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

Date of Decision: 25.03.2026

\+ O.M.P. (COMM) 335/2025 & I.A. 20401/2025 (Stay) & I.A. 20402/2025 (For the direction to call for the arbitral record)

M/S ST. THOMAS SCHOOL .....Petitioner

Through: Ms. Sulekha Agarwal, Mr. Rohit Amit Sthalekar, Mr. Ashish Choudhury, Ms. Prachi Grover, Mr. Abhishek Arora and Mr. Anand Kamal, Advocates.

versus

M/S MEGALOGIX .....Respondent

Through: Mr. Niraj Kumar Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% JUDGEMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], seeking setting aside of the **Arbitral Award dated 16.04.2025**[2], passed by the learned Sole Arbitrator. By the said Award, the learned Sole Arbitrator has allowed the claims of the Respondent herein to the extent of ₹1,30,66,989/-, along with interest at the rate of 9% per annum from 01.07.2021 till

[1] A&C Act

the date of actual payment. However, the learned Sole Arbitrator has, at the same time, rejected the claim pertaining to compensation sought towards loss of business opportunity.

2. At the outset, learned counsel for the Petitioner submits that the learned Arbitral Tribunal has exceeded the scope of reference. In support of this submission, reliance is placed upon the Order dated 30.05.2022, passed by a Co-Ordinate Bench of this Court, in ARB.P. 668/2022, whereby the learned Sole Arbitrator came to be appointed. Particular reliance is placed on paragraph no. 2 thereof, wherein it was recorded that disputes arising out of the **Curriculum Services Provider Agreement dated 01.12.2015**[3] would form the subject matter of arbitration. The relevant portion of the said order reads as follows:

> "2. By way of the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of an arbitrator to adjudicate the disputes between the parties arising under a "Curriculum Services Provider Agreement" dated 01.12.2015 read with a communication dated 14.03.2017 entitled "Extension of Agreement for Smart Class" signed by both the parties."

3. Learned counsel for the Petitioner thereafter draws the attention of this Court to paragraph no. 4 of the Impugned Award wherein reference is made to two agreements between the parties, *namely*, the CSP Agreement and the **Agreement for ICT Education dated 25.10.2016**[4].

> "4. The parties entered into two agreements, dated 01.12.2015 called "THE CURRICULAM SERVICE PROVIDER AGREEMENT" and 25.10 2016 called the "AGREEMENT FOR

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[2] Impugned Award
[3] CSP Agreement
[4] ICT-E Agreement

> ICT EDUCATION" for setting up Smart class programmes at the Respondent School and for providing ICT education, respectively. Pursuant to these agreements the Claimant is stated to have agreed to undertake to set up smart class programmes, which was subsequently, extended to include smart classes and science lab equipment as well. There was an extension letter dated 14.03.2017. The Agreement was for a period of five years to be computed from the date of its execution and the charges were to be paid periodically to the Claimant."

4. On the basis of the aforesaid, it is contended by the learned counsel for the Petitioner that the learned Arbitrator travelled beyond the scope of reference since the arbitration proceedings were confined to disputes arising out of the CSP Agreement, whereas the Impugned Award appears to take into consideration aspects relating to the ICT-E Agreement, which was never referred to arbitration. It is, therefore, submitted that on this ground alone the Impugned Award deserves to be set aside.

5. Learned counsel for the Petitioner further submits that the Impugned Award is vitiated by patent illegality as the learned Arbitrator refused to permit the Petitioner to bring certain documents on record. In this regard, reliance is placed on paragraph no. 26 of the Impugned Award wherein the learned Arbitrator declined the request of the Petitioner herein/ Respondent therein to place additional documents on record at the stage of final arguments. The relevant paragraph reads as under:

> "26. The Respondent School filed an application for producing additional documents, being copies of ledger accounts, on the last date of arguments, i.e. on 22.03.2025, which was opposed by the counsel for the Claimant for the reason that these documents were available with the Respondent School at the time of filing the statement of defence. No cogent reason has been given by the Respondent School in the application for not producing the documents at the earliest. In any case the Claimant had no

> opportunity to deal with and respond/counter the documents filed at the end of the proceedings. Since the time for publishing the award is available only up to 05.05.2025 after extension granted by the Hon'ble court, Therefore, the said additional documents cannot be taken on record and cannot be relied upon."

6. Learned counsel for the Petitioner, therefore, submits that the said conclusion is erroneous and that the documents sought to be brought on record were material and went to the root of the dispute.

7. It is further contended that the principal claim of the Respondent has been erroneously allowed by the learned Arbitrator solely on the basis of ledger accounts filed by the Respondent, without any supporting invoices or primary documentation to substantiate the claims.

8. Additionally, learned counsel raises a plea of impossibility of performance, contending that the contract in question fell within the period of the COVID-19 pandemic and, therefore, the contractual obligations could not have been performed. Consequently, it is urged that the claims pertaining to that period ought not to have been entertained.

ANALYSIS:

9. This court has heard the learned counsel appearing for the parties at length and, with their able assistance, has carefully perused the Impugned Award and the other material placed on record.

10. At the outset, it is apposite to note that this Court remains conscious of the limited scope of its jurisdiction while examining an objection petition under Section 34 of the A&C Act. There is a consistent and evolving line of precedents whereby the Hon'ble

Supreme Court has authoritatively delineated and settled the contours of judicial intervention in such proceedings. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier judgments, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[5], while dealing with the grounds of conflict with the public policy of India and patent illegality, 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.
>
> ***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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> **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.

[5] (2025) 2 SCC 417

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

Perversity as a ground of challenge

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

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

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

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

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

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

71. In ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed

out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

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

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

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

Scope of interference with an arbitral award

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

75. In ***Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*,**

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

11. This Court now proceeds to examine the contentions raised by the Petitioner on the anvil of the limited and circumscribed jurisdiction available under Section 34 of the A&C Act, and in the light of the principles authoritatively laid down by the Hon'ble Supreme Court in ***OPG Power Generation*** *(supra)*.

12. Upon a careful consideration of the findings recorded in the Impugned Award, as well as the rival submissions advanced by learned counsel for the parties, this Court is of the considered view that no infirmity can be discerned in the approach adopted by the learned Arbitrator. Having due regard to the narrow scope of judicial interference permissible under Section 34, this Court finds no reason to depart from, or interfere with, the conclusions arrived at by the learned Arbitrator and accordingly concurs with the same.

13. The principal contention advanced by learned counsel for the Petitioner is premised upon certain entries in the ledger accounts, which, according to the Petitioner, demonstrate that a portion of the claims adjudicated and ultimately allowed by the learned Arbitrator pertain not to the CSP Agreement, but to a distinct and independent agreement, *namely*, the ICT-E Agreement. It is urged that the arbitral

proceedings were invoked exclusively in respect of disputes arising under the CSP Agreement, and that no reference to arbitration was ever made insofar as disputes arising under the ICT-E Agreement are concerned.

14. On this basis, it is contended that any claim traceable to the ICT-E Agreement falls outside the scope of the arbitral reference and, therefore, ought to have been treated as wholly irrelevant and non-adjudicable by the learned Arbitrator. It is further submitted that the very invocation of arbitration, as facilitated through the Order passed by this Court under Section 11 of the A&C Act, was confined strictly to the CSP Agreement, and consequently, the learned Arbitrator exceeded jurisdiction in entertaining or allowing claims which allegedly arise from a separate contractual framework.

15. In order to substantiate the aforesaid contention, the Petitioner sought to rely upon certain ledger entries, which were sought to be placed on record before the learned Arbitrator at a highly belated stage, *namely*, at the verge of conclusion of final arguments.

16. It is an admitted position that although the ledger entries were placed on record at the belated stage, the manner in which the Petitioner now seeks to highlight alleged discrepancies therein was neither pleaded nor articulated at any stage before the learned Arbitrator. The present attempt, which essentially involves introducing an additional row in the ledger so as to provide a revised break-up, is clearly an afterthought. Such a case was never set up in the pleadings, nor was it urged during the arbitral proceedings.

17. A plain reading of the manner in which this argument has been

advanced before this Court, in proceedings under Section 34 of the A&C Act, reveals that the Petitioner could well have raised such a contention on the basis of the material already on record, without seeking to rely upon documents that were not permitted to be taken on record. Significantly, the documents now sought to be relied upon did not form part of the original pleadings, nor were they introduced during the evidentiary stage, when the parties were afforded a full and fair opportunity to lead their evidence.

18. In fact, the documents which came to be disallowed by the learned Arbitrator were never produced at any stage during the pleadings or evidence. It was only at the stage of final arguments that the Petitioner attempted to introduce the same. The learned Arbitrator, having regard to the belated stage at which such documents were sought to be brought on record, and the surrounding circumstances of their production, rightly declined to admit them. The Petitioner now seeks to challenge this refusal by contending that such rejection amounts to a violation of the Principles of Natural Justice, on the ground that it allegedly deprived the Petitioner of an effective opportunity to present its case. However, this contention is clearly untenable in light of the record, which demonstrates that the Petitioner had adequate opportunity throughout the proceedings to place all relevant material on record but failed to do so within the permissible stages of the arbitral process.

19. This Court, upon a careful and holistic consideration of the record, finds no merit in either limb of the Petitioner's contention. The learned Arbitrator has, in paragraph no. 26 of the Impugned Award,

categorically recorded that the documents sought to be introduced by the Petitioner were at all material times within its possession and control. Despite such availability, the Petitioner failed to place the same on record at the appropriate stage of the proceedings. It was only at the stage of final arguments, on the last date of hearing, that an attempt was made to introduce these documents.

20. The learned Arbitrator has further noted that no cogent, plausible, or satisfactory explanation was furnished by the Petitioner to justify such belated filing. In addition, it was rightly observed that permitting the introduction of such documents at that stage would have caused manifest prejudice to the Respondent, who would have been deprived of a fair and reasonable opportunity to examine, rebut, or respond to the same.

21. The Impugned Award further reflects that both parties were granted adequate and sufficient opportunity, at the appropriate stages of the proceedings, to lead evidence and place all relevant material on record. Indeed, the record demonstrates that at a particular stage, both parties consciously elected not to lead any further evidence and agreed to proceed on the basis of the documents already on record. In such circumstances, it is not open to the Petitioner, having voluntarily foregone the opportunity to introduce evidence at the proper stage, to subsequently attempt to reopen the evidentiary record at the stage of final hearing, and that too without any justifiable cause or explanation. Such conduct is clearly contrary to settled principles of procedural discipline and cannot be countenanced.

22. It is well-settled that the scheme of the A&C Act mandates

adherence to the Principles of Natural Justice, and any violation thereof may render an arbitral award susceptible to challenge under Section 34, including under Section 34(2)(a)(iii), which contemplates situations where a party was unable to present its case. Section 18 of the A&C Act expressly enshrines the requirement that parties shall be treated with equality and that each party shall be afforded a full and fair opportunity to present its case. However, the concept of "full opportunity" cannot be stretched to include a right to act in a dilatory or negligent manner, or to introduce material at a stage that would compromise the fairness of the proceedings as a whole.

23. In the present case, there is no material whatsoever to indicate that the Petitioner was denied a fair opportunity to present its case. On the contrary, the record clearly establishes that the arbitral proceedings were conducted in a fair, transparent, and equitable manner, with due adherence to procedural propriety. It is equally significant to note that Section 19 of the A&C Act confers autonomy upon the Arbitral Tribunal to determine its own procedure, and expressly provides that the Tribunal shall not be bound by the provisions of the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

24. This legislative framework is intended to ensure that arbitration remains a flexible, efficient, and expeditious mode of dispute resolution, free from the rigidities and technicalities that characterize conventional civil litigation. At the same time, such procedural flexibility is balanced by the overarching requirement that the proceedings must conform to the principles of fairness and natural justice.

25. Up to the stage of final hearing, the Petitioner did not raise any grievance whatsoever regarding any alleged deviation from the agreed procedure, nor was any complaint made with respect to denial of opportunity or procedural unfairness. The absence of any such contemporaneous objection is a significant factor that militates against the Petitioner's present attempt to assail the proceedings on grounds of alleged violation of natural justice. The learned Arbitrator, in exercise of powers vested under the A&C Act, is fully competent to regulate the conduct of proceedings and to decline attempts to introduce material at a belated stage, particularly where such attempts would disrupt the procedural balance and fairness of the adjudicatory process.

26. In the absence of any demonstrable prejudice or denial of opportunity, the contention that rejection of the belated documents constitutes a violation of natural justice is wholly untenable. It is a settled principle that a party cannot, as a matter of right, seek to introduce new evidence at the stage of final arguments. Procedural fairness operates bilaterally, and any indulgence shown to one party at a belated stage must not come at the cost of prejudice to the other. The refusal to entertain such belated material, especially in the absence of due diligence, cannot be construed as a procedural infirmity, much less one that vitiates the arbitral proceedings.

27. This Court is also of the considered view that the reasoning adopted by the learned Arbitrator does not suffer from perversity, patent illegality, or any jurisdictional error. The learned Arbitrator has exercised discretion judiciously and in accordance with settled

principles governing arbitral procedure. It is incumbent upon parties to act with due diligence and to ensure that all documents and material sought to be relied upon are placed on record at the appropriate stage. A failure to do so cannot be remedied by invoking the limited jurisdiction of this Court under Section 34 of the A&C Act, which is not intended to function as an appellate forum.

28. It is further noteworthy that the Petitioner has sought to rely upon the very same documents, which were rejected by the learned Arbitrator, before this Court, in an attempt to challenge the merits of the adjudication, particularly in relation to the alleged distinction between the ICT-E Agreement and the CSP Agreement. In the considered opinion of this Court, such an approach is impermissible. The scope of examination under Section 34 of the A&C Act is confined to the record that was before the Arbitral Tribunal, and it is not open to a party to introduce new material at this stage in order to assail the award. While there may exist exceptional circumstances where additional material may be looked into, no such circumstance has been demonstrated in the present case, not even remotely.

29. The challenge mounted by the Petitioner is, in substance, predicated almost entirely upon the rejection of the additional documents. For the reasons already recorded hereinabove, this Court finds no merit whatsoever in such grievance. The rejection of the documents was justified, reasonable, and in consonance with the principles of procedural fairness.

30. Furthermore, the attempt of the Petitioner to rely upon these documents to draw a distinction between the ICT-E Agreement and

the CSP Agreement is equally misconceived. A perusal of the record reveals that the case set up by the Claimant/Respondent before the learned Tribunal was not confined in a narrow or restrictive sense, and encompassed the entirety of the transactional relationship between the parties. If the Petitioner intended to raise any jurisdictional objection or to draw a clear distinction between the two agreements, it was incumbent upon the Petitioner to do so at the appropriate stage, either in its pleadings or during the course of evidence.

31. Significantly, no such distinction was raised by the Petitioner at the relevant stage. There is no indication in the pleadings, nor in the conduct of the proceedings, that the Petitioner ever sought to segregate the claims on the basis now sought to be urged. Even in the application filed for bringing additional documents on record at the stage of final hearing, no such case was clearly or specifically articulated. This omission assumes critical importance, as it demonstrates that the present contention is not rooted in the original defence, but is being raised as an afterthought.

32. The belated attempt to introduce such a distinction appears to be a clear afterthought, aimed at setting up an altogether new case which was never urged before the learned Arbitrator. It is trite law that a party cannot be permitted to raise, for the first time in proceedings under Section 34, a contention which was neither pleaded nor argued before the Arbitral Tribunal.

33. In view of the foregoing discussion, it is evident that the learned Arbitrator has adjudicated the dispute on the basis of the material duly placed on record by the parties, and in accordance with a procedure

that is consistent with the mandate of the A&C Act. The conduct of the proceedings reflects due adherence to the Principles of Natural Justice, procedural fairness, and party equality.

34. The Petitioner has further contended that the principal claim of the Respondent has been erroneously allowed by the learned Arbitrator solely on the basis of ledger accounts produced by the Respondent. According to the Petitioner, such reliance on ledger entries, without corroborative material, renders the findings of the learned Arbitrator unsustainable.

35. At the outset, this Court finds that such a contention is *ex facie* not tenable within the limited scope of jurisdiction under Section 34 of the A&C Act. It is well-settled that this Court, while exercising jurisdiction under Section 34, does not sit in appeal over the findings of the Arbitral Tribunal and is not empowered to reappreciate evidence or reassess its sufficiency. The Court cannot undertake a re-evaluation of the evidentiary material on record or substitute its own view merely because another interpretation may be possible. In the present case, it is not even the Petitioner's assertion that the findings of the learned Arbitrator are based on no evidence whatsoever, or that irrelevant material has been relied upon, or that vital evidence has been ignored. In the absence of such grounds, the findings cannot be said to suffer from perversity or patent illegality so as to warrant interference.

36. It is trite law that the learned Arbitrator is the final authority on questions of fact, including the appreciation and evaluation of evidence. Unless the conclusions drawn are shown to be wholly

unreasonable, arbitrary, or unsupported by the record, the same are not open to judicial interference. The Petitioner has failed to demonstrate that the findings returned by the learned Arbitrator fall within any of these exceptional categories.

37. Notwithstanding, even on merits, the contention regarding the insufficiency of reliance on ledger accounts is devoid of substance. In terms of Section 19 of the A&C Act, the Arbitral Tribunal is vested with wide procedural discretion to determine the admissibility, relevance, materiality, and weight of the evidence placed before it. The Tribunal is not bound by the strict rules of the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, and is entitled to adopt a flexible approach in evaluating the material on record. This includes the power to rely upon documentary evidence such as ledger accounts, especially where such material forms part of the regular course of business and is not effectively rebutted.

38. The learned Tribunal is also entitled to act upon admissions, whether express or implied, and to draw reasonable inferences from the conduct of the parties and the surrounding circumstances. The determination of the probative value of the evidence, including whether ledger entries are sufficient to substantiate a claim, lies squarely within the exclusive domain of the learned Arbitral Tribunal. The Courts exercising jurisdiction under Section 34 of the A&C Act cannot revisit or second-guess such determinations.

39. The only limitation on the procedural flexibility afforded to the Arbitral Tribunal is that the proceedings must conform to the fundamental principles of fairness, equality of treatment, and natural

justice. Both parties must be afforded a full and reasonable opportunity to present their respective cases. So long as these foundational safeguards are adhered to, the manner in which the Tribunal evaluates evidence or conducts the proceedings cannot be faulted merely because it departs from the technical rigours of conventional civil trials.

40. Furthermore, the record clearly demonstrates that the learned Arbitrator did not base the findings solely on ledger accounts, but undertook an evaluation of all material on record. This included consideration of the bills and invoices raised, payments made by the Petitioner at relevant stages, and the overall pattern of such transactions. The learned Arbitrator also took into account the admitted part liability of the Petitioner, as reflected from its conduct and payments. Further, the defence raised by the Petitioner was duly examined in light of the documentary evidence. The conclusions thus reflect a cumulative and reasoned appreciation of evidence, and cannot be faulted.

41. This court, therefore is of the considered opinion that no infirmity, much less any patent illegality or conflict with the public policy of India, can be said to arise in the Impugned Award on the ground of alleged insufficiency of evidence. Accordingly, this contention of the Petitioner is liable to be rejected.

42. Insofar as the plea of impossibility of performance on account of the COVID-19 pandemic is concerned, the learned Arbitrator has dealt with the said contention in considerable detail in paragraph nos. 39, 40 and 43-45 of the Impugned Award. The relevant paragraphs of

the Impugned Award read as under:

> **"39.** Reliance is placed by the Respondent School on the Direction issued on 23.04.2020 by the State of Haryana to counter the claim of the Claimant which provides as under:
>
> *"In continuation of the office order dated 12.04.2020 on the above subject. As you are aware that the instructions related to fees and other charges have been detailed in rule 158 by the Haryana government, according to which it is mandatory to give the details of fees charged by the schools in form six every year. In this context, it is expressed that lockdown has been implemented across India to prevent the infection of COVID-19. As a result there is a complete stop on all types of business activities which has had an adverse impact on the livelihood and sources of livelihood of the common people. In view of this instructions regarding fees and charges have been issued to private schools under the letter dated 12.4.2020 issued by Department of education, Haryana but it has come to the notice of the government that some private schools are charging students/parents other charges along with tuition fees. In view of the above situation, in continuation of the above letter, the education Department of Haryana instructs you to strictly follow the following instructions:*
>
> 1. *Private schools should charge only tuition fees on monthly basis other types of funds like building fund, maintenance fund, admission fee, computer fee etc. should be deferred in view of the unusual situation like COVID-19.*
> 2. *Private schools should not increase the tuition fees charged on monthly basis.*
> 3. *It should also be ensured that private schools do not add any kind of hidden charge in the monthly fees.*
> 4. *It should also be ensured that no private school will charge any kind of transport fee from students/parents during the lockdown period.*
> 5. *No private school should make any changes in the school uniform this year.*
> 6. *No private schools should make changes in textbooks workbooks private books practical files etc."*
>
> **40.** The argument based on the Direction issued on 23.04.2020 by the State of Haryana, is completely misplaced and mis founded on the face of it, in as much as the said direction specifically provides for *Private schools should charge only tuition fees on monthly basis other types of funds like building fund, maintenance fund, admission fee,* ***computer fee etc. should be deferred*** *in view of the unusual situation like COVID-19* and does not direct the schools to

not charge the computer fees. Therefore, this argument of the Respondent School is rejected.

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43. The legal position as held by the Hon'ble Apex Court in the judgments, cited on behalf of the Respondent School are well settled. It is to be seen if the same apply to the present facts and circumstance and if the Respondent School can be said to be covered in the same i.e. whether the agreement stood frustrated due to Covid-19 lock down. The judgments relied upon on behalf of the respondent are not applicable for the same are different than the facts and circumstances of the present case.

44. No communication has been placed on record to show that the said stand was taken by the Respondent School before the Claimant filed the statement of claims. At no point in time did the Respondent School inform the Claimant that due to lock down the service could not be rendered; therefore, the Claimant shall not be paid for the period starting March 2020. There is no plea or evidence to show that the school did not charge the said fees from the students which was only directed to be deferred. To the contrary, the amounts have been paid to the Claimant even during the Covid period which have been adjusted by the Claimant towards the invoices raised by it, as discussed herein below.

45. The claim is certainly not for the period from March 2020 onwards. The Respondent School has failed to pay to the Claimant the amounts due to the Claimant for three invoices from 2016, 10 invoices from 2017, 12 invoices from 2018, 11 invoices from 2019, 13 invoices from 2020 and 12 invoices from 2021. Therefore, the argument of frustration of the agreement is not available to the Respondent School in present facts and circumstances."

43. A careful, holistic, and contextual reading of the reasoning adopted by the learned Arbitrator while addressing the Petitioner's plea of impossibility of performance on account of the COVID-19 pandemic reveals the following key facets of the arbitral findings:

(a) The Petitioner herein relied on the Haryana Government's direction dated 23.04.2020 to justify non-payment of certain charges.

(b) The said direction only mandated that non-tuition fees (such as building, maintenance, computer fees, etc.) be deferred, not

waived or permanently prohibited.

(c) The direction did not prohibit charging of computer fees altogether, but merely postponed their collection due to the COVID-19 situation.

(d) Therefore, the Petitioner's interpretation of the direction as a complete bar on such charges was misplaced and legally untenable.

(e) The argument that the agreement stood frustrated due to COVID-19 lockdown was also examined in light of settled law laid down by the Hon'ble Supreme Court.

(f) The judgments cited by the Petitioner on frustration of contract were found inapplicable, as the facts of the present case did not support such a defence.

(g) There was no contemporaneous communication from the Petitioner informing the Respondent herein that services could not be rendered or that payments would be withheld due to the lockdown.

(h) The Petitioner failed to establish that it had stopped collecting fees from students; rather, the direction only required deferment, not waiver.

(i) On the contrary, payments were in fact made by the Petitioner herein to the Respondent herein during the COVID period, which were adjusted against invoices, indicating that the contractual relationship continued.

(j) The claim was not limited to the COVID period; it included unpaid invoices spanning multiple years from 2016 to 2021,

thereby weakening the frustration argument.

(k) The Petitioner herein had defaulted on several invoices even prior to the pandemic, showing that non-payment was not solely attributable to COVID-19.

(l) In light of these facts, the defence of frustration of contract was held to be unsustainable and inapplicable. Consequently, the reliance on the government direction and the plea of frustration were both rejected as lacking merit.

44. Upon an independent consideration of the reasoning adopted by the learned Arbitrator, this Court finds no perversity, illegality, or patent error in the conclusions drawn with respect to the plea of impossibility of performance under Section 56 of the Indian Contract Act, 1872. The findings are based on a proper appreciation of both law and evidence and do not warrant interference.

CONCLUSION:

45. In view of the foregoing analysis, this Court is of the considered opinion that no ground is made out within the limited scope of interference under Section 34 of the A&C Act, so as to justify the setting aside of the Impugned Award.

46. Accordingly, the present Petition, along with pending application(s), if any, stands dismissed in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 25, 2026/ν/kr/sg