and falls within the ambit of public policy, thereby warranting interference under Section 34 of the A&C Act.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

25. ***Per contra***, learned counsel appearing on behalf of the Respondent would submit that the present petition amounts to an attempt to seek re-appreciation of evidence and re-interpretation of the contractual terms, which is impermissible within the limited scope of proceedings under Section 34 of the A&C Act.

26. It would further be submitted that the learned Arbitrator examined the tender conditions, the Licence Agreement, the correspondence exchanged between the parties, and the oral as well as documentary evidence adduced during the arbitral proceedings, and thereafter has rendered a detailed and reasoned Award, and that the

[5] (2003) 5 SCC 705

findings so returned is neither arbitrary nor perverse but is based on a plausible and legally sustainable interpretation of the contract.

27. Insofar as Claim No. 1 is concerned, learned counsel for the Respondent would submit that the Licence Agreement expressly reserves to the Respondent the right to reject any proposed advertising site without assigning reasons and to treat the licensed advertising area as a single indivisible lot, and that the learned Arbitrator, while recognising this contractual position, nevertheless has granted a 50% remission of the licence fee on an *ad hoc* basis so as to balance the rival contentions of the parties, and therefore the Petitioner, having already been granted partial relief, could not seek a further re-determination of the same claim under Section 34 of the A&C Act.

28. With respect to Claim No. 3, it would be submitted that all twenty-four prefabricated advertising panels at Mandi House Metro Station were duly handed over to and accepted by the Petitioner on 06.12.2006 pursuant to a joint inspection conducted without any contemporaneous objection, and that the issue of alleged non-marketability of eleven panels was raised for the first time after more than one year, which aspect has been specifically noticed and relied upon by the learned Arbitrator while rejecting the claim.

29. It would further be contended that the learned Arbitrator rightly placed reliance upon the express undertaking contained in Clause 14 of the Licence Agreement, whereby the Petitioner acknowledged having inspected the prefabricated panels and accepted their business viability and unequivocally agreed not to raise any claim on that account, and that the conclusion reached in the Impugned Award

flows directly from the contractual stipulations and the admitted conduct of the Petitioner.

30. Learned counsel for the Respondent would also submit that the reliance placed by the Petitioner upon the judgment in ***ONGC v. Saw Pipes Ltd.*** (*supra*) is misplaced, since the Impugned Award neither rewrites the contract nor travels beyond its terms, and that the Award discloses no patent illegality or conflict with public policy but represents a possible and reasonable view based on the material on record, and therefore warrants no interference under Section 34 of the A&C Act.

ANALYSIS:

31. 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.

32. 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.

33. 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.[6], while dealing with the grounds of conflict with the public policy of India and perversity, grounds which have also been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

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

[6] (2025) 2 SCC 417

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

34. A careful perusal of the Impugned Award, insofar as it relates to Claim Nos. 1 and 3, which fall for consideration in the present proceedings, reveals that the learned Arbitrator has duly examined the entire factual matrix, the relevant contractual provisions, and the rival submissions of the parties before rendering his findings. The Award reflects a conscious consideration of the material placed on record and cannot be said to have been rendered in disregard of the evidence or the governing clauses of the Licence Agreement.

Claim 1

35. In respect of Claim No. 1, this Court has considered the challenge to the Impugned Award insofar as it relates to the withdrawal of approval of Site Nos. 29 and 30 at Indraprastha Metro Station. Before proceeding further, this Court considers it appropriate to reproduce the relevant portion of the Award, which reads as follows:

> "***Determination***
> MS TDI had submitted the location plans for Indraprastha Metro station comprising Site nos. 1 to 30 (total area 2,125 sq.ft), including Site nos. 26 to 30 (total area 1,000 sq.ft) located on the FOB with their letter dt. 16.11.2006 and electrical plans with letter dated 22.01.2007. DMRC had at first approved the Site plans as proposed by M/s TDI vide their letter dated 03.03.2007, but had conveyed later non-approval of Site nos. 29 & 30 (total area 800 sq. ft/74.50 sq.mt) vide their letter dt. 07.03.2007.
>
> On being requested to restore the approval of the two Sites, DMRC advised that these being not 'inside' the station, were not approved as per terms and conditions of License Agreement, and advised M/s TDI to propose alternate sites in lieu of Site nos. 29 & 30. This was followed by a protracted correspondence with both sides reiterating their positions.
>
> M/s TDI's main contentions are: (i) One of two platforms at Indraprastha station being non-functional due to low number of commuters, they could not find any alternate sites which may be suitable as advertising spaces. No information about one platform remaining non-functional was given at the tender stage. (ii) Site nos. 29 and 30 were located similar to Site nos. 26 to 28 on the FOB in Indraprastha station and Site nos. 33 to 35 at Pragati Maidan station, both of which had been approved. They contested the argument that Site nos. 29 and 30 would be installed, operated and maintained from outside and had 'viewability' only from outside, as neither was this suggested by M/s TDI at any stage nor were they asked about this, and 'viewability' was not an issue covered under the Agreement. And, (iii) The FOB at Indraprastha station was accepted as an integral part of the station and was included in the station layout plans provided to them, and at no stage had the FOB structure been defined as "inside' and 'outside'. (iv) Since DMRC could not 'provide' necessary advertising space arca of 74.50 sq.mt, as required under the Agreement, M/s TDI were not liable to pay license fee for the same. (v) On the same

account, demand for Security Deposit too should be based on the advertising area made available.

DMRC's main contentions are: (i) Site nos. 29 and 30 were visible only from outside and hence could not be approved. These were later given under a new Agreement to another Party for outside advertising, (ii) Site nos. 26 to 28 on the FOB at Indraprastha station and Site nos. 33 10 35 at Pragati Maidan station were in a different category as these were visible from inside the stations. (iii) As per terms and conditions of the Agreement, DMRC had the right to reject any such proposals and also the right to indicate alternate locations. (iv) M/s TDI could locate advertising spaces even on the non-functional platform as these will be visible to passengers on the opposite platform. (v) Since M/s TDI have not made any proposals for the 74.50 sq.mt area that could be approved, as per Agreement License fee for the full area of 469.12 sq.mt is being invoiced and should be paid by them. (vi) As per Agreement, the amount of Security Deposit to be paid by M/s TDI will not change on account of any change in the area of advertising spaces.

Vide CL 2 (Lic. Agt.), "DMRC hereby agrees to provide pre fabricated advertising panels Inside Mandi House Metro Station and also bare advertising spaces inside balance 2 (two) stations ie. Pragati Maidan MRTS station and Indraprastha station, to be identified, panels fabricated, installed and commissioned after approval of DMRC" Vide Cl. 4.1 (Lic. Agt.), "The licensee hereby agrees to take up on license basis all the Advertisement spaces specified in clause '2' and detailed in Table 1, and also agrees to submit all plans as one lot for approval by DMRC within 7 days from the date of issue of LOA." Under CI. 7 (Lic. Agt.), DMRC "reserves the right to reject any or all of the said submissions, without assigning any reason whatsoever. DMRC also has the right to indicate alternate locations." Vide Cl. 9 (Lic. Agt.), "The licensee will be charged License fee for a minimum of 469.12 Sq.m advertisement areas even if not fully utilized. For all purposes this total advertisement area of 469.12 Sq.m will be treated as one lot." Vide Cl. 14 (Lic. Agt.), M/s TDI "confirms having seen the prefabricated panels and their locations inside Mandi House MRTS Station and also seen the potential of advertising inside the balance 2 stations i.e. Pragati Maidan MRTS Station and Indraprastha MRTS Station also confirms full satisfaction as to the business viability of licensing" the advertising inside the said stations.

M/s TDI had submitted location plans of proposed panels covering approximately full area of 200 sq.mt at Indraprastha station as per Agreement. This was approved at first but soon thereafter, approval for Site nos. 29 & 30 was withdrawn and DMRC had asked for

alternate proposals. M/s TDI did not submit alternate proposals for their reasons as indicated above. The core issue is whether license fee for this area (74.50 sq.mt) is payable or not under the Agreement.

In normal circumstances, as per various clauses of the Agreement referred above, DMRC has the right to reject the proposal for Site nos. 29 & 30 and to "indicate alternate locations" and in case the licensee fails to submit acceptable proposals, to charge license fee for the full arca provided under the Agreement. Thus, DMRC had "the right to reject any or all of the submissions, without assigning any reasons whatsoever" and "to indicate alternate locations" [C1.7 of Lic. Agt.) and "The licensee will be charged License fee for a minimum of 469.12 sq.mt advertisement areas even if not fully utilized" [C1.9 of Lic. Agt.). However, following particular factors too need to be taken into account in this case:

(i). Location plans were submitted on 16.11.2006 and electrical plans on 22.01.2007. The plans were duly approved on 03.03.2007, and then on 07.03.2007 approval for Site nos. 29 & 30 was just withdrawn. If these Sites were clearly not within the ambit of the Agreement, these should have been rejected at least soon after submission of electrical plans and in any case would not have been approved vide letter dt. 03.03.2007, by which time DMRC had enough time to judge the issue.

(ii). The distinction being made by DMRC between different sites on the FOB at Indraprastha station seems to be not so clearcut as to be easily perceivable by the tenderers and should have been clearly indicated at the Tender stage.

(iii). The advice for submission of 'alternate' sites in lieu of Site nos. 29 and 30 was reiterated by DMRC but only in July 2008 the specific "alternate location" of the non-operational platform was indicated. Hence, M/s TDI's contention that they could not have had the idea that they would have to locate a large part of the advertising panels at Indraprastha station on a non-operational platform, a clearly unsuitable proposition from the commercial view, cannot be overlooked.

Taking all factors into account, the Arbitration Tribunal considers that in this case both DMRC and M/s TDI share the blame for the area of 800 Sq.ft (74.50 Sq.m) at Indraprastha station having remained unapproved and uninstalled. M/s DMRC's argument that they had a right to reject any submission, as also that M/s TDI on its own refused to suggest any alternate site, is valid. However, M/s TDI's arguments that at Indraprastha station, the approval was withdrawn after having been first approved and the reasons offered for withdrawal of approval might not have been clearcut at the tender stage and nor were any clearcut alternate sites proposed by DMRC soon after the withdrawal of site Nos. 29 and 30, and they too had difficulty in proposing a commercially viable alternate site,

too cannot be ignored. Hence, it may be taken as a case of 74.50 "provided" by DMRC nor having been clearly "utilized" by Mis T131 (wef 10.03.2007).
Hence, considering all factors, on an ad hoc basis, the Tribunal considers that for the said 74.50 Sq.m area which has not been installed, only 50% of the normal rate of License Fee may be charged wef 10.03.2007. Normal License Fee will be leviable from 7 days after the date an alternative proposal (if any) made by M/s TDI is approved by DMRC.

Regarding the issue of Security Deposit, in reply to DMRC's position that vide Cl. 16 (Lic Agt.), "security deposit will not be reduced in case of variation in the number of panels, their areas or locations", M/s TDI have stated that this read with Cl.2 and Cl. 4.6 (Lic. Agt.) would show that "the amount of Security Deposit and its escalation by 5% on annual basis would get governed by the Advertising Area made available to "TDI' and the operative rate of License Fee." However, Cl. 2 is only related to the advertising area to be provided and has no reference to Security Deposit, while the only relevant reference in Cl. 4.6 states: "The interest free security deposit will also be increased by 5% after completion of every year on compounding basis."
Therefore, based on terms and conditions of the Agreement, M/s TDI's claim in respect of Security Deposit is rejected. Security Deposit shall remain payable as being invoiced as per CI. 16 and Cl. 4.4 and 4.6 of License Agreement

Award
a) In the case of the withdrawal of the approval by DMRC for Site nos. 29 & 30 (total) area 800 sq.ft. or 74.50 sq.mt) at Indraprastha Metro station and non-proposal of any alternate sites by M/s TDI, on an ad hoc basis, only 50% of the normal rate of License Fee may be charged wef 10.03.2007, Normal License Fee may be charged from 7 days after the date an alternative proposal (if any) made by M/s TDI is approved by DMRC.

b) M/s TDI's claim in respect of Security Deposit being governed by the advertising area made available is rejected. Security Deposit shall remain payable as being invoiced by DMRC as per CT. 16 and Cl. 4.4 and Cl. 4.6 of License Agreement.”

36. Upon examination of the above extracted portion, it is evident that the learned Arbitrator arrived at, *inter alia*, the following conclusions, which, though not exhaustive, reflect the core findings underpinning the Award concerning Claim No. 1:

(a) The Petitioner submitted location and electrical plans for Indraprastha Metro Station, including Site Nos. 29 and 30 (800 sq. ft.), which were initially approved by the Respondent but subsequently withdrawn within a short span of time.

(b) The Respondent justified the withdrawal on the ground that the said sites were not "inside" the station as contemplated under the Licence Agreement and called upon the Petitioner to propose alternate sites in lieu thereof.

(c) The Licence Agreement conferred upon the Respondent the express right to reject any proposal without assigning reasons (Clause 7) and to indicate alternate locations, while also treating the total advertising area as a single indivisible lot with a minimum licence fee payable irrespective of actual utilization (Clause 9).

(d) The Agreement further stipulated that the Security Deposit would not vary on account of changes in number, area, or location of panels and would remain payable as per Clauses 4.4, 4.6, and 16.

(e) On a strict contractual reading, the Respondent possessed the right to reject Site Nos. 29 and 30, to insist upon alternate proposals, and to levy a licence fee for the full minimum area contemplated under the Agreement.

(f) However, the learned Arbitral Tribunal noted that the sites had first been approved and thereafter withdrawn, which suggested inconsistency, particularly since sufficient time had elapsed for scrutiny before the initial approval was granted.

(g) The distinction sought to be drawn by the Respondent between "inside" and "outside" locations on the Foot Over Bridge was not clearly demarcated at the tender stage, thereby giving some credence to the Petitioner's grievance.

(h) Although the Respondent reiterated the requirement of alternate sites, specific alternate locations, such as the non-operational platform, were not clearly indicated at the earliest stage, and the commercial viability of such alternatives was legitimately questioned by the Petitioner.

(i) At the same time, the Petitioner did not submit any alternate proposals after withdrawal of approval and declined to explore available options, thereby contributing to the impasse.

(j) The learned Arbitral Tribunal concluded that both parties shared responsibility for the 74.50 sq. m. area remaining unapproved and uninstalled, as the area was neither clearly "provided" by the Respondent nor effectively "utilized" by the Petitioner.

(k) Taking an overall view of the matter, the Tribunal adopted an *ad hoc* approach and directed that only 50% of the normal licence fee would be payable for the uninstalled 74.50 sq. m. area with effect from 10.03.2007. It was further directed that the normal licence fee would become payable from seven days after approval of any alternate proposal submitted by the Petitioner.

(l) Insofar as the Security Deposit was concerned, the learned Arbitral Tribunal held that the contractual provisions clearly disentitled the Petitioner from seeking reduction based on

variation in advertising area, and accordingly rejected the Petitioner's claim on that count.

37. Thus, it is evident that the learned Arbitrator has examined the relevant clauses of the Licence Agreement, particularly those treating the licensed advertising area as one composite lot and reserving to the Respondent the right to reject proposed locations and seek alternative sites. The learned Arbitrator has, prior to beginning the determination, also taken note of the sequence of events leading to the withdrawal of approval and the subsequent correspondence exchanged between the parties.

38. It is settled that the interpretation of contractual terms lies primarily within the domain of the arbitral tribunal. As held in ***McDermott International Inc. v. Burn Standard Co. Ltd***.[7], the Hon'ble Supreme Court observed that construction of the contract is for the arbitrator to decide, and that even if the court were to take a different view, such difference by itself would not justify interference under Section 34 of the A&C Acy. The relevant paragraph of the judgment is reproduced hereunder for reference:

> **"112.** It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. (See ***Pure Helium India (P) Ltd.* v. *ONGC* [(2003) 8 SCC 593]** and ***D.D. Sharma* v. *Union of India* [(2004) 5 SCC 325]**.)"

[7] (2006) 11 SCC 181

39. Similarly, in ***Associate Builders v. DDA***[8], it was held that where two views are possible and the arbitrator adopts one such view, the court cannot substitute its own interpretation. The relevant paragraphs of the said judgment are reproduced hereunder for reference:

> **"33.** It must clearly be understood that when a court is applying 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. 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. Thus 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 this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In ***P.R. Shah, Shares & Stock Brokers (P) Ltd.* v. *B.H.H. Securities (P) Ltd.*** **[(2012) 1 SCC 594**], this Court held: (SCC pp. 601-02, para 21)
>
> > "*21*. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."
>
> *****
>
> **42.** In the 1996 Act, this principle is substituted by the "patent illegality" principle which, in turn, contains three subheads:
> **42.1.** (*a*) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be

[8] (2015) 3 SCC 49

understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(*a*) of the Act, which reads as under:

> "**28.** ***Rules applicable to substance of dispute***.—(1) Where the place of arbitration is situated in India—
> (*a*) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;"

42.2. (*b*) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3. (*c*) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

> "**28.*Rules applicable to substance of dispute***.—(1)-(2)***
> (3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do."

(*emphasis supplied*)

40. Applying these principles, this Court finds that the learned Arbitrator has neither ignored the contractual stipulation treating the advertising area as one indivisible unit nor overlooked the Respondent's contractual right to reject locations. At the same time, the Arbitrator has taken into account the fact that approval for the sites was initially granted and subsequently withdrawn, and that no specific alternative sites were indicated for a considerable period.

41. In the present petition, an attempt was made by the Petitioner to contend that the learned Arbitrator could not have granted equitable relief in the absence of consent under Section 28(2) of the A&C Act.

42. This Court finds that the said contention does not advance the Petitioner's case, as the learned Arbitrator categorically found that both parties had erred or were negligent in relation to the subject matter and, on that basis, fashioned an appropriate remedy. This is not a case where relief was granted solely on equitable considerations in disregard of the contract; rather, partial relief was granted upon a finding of shared responsibility. Such determination cannot be characterised as an exercise of jurisdiction *ex aequo et bono* in violation of Section 28(2) of the Act.

43. Therefore, the grant of an *ad hoc* remission of 50% of the licence fee for the uninstalled area represents an exercise of contractual interpretation and factual appreciation. This Court is unable to hold that such an approach is perverse or patently illegal, or that it contravenes the public policy of India. As held in the precedents, patent illegality does not encompass an erroneous application of law or an alternative interpretation of contractual terms, so long as the view taken by the arbitrator is a plausible and reasonable one.

Claim 3

44. This Court now turns to the challenge laid by the Petitioner to the Impugned Award insofar as it relates to Claim No. 3, whereby remission of licence fee was sought in respect of eleven (11) prefabricated advertising panels at Mandi House Metro Station, which were alleged to be unmarketable on account of their location in an area stated to be "out of bounds".

45. It is not in dispute that all twenty-four (24) prefabricated panels at Mandi House Metro Station were handed over to the Petitioner

pursuant to a joint inspection conducted on 06.12.2006. Significantly, at the time of such handover and takeover, no objection whatsoever was raised by the Petitioner regarding the location, visibility, illumination, accessibility, or marketability of any of the said panels. The absence of any contemporaneous protest assumes importance in the context of the subsequent claim.

46. Under Clause 14 of the Licence Agreement, the Petitioner expressly confirmed that it had inspected the prefabricated panels and their respective locations and unequivocally acknowledged satisfaction as to their commercial and business viability. The clause further records a clear waiver of any future claim for compensation or remission on that account. This contractual acknowledgment forms a crucial part of the framework within which the dispute was adjudicated.

47. It is well settled that the interpretation of contractual clauses and the assessment of their legal effect, particularly when considered in light of the conduct of the parties, lie squarely within the domain of the arbitral tribunal. In ***Associate Builders*** (*supra*), the Hon'ble Supreme Court has held that where the view adopted by the arbitrator is a plausible one, interference under Section 34 of the A&C Act is not warranted merely because the court may have arrived at a different conclusion. Similarly, in ***McDermott International Inc.*** (*supra*) and ***OPG Power Generation*** (*supra*), it was held that construction of the contract is primarily for the arbitrator to determine and that errors, if any, within jurisdiction are not amenable to correction under Section 34 of the A&C Act.

48. In the present case, the learned Arbitrator has construed Clause 14 in conjunction with the admitted fact of joint inspection and unconditional takeover of all twenty-four panels and has concluded that the Petitioner, having expressly acknowledged their viability and raised no objection at the relevant time, could not subsequently resile and contend that eleven of the panels were inherently unmarketable. This conclusion is based upon the express terms of the contract as well as the admitted conduct of the parties.

49. The learned Arbitrator has further considered the Petitioner's proposal seeking relocation of the said eleven panels and the Respondent's decision to treat such relocation as "additional area". chargeable on a *pro-rata* basis under Clauses 9 and 17 of the Licence Agreement. The rejection of the Petitioner's contention that such relocation ought to have been treated as an "alternate" arrangement within the originally licensed area is firmly rooted in the contractual framework. The reasoning reflects an interpretation of the relevant clauses and does not disclose any perversity, patent illegality, or disregard of the contractual scheme.

50. In ***MMTC Ltd. v. Vedanta Ltd***[9]**.**, the Hon'ble Supreme Court has cautioned that Section 34 does not permit a court to undertake a merits-based review under the guise of testing reasonableness. The arbitrator's evaluation of contractual stipulations and the factual matrix must be accorded due deference, so long as the conclusions reached do not shock the conscience of the court or fall foul of the limited grounds specified under Section 34(2). Tested on this anvil, the findings returned by the learned Arbitrator with respect to Claim

[9] (2019) 4 SCC 163

No. 3 cannot be said to be irrational, perverse, or in contravention of the fundamental policy of Indian law.

51. In view of the aforesaid discussion, this Court is not persuaded to hold that the Impugned Award, insofar as it rejects Claim No. 3, suffers from any infirmity so as to warrant interference under Section 34 of the A&C Act. The conclusions reached by the learned Arbitrator represent a plausible and reasoned interpretation of the Licence Agreement and the admitted factual position.

CONCLUSION:

52. In light of the foregoing discussion on Claim Nos. 1 and 3, this Court is of the considered view that the present petition fails to make out any ground for interference under Section 34 of the A&C Act. It is trite law that while exercising jurisdiction under Section 34 of the A&C Act, this Court does not sit in appeal over the arbitral award, nor can it substitute its own view merely because an alternative interpretation of the contract or appreciation of evidence may be possible. So long as the view taken by the learned Arbitrator is a plausible one, founded upon the contractual terms and the evidence on record, judicial intervention is impermissible.

53. Consequently, the Impugned Award does not suffer from any infirmity contemplated under Section 34(2) of the A&C Act. Accordingly, the present petition is dismissed, along with all pending applications.

54. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 24, 2026/sm/jk