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

% ***Judgment reserved on: 07.04.2026***
Judgment pronounced on: 27.04.2026

\+ O.M.P. (COMM) 119/2026

TELECOMMUNICATIONS CONSULTANTS INDIA LTD
.....Petitioner

Through: Mr. Amitesh Chandra Mishra, Ms. Vishakha, Mr. Mrityunjai Singh and Mr. Harshit S Gahlot, Advocates.

versus

M/S FRANS GLOBAL INFOTECH LTD.
.....Respondent

Through: Mr. Rizwan, Ms. Sachi Chopra and Mr. Samarth Sharma, Advocates.

\+ O.M.P. (COMM) 555/2025

M/S FRANS GLOBAL INFOTECH PVT. LTD .....Petitioner

Through: Mr. Rizwan, Ms. Sachi Chopra and Mr. Samarth Sharma, Advocates.

versus

TELECOMMUNICATIONS CONSULTANTS INDIA LTD.
.....Respondent

Through: Mr. Amitesh Chandra Mishra, Ms. Vishakha, Mr. Mrityunjai Singh and Mr. Harshit S Gahlot, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

1. The present Petitions filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], being *OMP (COMM) 119/2026* filed by **Telecommunications Consultants India Limited**[2] and *OMP (COMM) 555/2025* filed by **Frans Global Infotech Private Limited**[3], arise out of a common **Arbitral Award dated 24.09.2025**[4] passed by the **learned Arbitral Tribunal**[5], comprising a Sole Arbitrator, in disputes *inter se* the parties.

2. It is noted that Frans was the Claimant before the learned AT, whereas, TCIL was the Respondent.

3. By way of ***OMP (COMM) 119/2026***, TCIL has laid a challenge to the Impugned Award insofar as it allows certain claims in favour of Frans and rejects the counter-claims preferred by TCIL.

4. Conversely, by way of ***OMP (COMM) 555/2025***, Frans has assailed the Impugned Award to the extent that its Claim Nos. 1, 2 and 6 have been rejected, pertaining to damages on account of termination of the Purchase Order, payment under invoices dated 14.04.2023 and 01.05.2023, and damages for loss of reputation arising from the blacklisting by TCIL, along with consequential claim for interest.

5. Since both petitions emanate from the same arbitral proceedings and call into question different parts of the same award, involving overlapping factual and legal issues, they were heard together and are being considered by this common judgment.

BRIEF FACTS:

[1] A&C Act
[2] TCIL
[3] Frans
[4] Impugned Award
[5] AT

6. The disputes between the parties arise out of a tender for the supply, installation, commissioning and maintenance of the Horizontal Extension of State Wide Area Network.

7. A Request for Proposal dated 05.12.2022 was issued by the **Directorate of Information Technology**[6], Government of Tripura, for the execution of the said project. In pursuance thereof, TCIL issued a Notice Inviting Tender dated 07.03.2023 for the selection of an implementing agency.

8. Subsequently, TCIL issued a corrigendum dated 15.03.2023, clarifying that the timeline for commencement of the work order would be reckoned from 06.03.2023.

9. Frans participated in the tender process, and its bid was accepted. A Letter of Intent dated 24.03.2023 was issued in its favour, which was accepted on 27.03.2023.

10. Thereafter, a **Purchase Order dated 28.04.2023**[7] was issued for the execution of the project. And in terms of Clause 3.2 of the **Special Conditions of Contract**[8], Frans also furnished a **Performance Bank Guarantee dated 13.04.2023**[9] in favour of TCIL for an amount of ₹25,75,512/-, valid for 42 months, which was submitted electronically on 13.04.2023 and physically on 17.04.2023.

11. The contractual framework envisages the supply, installation, testing and commissioning of equipment within stipulated timelines, along with maintenance obligations. The timelines for delivery and execution formed a central component of the contractual obligations between the parties.

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[6] DIT
[7] Purchase Order
[8] SCC
[9] PBG

12. During the execution of the project, disputes arose between the parties with respect to timelines, placement of purchase orders, and delivery of equipment. In this context, TCIL issued a communication dated 11.05.2023 raising concerns of delay, followed by a **Show Cause Notice dated 18.05.2023**[10], which was responded to by Frans disputing the allegations.

13. Thereafter, TCIL terminated the Purchase Order *vide* termination notice dated 09.06.2023 and simultaneously imposed a ban on Frans from participating in its future tenders for a period of two years.

14. Following that, Frans approached this Court for the appointment of an arbitrator by filing *ARB. P. 769/2023*, wherein, *vide* Order dated 06.11.2023, a Sole Arbitrator came to be appointed.

15. Before the learned AT, Frans raised claims *inter alia* on account of alleged wrongful termination, non-payment of invoices, encashment of the PBG, damages and challenge to blacklisting. TCIL contested the claims and also raised counter-claims towards penalty, risk purchase costs and other losses.

16. On the basis of pleadings, the learned AT *vide* its Order dated 24.05.2024 framed issues concerning, *inter alia*, the validity of termination of the Purchase Order, entitlement to payments, encashment of the PBG, claims for damages, legality of blacklisting, and entitlement to counter-claims. For the sake of clarity and ready reference, the issues framed by the learned AT, upon which the disputes between the parties came to be adjudicated, are reproduced herein under:

> "**Issues**

[10] Show Cause Notice

86. The following Points of Determination/Issues were framed vide Order dated 24.05.2024 (as revised by Order dated 10.07.2024):

i. Whether the termination of the Purchase Order dated 28.04.2023 by the Respondent vide its Notice dated 09.06.2023 is wrongful & fraudulent? If yes, then whether the Claimant is entitled to damages of Rs. 15,00,000/- or any other amount? OPC

ii. Whether the Claimant is entitled to an amount of Rs. 1,31,64,631/- against the invoice dated 14.04.2023 amounting to Rs. 88,03,589/- and invoice dated 01.05.2023 amounting to Rs. 43,61,042/- raised by the Claimant? OPC

iii. Whether the encashment of the Performance Bank Guarantee by the Respondent was wrongful and fraudulent? If yes, whether Claimant is entitled to the cost of the Performance Bank Guarantee amounting to Rs. 25,75,512/- or any other amount? OPC

iv. Whether the Claimant is entitled to the loss of Opportunity Cost of Rs. 35,00,000/- or any other amount? OPC

v. Whether the Claimant is entitled to re-imbursement of the expenses to the tune of Rs. 15,00,000/- or any other amount? OPC

vi. Whether, the blacklisting/debarment of the Claimant by the Respondent from participating in future tenders/bids of the Respondent is arbitrary, wrong and unjust? OPC

vii. Whether the Claimant is entitled to claim of Rs. 15,00,000/- or any other amount towards loss of reputation on account of banning and blacklisting of the Claimant by the Respondent from participating in future tender bids of the Respondent? OPC

viii. Whether the Respondent is entitled to an amount of Rs. 94 72 000/- or any other amount towards penalty as per the Client RFP/Tender dated 05.12.2022? OPR [Revised by Order dated 10.07.2024 passed by the Arbitral Tribunal]

ix. Whether the Respondent is entitled to an amount of Rs. 12,87,756.75/- or any other amount towards risk purchase cost? OPR

x. Whether the Respondent is entitled to the claim of Rs. 5,00,000/- or any other amount towards loss of business opportunities and reputation? OPR

xi. Whether the parties are entitled to pendente lite and future interest on the above-mentioned claims. If yes, then at what rate and for what period? OPC/OPR

xii. Whether the parties are entitled to the cost and expenses. If yes, then what amount? OPC/OPR"

17. Upon consideration of the pleadings, evidence and oral submissions, the learned AT passed the Impugned Award, whereby certain claims of Frans were allowed, while others were rejected, and

the counter-claims of TCIL were also rejected. Aggrieved thereby, the parties have preferred the present Petitions before this Court.

SUBMISSIONS ON BEHALF OF PARTIES IN OMP(COMM) 119/2026:

TCIL's submissions:

18. Learned counsel for TCIL would submit that the Impugned Award is vitiated by patent illegality and is liable to be set aside under Section 34 of the A&C Act, inasmuch as the findings of the learned AT are perverse, based on a misreading of contractual provisions and non-consideration of material evidence on record. In this regard, reliance would be placed on ***OPG Power Generation Pvt. Ltd. v. Enexio Power Cooling Solutions (India) Pvt. Ltd.***[11] and ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.***[12] to submit that an award which is perverse, based on no evidence, or ignores vital evidence, is liable to be interfered with.

19. Learned counsel would submit that the learned AT erred in holding the termination of the Purchase Order to be premature, since the material on record demonstrated persistent defaults on the part of Frans, including failure to adhere to stipulated timelines and non-performance of contractual obligations, which entitled TCIL to terminate the contract in terms of Clause 2.18 of the **General Conditions of Contract**[13].

20. He would contend that the learned AT has failed to consider material evidence, including communications from **Original Equipment Manufacturers**[14] indicating non-payment and

[11] (2025) 2 SCC 417
[12] (2024) 6 SCC 357
[13] GCC
[14] OEM

consequent delays, and has misinterpreted the contractual provisions, including the SCC, without harmoniously construing the same. Reliance would be placed on ***I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.***[15], ***Ram Kishore Lal v. Kamal Narayan***[16], to submit that findings rendered in disregard of material evidence and based on an incorrect construction of contractual provisions are liable to be set aside.

21. Learned counsel for TCIL would submit that the rejection of the counter-claims of TCIL is unsustainable, as the same were based on independent contractual provisions, including risk purchase and termination clauses, and ought to have been adjudicated independently.

22. He would also submit that the learned AT erred in holding that Section 39 of the **Indian Contract Act, 1872**[17], was inapplicable. TCIL would submit that Frans's conduct constituted an anticipatory breach, entitling TCIL to terminate the contract. In this regard, reliance would be placed on ***Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd***.[18].

23. Lastly, it would be submitted that the direction to refund the PBG amount, along with interest and costs, is arbitrary and contrary to the contractual framework and the evidence on record. He would further contend that the Impugned Award of interest @ 12% per annum is excessive and unwarranted, particularly in the absence of any contractual stipulation justifying such a rate.

Frans Submissions:

[15] (2022) 3 SCC 121
[16] AIR 1963 SC 890
[17] IC Act
[18] (2018) 3 SCC 133

24. ***Per contra***, learned counsel for Frans would submit that the challenge raised by TCIL proceeds on a fundamental misappreciation of the scope of interference under Section 34 of the A&C Act, inasmuch as it seeks a re-interpretation of the contractual provisions and a re-appreciation of evidence, which is impermissible in law.

25. He would submit that the principal contention of TCIL pertains to the application of Clause 3.9 of the SCC. Learned counsel would contend that the learned AT has applied the said provision in the context of the contractual framework and the facts on record, and has arrived at a reasoned conclusion, which does not warrant interference merely because TCIL seeks to advance an alternate construction of the same provision.

26. He would further submit that the entire challenge of TCIL is predicated on a reinterpretation of Clause 3.9 of the SCC, and once the interpretation adopted by the learned AT is found to be a possible and reasonable one, the foundation of TCIL's challenge stands eroded.

27. He would further submit that the reliance placed by TCIL on Section 39 of the IC Act is misplaced. Learned counsel would urge that the doctrine of anticipatory breach is not attracted in the facts of the present case, since there was no unequivocal refusal or conduct on the part of Frans which could be said to have disabled performance of the contract. He would contend that the learned AT has correctly appreciated this aspect and declined to apply Section 39 of the IC Act.

28. Learned counsel would also submit that the findings of the learned AT in relation to encashment of the PBG are based on a proper construction of the contractual provisions and the surrounding circumstances, and do not suffer from any infirmity warranting interference.

29. He would submit that the attempt on the part of TCIL is to read the contractual provisions in isolation and in a manner favourable to itself, whereas the learned AT has construed the contract as a whole, keeping in view the commercial intent and the factual matrix.

30. Learned counsel would clarify that Frans has independently assailed the Impugned Award in *OMP(COMM) 555/2025* to the limited extent certain of its claims have been rejected, and seeks interference only to that extent.

31. Insofar as *OMP(COMM) 119/2026* filed by TCIL is concerned, he would submit that the same is devoid of merit and does not disclose any ground warranting interference with the impugned award.

SUBMISSIONS ON BEHALF OF PARTIES IN OMP(COMM) 555/2025:

Frans submissions:

32. Learned counsel for Frans would submit that the Impugned Award is liable to be set aside to the limited extent that the claims of Frans have been rejected, despite the learned AT having returned findings in its favour on material issues, including wrongful termination and blacklisting.

33. He would submit that the learned AT, while holding the termination of the Purchase Order to be wrongful and noting the absence of notice under Clause 3.9 of the SCC, has nevertheless rejected the claim for damages on the ground of lack of proof of actual loss. Learned counsel would contend that such an approach is contrary to settled principles of contract law, as once breach is established, compensation cannot be denied merely for want of strict proof of loss and for the same, the reliance would be placed by the learned counsel

for Frans upon ***MSK Projects (India) (JV) Ltd. v. State of Rajasthan***[19].

34. In this context, he would submit that the learned AT has failed to apply the aforesaid settled position of law and has erroneously denied damages, thereby rendering the impugned award unsustainable to that extent.

35. Learned counsel would further submit that the findings of the learned AT in relation to rejection of claims towards payment for the supply of equipment are contrary to the pleadings and the material on record. It would be contended that the learned AT has accepted a "back-to-back" or "pay-when-paid" defence in favour of TCIL, despite the absence of any such foundational plea in the **Statement of Defence**[20]. It would be urged that such a defence was raised for the first time during oral arguments and could not have been relied upon in the absence of pleadings and proof.

36. He would further submit that even otherwise, there was no material on record to establish that TCIL had not received payment from the end client, and in the absence of such proof, the denial of Frans' claims on this basis is legally untenable.

37. Learned counsel would also submit that the learned AT has failed to give effect to the contractual payment terms, which clearly provided for the release of a substantial portion of the consideration upon delivery of the equipment. He would contend that the delivery of equipment having been admitted, the rejection of claims for payment is contrary to the express stipulations of the contract.

[19] (2011) 10 SCC 573
[20] SoD

38. Learned counsel would clarify that Frans supports the findings of the learned AT insofar as they relate to the issue of wrongful termination of the Purchase Order and the illegality of blacklisting. The present challenge is confined to the rejection of Claim Nos. 1, 2 and 6, namely, (i) denial of damages on account of wrongful termination; (ii) non-payment of amounts under invoices dated 14.04.2023 and 01.05.2023 for supply of equipment; and (iii) denial of damages towards loss of reputation arising from wrongful blacklisting.

39. He would, accordingly, submit that the Impugned Award is liable to be set aside to the aforesaid limited extent, and the claims of Frans deserve to be allowed.

TCIL Submissions:

40. ***Per contra***, learned counsel for TCIL would submit that the contention of Frans that, upon a finding of wrongful termination, damages must necessarily follow, is misconceived. He would submit that the learned AT has specifically recorded that Frans failed to lead any credible evidence to establish actual loss, profitability, or any proximate loss flowing from the alleged breach, and has, on that basis, rightly rejected Claim No. 1.

41. He would contend that the challenge raised by Frans is, in substance, directed against the appreciation of evidence by the learned AT on the issue of quantum of loss, and does not disclose any jurisdictional or legal error warranting interference under Section 34 of the A&C Act.

42. He would further submit that the reliance placed by Frans on ***MSK Projects*** *(supra)* is misplaced. Learned counsel would contend

that while the said judgment recognises that loss of expected profits may be awarded in appropriate cases, the same is contingent upon proof of breach and a rational basis for quantification.

43. Learned counsel would also submit that the rejection of the claim for payment under invoices is in consonance with the contractual framework, which envisaged a back-to-back arrangement with the end client. He would contend that the so-called "pay-when-paid" mechanism is not an independent defence but a consequence of the contractual terms themselves, and the learned AT was well within its jurisdiction to interpret and apply the same. He would urge that Frans failed to establish an unconditional entitlement to payment, particularly in the absence of satisfaction of the conditions precedent under the contract.

44. He would further contend that the reliance placed by Frans on Clause 3.1(i) of SCC is selective and ignores the overall contractual scheme, as "delivery" in the present project cannot be construed as mere physical supply but must be read in conjunction with installation, commissioning, and readiness for acceptance. He would submit that the findings of the learned AT in this regard are based on a contractual and factual appreciation and do not warrant interference.

45. He would submit that the claim for damages towards loss of reputation is wholly untenable and the finding of wrongful blacklisting does not, by itself, entitle a party to compensatory damages in the absence of proof of actual loss. He would urge that such claims are governed by Section 73 of the IC Act and require cogent evidence of loss and its nexus with the alleged wrongful act, which is absent in the present case; thus, the learned AT has,

therefore, rightly declined to award damages and cannot be faulted for refusing to engage in speculation.

46. He would submit that the present Petition is liable to be dismissed as it is an attempt to re-agitate issues already adjudicated by the learned AT and does not disclose any ground for interference under Section 34 of the A&C Act.

ANALYSIS:

47. This Court has carefully considered the submissions advanced on behalf of both sides and, with their able assistance, has perused the Impugned Award and the material placed before this Court by the respective parties.

48. 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.

49. In this regard, a 3-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier judgments, in ***OPG Power*** *(supra)*, while dealing with the grounds of conflict with the public policy of India, perversity and patent illegality, grounds which have also been urged in the present case, made the following observations, which are reproduced hereunder:

> *"**Relevant legal principles governing a challenge to an arbitral award***
> **30.** Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section

34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) is concerned, it has two sub-clauses, namely, (*i*) and (*ii*). Sub-clause (*i*) of clause (*b*) is not relevant to the controversy in hand. Sub-clause (*ii*) of clause (*b*) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.

Public policy

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

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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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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."

50. It is in the aforesaid backdrop that the rival challenges in *OMP (COMM) 119/2026* filed by TCIL and *OMP (COMM) 555/2025* filed by Frans are required to be examined.

I. TCIL'S CHALLENGE

Termination of Contract

51. At the outset, it is apposite to examine the principal challenge raised by TCIL, which arises in the context of Issue No. 1 framed by the learned AT, pertaining to the validity of the termination of the Purchase Order. TCIL assails the finding of the learned AT holding the termination to be wrongful and not in accordance with the contractual provisions, whereas Frans supports the said finding and seeks consequential relief on that basis. In the considered view of this Court, the determination of this issue is foundational, since the claims and counter-claims of the parties in both petitions are intrinsically

dependent upon the validity of such termination. The relevant findings of the learned AT on Issue No. 1 are reproduced hereunder:

> **"Analysis & Findings**
>
> **132.** The relevant facts for adjudication of the present issue are as follows:
>
> a) Pursuant to the Client's Tender (05.12.2022), a work order dated 06.03.2023 was issued by the end Client in favour of the Respondent, subsequent to which the Respondent issued the Tender (07.03.2023).
> b) Subsequent to the issuance of the Tender, the Respondent issued the Corrigendum (15.03.2023).
> c) The Claimant submitted its bid on 20.03.2023 which was accepted and the LOI (24.03.2023) was issued by the Respondent in favour of the Claimant. The LOI was accepted by the Claimant vide email dated 27.03.2023.
> d) The Claimant submitted the PBG belatedly on 13.04.2023 (through email) and on 17.04.2023 (hardcopy).
> e) The said Purchase Order (28.04.2023) was issued by the Respondent in favour of the Claimant.
> f) As per the Claimant, it placed certain purchase orders on OEMs after issuance of the LOI. Further purchase orders were placed after the issuance of the said Purchase Order.
> g) The Respondent followed up the progress of the purchase orders placed by the Claimant on the OEMs and the Claimant provided timelines. Various emails were exchanged between the Claimant and the Respondent in this regard.
> h) The Respondent received complaints from OEMs seeking its intervention as the Claimant was not making payment to the OEMs for the purchase orders provisionally placed on the OEMs by the Claimant.
> i) The end Client sent an email dated 08.05.2023/letter dated 06.05.2023 to the Respondent requesting to complete execution of the work without any delay by the end of May 2023, pursuant to which the Respondent sent emails to the Claimant, *inter-alia*, seeking information/details pertaining to the delivery schedule and installation timelines.
> j) The Respondent issued a notice dated 11.05.2023 to the Claimant with regard to the delay in the execution timelines of the project. The said notice was replied to by the Respondent vide its email dated 13.05.2023.
> k) Thereafter, the Respondent issued the Show Cause Notice (18.05.2023) to the Claimant, *inter-alia*, stating that the Claimant had prima facie failed to provide any tangible details regarding the purchase orders placed on the OEMs, the delivery schedule of the goods and installation timelines resulting in serious delays in the execution timelines of the project. By the Show Cause Notice, the Respondent called upon the Claimant to show cause as to why the

Respondent should not initiate action against the Claimant as mentioned in the Show Cause Notice including termination of the Tender. The Claimant was called upon to reply to the Show Cause Notice within 3 days failing which necessary action would be taken by the Respondent.

I) The Claimant replied to the Show Cause Notice vide its replies dated 20.05.2023 (also sent vide email dated 22.05.2023) and 24.05.2023, *inter-alia,* stating that the Claimant is going as per the timelines and trying its best to complete the project within the stipulated timelines mentioned in the Tender. The Respondent issued a pointwise reply dated 30.05.2023 to the above replies of the Claimant. In the said letter dated 30.05.2023, the Respondent directed the Claimant to complete the SITC part as per the project requirements by 06.06.2023 (except for. Networking switches), failing which action would be taken as per the Show Cause Notice and the terms of the Tender.

m) The Respondent issued the Termination Notice (09.06.2023), *inter-alia,* alleging that the Claimant had failed to take any tangible action in furtherance of the said Purchase Order inspite of opportunities provided to it. By the Termination Notice, the Respondent terminated the said Purchase Order and banned the Claimant for a period of 2 years from participating in future/new works/tenders undertaken by the Respondent. The PSG was also forfeited.

n) The Claimant made a representation dated 15.06.2023 to the Respondent stating that the Termination Notice was issued wrongly and erroneously. The Claimant requested for extension in terms of Clause 3.14 of the Tender and also reinstatement of the said Purchase Order. The Claimant stated that it was keen on completion of the project and assured that the same shall be executed within 45 days.

o) The Respondent replied to the above representation of the Claimant vide its letter dated 20.06.2023 denying the extension sought by the Claimant.

p) Thereafter, the Respondent issued a letter dated 03.07.2023 to the Claimant informing that work had been awarded to a new vendor i.e. Orbit at an additional cost of Rs. 12,87,756.75/- (Rupees Twelve Lakhs Eighty-Seven Thousand Seven Hundred Fifty-Six and Seventy-Five Paisa Only) which would be recovered from the Claimant.

133. For the adjudication of the present issue, the first aspect which needs to be decided is the timeline within which the Claimant was to deliver the equipment as per the Tender.

134. The Delivery/Implementation Schedule is provided in Clause 3.6 of the SCC of the Tender which is set out hereunder:

> ***"3.6 DELIVERY/IMPLEMENTATION SCHEDULE***
> *As per Client's tender'*

135. The Implementation Schedule in the Client's Tender is provided in Clause 7 which is set out hereunder:

"7. ***Implementation Schedule***

SI No.	*Activity*	*Time line*
1.	*Issue of LoI/ Work Order*	*T*
2.	*Delivery & installation of equipment at identifies location*	*(i) T+6 Months for networking Switches (ii) T+3 months for other than networking switches*
3.	*Providing maintenance services as mentioned in this RFP*	*T+ 36 Months*

136. The Claimant has contended that as per Clause 7 of the Client's Tender, the time period for delivery of equipment and installation is to commence from T, defined as the date of issuance of the Letter of Intent or Work Order. As the LOI in favour of the Claimant was issued on 24.03.2023, the commencement of the delivery period has to be calculated from 24.03.2023 and the stipulated period for delivery and installation of equipment other than network switches would have elapsed on 24.06.2023 (T +3 months) and 24.09.2023 (T +6 months) for network switches. Accordingly, the said Purchase Order was terminated prematurely and wrongfully.

137. The contention of the Claimant is misconceived. The terms "Service Provider/Selected Bidder/Selected Agency" and "Work Order/Supply Order" are defined in Clause 2.1 (Definitions) of the Client's Tender. The relevant clauses are reproduced as under:

> ***"Service Provider/Selected Bidder/Selected Agency'*** *means "Successful Bidder', with whom Govt. signs the Contract.*
> ***"Work Order/Supply Order''*** *means tasks/activities which will be assigned or scheduled to the* successful · *Bidder'*

138. The Selected Bidder means the "Successful Bidder" with whom the end Client signs the Contract i.e. the Respondent herein. The Work Order/Supply Order is the work order executed between the end Client and the Respondent herein. In view of the above, when in Clause 7 (Implementation Schedule) of the Client's Tender, the term LoI/Work Order is used, it means the work order

executed between the end Client and the Respondent i.e. the work order dated 06.03.2023 (which has been referred to in the Letter dated 06.05.2023 sent by the end Client to the Respondent) i.e. Ex. RW1/S(Colly.).

139. Accordingly, as per Clause 7 of the Client's Tender, the timeline for delivery and installation of equipment was to commence on the date of the work order executed by the end Client in favour of the Respondent i.e. 06.03.2023 and not 24.03.2023 as contended by the Claimant. Therefore, commencement for the delivery period was from 06.03.2023.

140. The Respondent had issued the Corrigendum which stated/clarified "T" as specified in Clause 7 of the Client's Tender as 06.03.2023. The relevant portion of the Corrigendum is set out hereunder:

3	3.6 Delivery/ Implementation Schedule (Page-21)	As per Client's tender		#	**Activity**	**Timeline**	
				1	Issue of LoI/ Work Order	T = 06/03/2023	
				2	Delivery & installation of equipment at identified location	(i) T+6 Months for networking Switches (ii) T+3 months for other than networking switches	
				3	Providing maintenance services as mentioned in this RFP	T+36 Months	

The Corrigendum made it clear that the date of commencement is 06.03.2023 and that the date for delivery and installation of equipment other than network switches is 06.06.2023 (T +3 months) and for the network switches is 06.09.2023 (T +6 months).

141. The Corrigendum is dated 15.03.2023 and was issued by the Respondent prior to the Claimant submitting its bid on 20.03.2023.

Further, by the Corrigendum, the Respondent also extended the last date of submission of bids and the Claimant submitted its bid as per the extended date mentioned in the Corrigendum. Accordingly, the Claimant cannot contend that it was unaware of the Corrigendum before submission of its bid. Further, the Respondent is correct in contending that the Corrigendum being a public document was readily available on the a-procurement portal and the Respondent's website throughout the bidding period. The Corrigendum is also

mentioned in the LOI as well as the said Purchase Order. In fact, CW-1 in answer to Question 11 has admitted that when the Corrigendum was mentioned in the LOI/said Purchase Order, the Claimant did not raise any objection or concern regarding the same. Therefore, the argument of the Claimant that no email or letter communication exists apprising the Claimant of a change in the delivery schedule cannot be accepted.

142. The contention of the Claimant that the Corrigendum materially changed the Tender is misconceived. The Corrigendum with respect to the delivery/implementation schedule was more in the nature of a clarification and there was no material change in the Tender. The judgments in *Bhanwar Lal Verma* (supra) and *Parvati Oevi (supra)* do not support the case of the Claimant inasmuch as the Corrigendum was issued prior to the submission of the bid by the Claimant and there was no vested right in the Claimant that was withdrawn or taken away by virtue of the Corrigendum.

143. Even as per the Claimant's own case, the Claimant had started placing the purchase orders on the OEMs for procuring the equipment immediately after the issuance of the LOI. The Claimant placed the first purchase order on 29.03.2023 i.e. within 7 days of issuance of the LOI. The Claimant therefore was aware and conscious of the strict timelines. The Respondent vide its email dated 25.04.2023 had requested the Claimant to review the timelines as the same were not in sync with the delivery timelines of the end· Client and the Tender. It is for the first time vide its email dated 10.05.2023 that the claimant took a stand that the "T" is 24.03.2023. CW-1 in his cross-examination in answer to Question 22 has deposed that the Claimant did not raise any issue of delivery schedule prior to its email dated 20.05.2025 as the Claimant was waiting for the OEMs to give the delivery schedule to the Claimant, which was received only in the last week of May 2023

144. Even otherwise, if the obligation of the Respondent to the end client is to deliver and install the equipment within. the timelines specified in the Client's Tender, the Respondent cannot give a longer time period to the Claimant for delivery and installation of the equipment than what is specified in the Client's Tender. The Claimant would have to comply with the timelines agreed to between the Respondent and the end Client which are in line with

the timeline of the Tender. The judgment in *Novartis Vaccines* (supra) does not help the case of the Claimant.

145. From the above discussion, it is clear that the commencement of the delivery period "T" has to be calculated from 06.03.2023. Accordingly, the Claimant was to deliver and install the equipment other than network switches by 06.06.2023 and the network switches by 06.09.2023.

146. The second issue which has to be considered is whether any notice period was required to be given by the Respondent to the Claimant prior to terminating the said Purchase Order/Tender.

147. The Claimant has contended that termination of the said Purchase Order by the Respondent is wrongful as the Claimant was not given the contractually stipulated notice period. In this regard, the Claimant has relied upon Section 3 of the SCC of the Tender which provides that the terms and conditions of the Tender are to be applied on a back-to-back basis with the Client's Tender. The Claimant contends that as per Clause 3.9 of the Tender, the termination has to be in accordance with the Client's Tender i.e. Clause 3.12 of the Client's Tender. In terms of Clause 3.12 of the Client's Tender, it was entitled to a 45 day' notice prior to termination of the Tender by the Respondent and as the said clause was not compiled. with, the termination by the Respondent is unlawful. The Claimant contended that Clause 3.12 of the Client's Tender would have been applicable, however, the Respondent issued the Termination Notice in terms of Clause 2.18 of the Tender.

148. The relevant clauses in the Tender regarding termination are Clause 2.18 and Clause 3.9, which are reproduced as under:

> *"2.18* ***TERMINATION FOR DEFAULT***
>
> *a) TCIL may, without prejudice to any other remedy for breach of contract, by written notice of default, sent to the supplier, terminate this contract in whole or in part.*
>
> *- if the supplier fails to deliver any or all the services/goods within the time period specified in the contract, or any extension thereof granted by TCIL.*
>
> *- if the supplier fails to perform any other obligation(s) under the contract;*
>
> *- if the supplier, in either of the above circumstances, does not remedy his failure within* a period *of 15 days (or such longer period as TCIL may authorize in writing) after receipt of the default notice from TCIL*
>
> *- Failure of the successful bidder to comply with the requirement of submission of performance security shall constitute sufficient ground for cancellation of the award of work and forfeiture of the bid security.*
>
> ....
>
> ***"3.9 TERMINATION OF CONTRACT***
>
> *As per Client's tender'*

149. The clause regarding termination in the Client's Tender is Clause 3.12 of the Client's Tender, which is set out hereunder:

> ***"3.12. Termination***
>
> *(i) Termination for Default:*
>
> *If the Selected Agency/Service Provider fails to carry out the award/work order in terms of this document within the stipulated period or any extension thereof, as may be allowed· by OIT, without any valid reasons acceptable to OIT, OIT may terminate the contract after giving 45 days' notice, and the decision of DIT on the matter shall be final and binding on the Service Provider. Upon termination of the contract, DIT shall be at liberty to get the work done at the risk and expense of the Selected Agency through any other*
>
> *agency, and to recover from the Service Provider's compensation or damages."*

150. The Note under Section 3 of the SCC of the Tender mentions that in case of any difference in the clauses in the Tender, the conditions mentioned in the SCC of the Tender shall prevail. The said Note is set out hereunder:

> ***"Note**: In case clauses/sub clauses have any difference mentioned in this NIT at different places, the conditions mentioned in this section shall prevail. The terms and conditions of this section shall be on back-to-back basis based on client's tender No. **22(44)/DIT/COMM/2022 for "Request for Proposal for Selection of Agency for supply, installation, commissioning & maintenance of Horizontal Extension of SWAN (HSWAN)"."***

151. Accordingly, Clause 3.9 of the SCC of the Tender would prevail over Clause 2.18 of the GCC of the Tender and the applicable clause for termination of the Tender will be Clause 3.12 of the Client's Tender. Clause 3.12 of the Client's Tender mandates that upon failure to carry out the work *"within the stipulated period'*, a *"45 days notice period'* has to be given before termination.

152. The Respondent contended that due to the Claimant's failure to fulfill its obligations and abide by the stipulated timelines, The Respondent reasonably apprehended that the Claimant would default on the project execution schedule. Such delay would have adversely impacted the end Client. Accordingly, in order to safeguard its interests, the Respondent initially warned the Claimant vide its email dated 01 .05.2023 to act urgently in the interest of the project and thereafter issued a notice dated 11.05.2023 for rectification of the delivery timeline and expediting the completion of work. The Claimant was also served with the Show Cause Notice whereby the Claimant was given 3 days time to respond with details on its plans to meet the delivery timelines. Upon receiving an unsatisfactory response and being unconvinced

by the· Claimant's proposed delivery schedule and lack of delivery and execution on ground, the Respondent terminated the said Purchase Order only after the timeline of 06.06.2023.

153. The contention of the Respondent is without any merit. The Claimant could have issued the notice under Clause 3.12 only upon the failure of the Claimant to deliver and install the equipment within the stipulated time period i.e. other than networking switches by 06.06.2023. Till 06.06.2023, the Claimant had not defaulted in its obligations under the said Purchase Order/Tender. Accordingly, no notice could have been issued by the Respondent before the actual default on the Claimant's part.

154. Even upon the failure of the Claimant to delivery and install the said equipment by 06.06.2023, the Respondent had to give 45 days notice to the Claimant as envisaged in Clause 3.12 of the Client's Tender before terminating the said Purchase Order/Tender. On the date the Show Cause Notice was issued, the stipulated period had not expired. The Show Cause Notice is also not a notice as envisaged under Clause 3.12 of the Client's Tender. In fact, no notice as envisaged under Clause 3.12 of the Client's Tender was issued by the Respondent to the Claimant. A notice under Clause 3.12 of the Client's Tender could only have been given after the expiry of the term provided for performance of the contract. The Respondent did not give the Claimant the contractually stipulated notice period to execute the said Purchase Order in terms of the Tender.

155. Accordingly, there is merit in the contention of the Claimant that the termination of the said Purchase Order by the Respondent is wrongful as the Claimant was not given adequate notice in terms of Clause 3.12 of the Client's Tender.

156. The Respondent contended that delivery timelines shared by the Claimant created an apprehension that the Claimant will not be able to complete the delivery and installation by 06.06.2023 and would eventually fail to meet its obligations as per the Tender. The Respondent placed reliance on Section 39 of the Contract Act and illustration (a) therein to contend that a non-defaulting party is not required to wait till the last date of the contract if it can anticipate that the defaulting party is not going to perform its obligations under contract. In the present case, the Claimant had neither refused to perform nor disabled itself from performing the said Purchase Order/Tender. In fact, by its emails dated 20.05.2023 and 24.05.2023, the Claimant stated that it was trying to its best to complete the project within the stipulated period mentioned in the Tender. Subsequent to the Termination Notice, the Claimant by its letter dated 15.06.2023 stated that it was keen on completion of the project and assured that the same shall be executed within 45 days and the Cisco Switches would be delivered by 30.09.2023. The Claimant also sought extension and reinstatement of the said Purchase Order to enable it to execute the project. The judgments

relied upon by the Respondent with regard to anticipatory breach i.e. *HFCL Beze Telecom (supra), Air India Limited (supra)* and *Deva Builders (supra)* do not help the case of the Respondent. Section 39 of the Contract Act is not applicable in the facts of the present case. There was no repudiation of the said Purchase Order/Tender by the Claimant.

157. The reliance of the Respondent on the complaints ·by the OEMs do not help the Respondent as admittedly there was no privity of contract between the Respondent and the OEMs. Further, though the PSG was admittedly delayed by the Claimant, however, the same cannot be a ground for termination after the Respondent accepted"'1he same and issued the said Purchase Order in favour of the Claimant.

158. The Respondent contended that the Claimant did not plead in its reply to the Termination Notice or in the Statement of Claim that the Termination Notice was not in terms of the Client's Tender and it was for the first time during arguments that the Respondent contended as an afterthought that the notice period of 45 days was not given. The contention of the Respondent is misconceived. The Claimant in Para 6 of its Statement of Claim has referred to, reproduced and relied upon various clauses of the Tender and the Client's Tender including Clause 3.12 of the Client's Tender. Further, the Claimant has stated that the termination of the Tender is to be in accordance with the Client's Tender. Therefore, it cannot be said that this argument was only raised by the Claimant during the final arguments or is an afterthought. The judgments in *Ibrahim Uddin (supra), Bajrang Lal* (supra), *Susaka Private Limited (supra)* and *Mohammed Abdul Wahid (supra)* relied upon by the Respondent are not applicable in the facts of the present case.

159. The Arbitral Tribunal is of the view that the termination of the said Purchase Order/Tender vide the Termination Notice was not in terms of the 'Client's Tender or the Tender as the 45 days' notice was not given by the Respondent to the Claimant before termination. Accordingly, it is held that the termination of the said Purchase Order by the Respondent vide the Termination Notice is wrongful.

……"

52. Insofar as the first limb of challenge by TCIL is concerned, it was held that the termination of the Purchase Order was not preceded by a notice in terms of Clause 3.9 of the SCC, which, being a back-to-back agreement, corresponds to Clause 3.12 of the Client's Tender, and such notice was a condition precedent to a valid termination; further, the communications on record, including Frans' letters dated

20.05.2023 and 24.05.2023, disclosed a continued willingness to perform the contract, thereby negating any inference of anticipatory breach; consequently, the contention of TCIL under Section 39 of the IC Act was rejected.

53. With respect to the second limb of Issue No. 1, the learned AT, while holding the termination to be wrongful, declined to award damages on the ground that Frans failed to lead any evidence to establish the nature and quantum of loss. This Court proceeds to examine the challenge to the aforesaid findings.

54. TCIL contends that the learned AT has misconstrued the SCC, particularly Clause 3.9 thereof, and has failed to give due weight to material evidence, including communications from the OEM, which, it is urged, demonstrate delay and non-performance disentitling Frans from any relief.

55. In this context, this Court finds that TCIL's challenge to the interpretation of the SCC is selective and lacks consistency. The learned AT, while adjudicating the same issue relating to the date of commencement of the work order, interpreted the relevant provisions of the SCC and returned a finding which has not been disputed by TCIL. However, insofar as the finding on termination is concerned, TCIL seeks to challenge the award on the ground of an alleged erroneous construction of the very same contractual framework.

56. Such a selective challenge to a unified contractual scheme cannot be sustained. The doctrine of *quod approbo non reprobo*, that a party cannot approbate and reprobate the same instrument, is well-settled in Indian law. As held by the Hon'ble Supreme Court in ***Rajasthan State Industrial Development & Investment Corpn. v.***

Diamond & Gem Development Corpn. Ltd.[21], a party cannot "blow hot and cold" or "approbate and reprobate" where it has knowingly accepted the benefits of a contractual framework; it is estopped from denying its validity or binding effect when the same framework operates against it.

57. TCIL, having accepted the learned AT's interpretation of the SCC with respect to the commencement timeline and other findings, cannot now resist the application of the same contractual scheme in the context of termination.

58. Insofar as Clause 3.9 of SCC is concerned, which, as discussed earlier, corresponds to Clause 3.12 of the client's tender given the back-to-back nature of the agreement, the contention of TCIL that the termination was justified under Clause 2.18 of GCC cannot be sustained. Clause 3.9 of SCC, read with Clause 3.12 of the client's tender, prevails over Clause 2.18 of the GCC and mandates a 45-day notice period upon failure to perform within the stipulated period, as a condition precedent to a valid termination.

59. It is an admitted position that no such notice was issued prior to the termination dated 09.06.2023, and the Show Cause Notice does not qualify as a notice under Clause 3.9 of SCC *vis-à-vis* Clause 3.12 of the client's tender, since the mandatory period for performance had not even expired on the date of its issuance.

60. The learned AT has interpreted and applied the said provision in the context of the contractual scheme and the conduct of the parties. The contention of TCIL essentially seeks an alternate interpretation of the said clause. The judgments relied upon by TCIL, including ***OPG Power*** *(supra)* and ***Delhi Airport Metro Express Pvt. Ltd.*** *(supra)*, do

[21] (2013) 5 SCC 470

not advance its case, as the present case is not one of absence of evidence or perversity, but one of interpretation of contractual terms.

61. The contention that the OEM communications constituted material evidence that has been wholly ignored is not borne out from a reading of the impugned award. The learned AT has adverted to the correspondence between the parties and assessed the same in its totality. The mere fact that the learned AT did not assign to such communications the probative weight sought to be ascribed by TCIL does not amount to non-consideration of material evidence within the meaning of ***I-Pay Clearing Services Pvt. Ltd.*** *(supra).* As clarified therein, and in ***OPG Power*** *(supra),* interference is warranted where material evidence is completely ignored, and not where it has been considered but found insufficient or unpersuasive.

62. In the present case, the learned AT has also recorded that there was no privity of contract between the OEM and Frans. The evidentiary value of such communications has thus been assessed in the context of the contractual relationship between the parties. The challenge of TCIL, in substance, seeks a re-appreciation of the evidentiary weight assigned by the learned AT, which falls within its exclusive domain and does not warrant interference.

63. The reliance on principles of contractual interpretation in ***Ram Kishore Lal*** *(supra)* also does not aid TCIL, as the learned AT has construed the contract as a whole and has not adopted an interpretation contrary to the contractual scheme.

64. Consequently, this Court finds that the said conclusion flows logically from the findings of the learned AT on termination and does not warrant any interference by this Court.

Section 39 of the IC Act

65. As regards Section 39 of the IC Act, it provides that where a party to a contract refuses to perform or has disabled himself from performing his promise in its entirety, the other party may put an end to the contract, unless it has signified by words or conduct, acquiescence in the contract's continuance. The learned AT has recorded a reasoned finding that there was no repudiation or disabling conduct on the part of Frans.

66. The learned AT, in its finding, has noted that Frans, through its communications dated 20.05.2023 and 24.05.2023, expressed its willingness to perform and sought to complete the project, and even thereafter sought extension and reinstatement. The reliance placed by TCIL on ***Maharashtra State Electricity Distribution Co. Ltd.*** *(supra)* is misplaced, as the said judgment applies where the conduct of a party clearly demonstrates an unwillingness or inability to perform, which is not borne out in the facts of the present case; the conclusion that anticipatory breach is not attracted cannot be said to be erroneous.

67. For the aforesaid reasons, this Court finds no ground to interfere with the finding of the learned AT that the termination of the Purchase Order was wrongful. The finding of the learned AT on this aspect is cogent and based on the material on record, and does not warrant any interference. Accordingly, the challenge laid by TCIL to this finding in *OMP (COMM) 119/2026* fails.

Refund of PBG

68. The challenge to the direction regarding refund of the PBG arises in the context of Issue No.3 framed by the learned AT and is intrinsically linked to the aforesaid finding on termination. TCIL has

also assailed the said direction, contending that the encashment was justified on account of the breach committed by Frans. The finding of the learned AT on Issue No.3 in this regard is extracted herein below:

> **"Analysis & Findings**
> **191.** As per the Respondent, the encashment of the PBG was due to the Claimant's breach of the Tender, particularly its failure to deliver and install the required equipment within the stipulated timeline. The decision to encash the PBG was due to the Claimant's repeated non-performance and failure to adhere to the terms of the Tender. The Arbitral Tribunal while deciding Issue No. 1 above has held that the termination of the said Purchase Order/Tender by the Respondent by the Termination Notice was wrongful and premature and a breach of the terms of the Tender. As the termination of the said Purchase Order was wrongful and premature and a breach of the terms of the Tender, the encashment of the PBG by the Respondent was also wrongful.
> **192. Accordingly, the Claimant is entitled to an amount of Rs. 25,75,512/- (Rupees Twenty-Five Lakhs Seventy-Five Thousand Five Hundred and Twelve Only) from the Respondent for the wrongful encashment of the PBG being the cost of the PBG. Issue No. 3 is accordingly decided in favour of the Claimant and against the Respondent."**

69. A perusal of the above-extracted finding indicates that the learned AT has examined this contention in light of its finding on Issue No. 1 and has held that the termination of the Purchase Order was wrongful and not in accordance with the contractual provisions. On that basis, the learned AT has concluded that the alleged breach attributed to Frans could not be sustained.

70. In view of the above finding, the very premise on which TCIL sought to justify the encashment of the PBG stands displaced. It was the specific case of TCIL that such encashment was consequent upon the alleged breach by Frans; however, the foundation of that contention having been found to be unsustainable, the justification for the invocation of the PBG does not survive. The learned AT has thus

treated the encashment as a direct consequence of the wrongful termination and has directed the refund of the said amount.

Interest

71. On the issue of interest, the Impugned Award also does not warrant any interference. It is trite that the grant of interest falls within the discretion of the learned AT under Section 31(7) of the A&C Act, which empowers the learned AT to award interest at such rate as it deems reasonable, in the absence of any agreement to the contrary. The relevant finding of the learned AT at Paragraph Nos. 239 and 240 of the Impugned Award are reproduced herein below:

> "239. While deciding Issue No.3, the Arbitral Tribunal has held that the Claimant is entitled. to an amount of Rs. 25,75,512/- (Rupees Twenty-Five Lakhs Seventy-Five Thousand Five Hundred and Twelve Only) from the Respondent for wrongful encashment of the PSG being the cost of the PBG. Therefore, the Claimant is granted interest @ 12% per annum on the amount of Rs. 25,75,512/- (Rupees Twenty-Five Lakhs Seventy-Five Thousand Five Hundred and Twelve Only) from the date of encashment of the PSG till the date of the Award.
> **240. Accordingly, the Claimant is entitled to and is granted simple interest on the amount of Rs. 25,75,512/- (Rupees Twenty-Five Lakhs Seventy-Five Thousand Five Hundred and Twelve Only) @ 12% per annum from the date of encashment of the PBG till the date of Award. Issue No. 11 is decided accordingly."**

72. In light of the above-stated finding, no contractual bar or restriction on the grant of such interest has been demonstrated. The learned AT has awarded simple interest @ 12%, which cannot be said to be unreasonable or excessive so as to warrant interference under Section 34 of the A&C Act, the determination thereof being within the domain of the learned AT.

73. Consequently, this Court finds that the said conclusion flows logically from the findings on termination and does not warrant interference.

II. FRANS'S CHALLENGE:

Issue no.1

74. Having upheld the finding of wrongful termination under the first limb, this Court now turns to the second limb, being Frans' cross-challenge against the rejection of its claim for damages flowing therefrom. Frans has assailed the rejection of its claim for damages despite a finding of wrongful termination, contending that once breach is established, damages must follow. In this regard, reliance is placed upon ***MSK Projects*** *(supra)*. The relevant finding of the learned AT at Paragraph Nos. 160, 161 & 162 of the impugned award are reproduced herein below:

> "**160.** However, the Claimant has not led any evidence to prove that it suffered any damages on account of the wrongful termination of the said Purchase Order by the Respondent.
> **161.** The annexure *to* the said Purchase Order contains the list of the items/equipment that were to be supplied. As per the Claimant's own case, it had delivered only the NGF and the NMS, however, as per the Respondent only the NGF was delivered to the end Client, and even that was not installed. Assuming the Claimant is correct in contending that it had supplied the NGF and the NMS, even then the Claimant has delivered only 2 items (out of 21 items) amounting to Rs. 1,31,64,631/- (Rupees One Crore Thirty One Lakhs Sixty-Four Thousand Six Hundred and Thirty-One Only) out of the contract value of Rs. 8,58,50,387.06/- (Rupees Eight Crores Fifty-Eight Lakhs Fifty Thousand Three Hundred Eighty-Seven and Six Paise Only). The said 2 items were not even installed or commissioned till the 06.06.2023. As till the stipulated date, the Claimant had, even as per its own case, only delivered 2 items which were not installed or commissioned, amounting to around 15% of the total value of the said Purchase Order, the Claimant is not even entitled to nominal damages. The judgments relied upon by the Claimant in *A. T. Brij Paul Singh* (supra) and *Bungo ·Steel Furniture (supra)* do not support the case of the

> Claimant. Accordingly, the Claimant is not entitled to any damages.
>
> **162. It is held that the termination of the said Purchase Order/Tender by the Respondent vide the Termination Notice is wrongful and premature and a breach of the terms of the Tender. However, the Claimant is not entitled to any damages as the Claimant has failed to prove that it suffered any the damages in this regard. Issue No. 1 is decided accordingly.**"

75. As is evident from the findings extracted hereinabove, the learned AT has rejected the claim for damages on the ground that Frans failed to establish any actual loss, and has supported the said conclusion with cogent reasoning. The learned AT has recorded that, even as per the case of Frans, only a limited portion of the contractual work was performed, with delivery of merely two items out of the total scope of twenty-one items under the Purchase Order, which themselves were neither installed nor commissioned within the stipulated timeline. The value of such partial performance constituted only a fraction of the overall contract value. In this factual backdrop, the learned AT has concluded that no basis existed for awarding damages, even in the nature of loss of profits.

76. While it is true that in appropriate cases loss of expected profits may be awarded, the same is neither automatic nor can it be granted in the absence of material enabling its quantification. The ruling in ***MSK Projects*** *(supra)* does not dispense with the requirement of establishing the foundational facts necessary for such a claim.

77. The finding of the learned AT that no such material was placed on record, being based on an appreciation of evidence, cannot be said to suffer from any perversity warranting interference.

Issue No. 2

78. Frans further challenges the rejection of its claim for payment under invoices dated 14.04.2023 and 01.05.2023, which fell for

consideration before the learned AT under Issue No. 2. It is contended that the learned AT has effectively sustained a "back-to-back" payment defence, i.e., that TCIL's obligation to pay Frans was contingent upon receipt of corresponding payments from the DIT, without TCIL having expressly pleaded such a contractual arrangement. The relevant findings returned by the learned AT on Issue No. 2, which bear upon the present challenge, are extracted hereunder:

> **"Analysis & Findings**
>
> **178.** The Claimant relied upon Clause 3.1 (i) of Section 3 of the Tender to claim the amounts of the invoices raised in respect of the NGF and the NMS. Clause 3.1 of the SCC of the Tender provides for the payment terms which is reproduced hereunder:
>
> ***"3. 1 PAYMENT TERMS***
>
> *(i) 80% of CAPEX amount will be paid after delivery of equipment.*
>
> *(ii) 10% ·of CAP EX amount will be paid after completion of installation, commissioning, Testing & Final acceptance.*
>
> *(iii) Remaining 10% of the CAP EX amount will be released @3% per year at the end of 151 & 2'Jd year and remaining 4% will be release after end of 3rd year.*
>
> *Note**: Payment terms between the TCIL and vendor shall be on back to back basis except in cases of advance payment i.e. TCIL will release the payment of each stage only if received from the client.** Client payment terms will supersede terms mentioned in this document'*
>
> *(Emphasis Supplied)*
>
> **179.** The said Purchase Order also mentions the payment terms, which are set out hereunder:
>
> ***"5. PAYMENT TERMS***
>
> *(i) 80% of CAPEX amount will be paid after delivery of equipment.*
>
> *(ii) 10% of CAPEX amount will be paid after completion of installation, commissioning, Testing & Final acceptance.*
>
> *(iii) Remaining 10% of the CAPEX amount will be released @3% per year at the end of 1st & 2nd year and remaining 4% will be release after end of 3'd year.*
>
> *Note: **Payment terms between the TCIL and vendor shall be on back to back basis except in cases of advance payment i.e. TCIL will release the payment of each stage only if received from the client."***
>
> *(Emphasis Supplied)*

180. In terms of Clause 3.1 of the Tender and Clause 5 of the said Purchase Order, the payment terms between the Respondent and the Claimant are on back-to-back basis except in cases of advance payment i.e. the Respondent was to make payment to the Claimant only upon receipt of payment from the end Client.

181. The Respondent has disputed delivery of the NMS and also contended that the Claimant had not provided the license key for installation of the NGF. Even otherwise, it was the understanding of the Claimant that the payments were on back to back basis.'

182. In the letter dated 13.05.2023, the Claimant stated that it had "placed all back to back POs to the concerned OEMs". This shows that the Claimant was aware that the payments to be made to the Claimant under the Tender were on back to back basis and the payment would be made only after the Respondent is paid by the end Client. In fact, the Invoice dated 01.05.2023 raised by the Claimant for the NMS also mentions the Terms' as *"Back to Back'*. This is also the reason the Claimant never sought payment for the delivery of the equipment till termination of the said Purchase Order/Tender. There is also nothing on record to show that the Respondent has received payment from the end Client with respect to the NGF and the NMS.

183. The contention of the Claimant that the Respondent failed to raise the argument of existence of back-to-back contract in its pleadings is misconceived. In Para 17 of the Statement of Defence, the Respondent has referred to, reproduced and relied upon Clause 3.1 of the SCC of the Tender which refers to the payment terms being on back to back basis and therefore it cannot be said that the "Respondent did not raise this point in its pleadings. The judgment in *Prakash Rattan La/ (Supra)* does not support the case of the Claimant.

184. It is pertinent to note that the Claimant has not disputed that it did not make payment to the OEMs in respect of either the NGF or the NMS. In answer to Questions 25 to 28, CW-1 deposed that the payment to the OEMs for the NGF and the NMS had been made in form of credit notes after filing of the Statement of Claim. On the other hand, the Respondent has stated that it had purchased the NMS from Orbit. The Respondent has placed on record an invoice dated 21.08.2023 of Orbit with regard to purchase of the NMS. If the end Client or the Respondent had received the NMS from the Claimant, there would have been no occasion for the Respondent to order the same product again.

185. In the judgment in *Kingston Enterprises (supra)* relied upon by the Respondent, it was held that

> *"24. Judicial precedents consistently uphold the · enforceability of 'pay-when-paid' clauses in back-to-back contracts, provided these clauses are clear and*

unambiguous. Courts only intervene where there is gross unfairness or ambiguity. In this case, the language of the 'pay-when paid' clause leaves no

room for interpretation : NBCC's obligation to pay the Petitioner is *strictly contingent upon receiving payment from NSG.*

25. Clause 24.2 of the GCC *explicitly stipulates that NBCC's liability to pay the Petitioner arises on its receipt of funds from NSG. The NBCC, in its counter affidavit, acknowledges an outstanding sum of INR 88,47,080/-, but it is clear that this payment is contingent on receipt of funds from NSG. Given the unambiguous terms of the contract, the Court finds no basis to interfere, and the Petitioner's right to payment is accordingly tied to NBCC's receipt of funds from NSG.*

26. It is a well-established principle of contract law that parties are bound by the terms to which they voluntarily agree. Once a contract is executed, neither party can contest its terms unless they are arbitrary or violate public policy. In this case, the Petitioner was fully aware of the 'contractual condition linking their payment to NBCC's receipt of funds from NSG and willingly entered into the agreement. There is no challenge to the terms of the impugned agreement. Moreover, the Petitioner cannot challenge the enforcement of the impugned contractual stipulation under Article 226 of the Constitution. The Court finds no merit in the Petitioner's claim for direct payment from NBCC when NBCC's obligation to pay is dependent on receiving funds from NSG."

Pertinently, in Para 14 of the said judgment, the Delhi High Court has also dealt with the judgment in Harvinder Singh & Company (supra) which has been relied upon by the Claimant.

186. It is accordingly held that the Respondent was to pay the Claimant for the equipment delivered by it on back to back basis i.e. upon receipt of payment from the end Client. It is not the case of the Claimant that the Respondent had received the amounts for the said items from the end Client. Accordingly, the Claimant is not entitled to the amount of Rs. 1,31,64,631/- (Rupees One Crore Thirty-One Lakhs SixtyFour Thousand Six Hundred and Thirty-One Only) against the invoice dated 14.04.2023 amounting to Rs. 88,03,589 (Rupees Eighty-Eight Lakhs Three Thousand Five Hundred and Eighty-Nine Only) and the invoice dated 01 .05.2023 amounting to Rs. 43,61,042/- (Rupees Forty-Three Lakhs Sixty-One Thousand and Forty-Two Only) raised by the Claimant. Issue No.2 is decided accordingly."

79. A perusal of the above finding indicates that the learned AT has undertaken a detailed examination of the contractual framework governing payments, including Clause 3.1 of the SCC and Clause 5 of the Purchase Order, and has recorded a categorical finding that the payment mechanism between the parties was on a "back-to-back" basis, i.e., payments to Frans were contingent upon receipt of corresponding payments from the end client.

80. The learned AT has further noted that Frans was itself aware of and acted in accordance with such arrangement, including by placing back-to-back purchase orders and reflecting the same understanding in its own correspondence and invoices. It has also been recorded that there was no material to show that TCIL had received payment from the end client in respect of the equipment in question.

81. In this backdrop, the learned AT has rejected the claim for invoices on the ground that the contractual condition precedent for payment was not satisfied. The contention of Frans that such a defence was not pleaded has also been specifically addressed and rejected by the learned AT on the basis of the pleadings on record.

82. In view of the aforesaid, the finding so returned is based on a reasoned interpretation of the contractual terms and appreciation of evidence, and does not warrant interference merely because an alternate view is sought to be advanced.

Issue No. 6

83. Frans has also assailed the rejection of its claim for damages towards loss of reputation consequent upon the two-year ban imposed by TCIL. While the wrongfulness of the blacklisting was decided in favour of Frans under Issue No. 6, the core of the present challenge is

to the finding under Issue No. 7, whereby the learned AT, despite holding the blacklisting to be wrongful, declined to grant damages for the reputation and commercial loss following therefrom.

84. In this regard, it is submitted that the learned AT, having held the blacklisting itself to be wrongful, the legal consequences of such wrongful act must necessarily include compensation for reputational and commercial damage.

85. The principles governing such claims are instructive. Damages for injury to reputation or goodwill, in a commercial context, are not awardable on the basis of assertion alone and, as reiterated in ***M/s Unibros v. All India Radio***[22], must be supported by cogent evidence, which may include, *inter alia*, demonstration of lost business opportunities, cancellation of contracts, denial of future tenders, or other concrete and quantifiable consequences flowing from the blacklisting. In the absence of such material, the learned AT is neither required nor empowered to award damages by speculation or inference.

86. Considering the aforesaid principles, the learned AT, while holding the blacklisting to be wrongful, has rightfully declined to award any damages in the absence of any material produced by Frans to establish such loss.

87. Accordingly, this Court finds no infirmity in the said approach, as a claim for damages of such nature necessarily requires cogent evidence, which was not forthcoming in the present case.

CONCLUSION:

88. In view of the aforesaid discussion, this Court finds that the Impugned Award does not suffer from any infirmity falling within the

[22] 2023 SCC OnLine SC 1366

limited scope of interference under Section 34 of the A&C Act. The findings returned by the learned AT are based on a reasonable interpretation of the contractual framework and an appreciation of the material on record, and cannot be said to be perverse, patently illegal, or in conflict with the fundamental policy of Indian law.

89. The challenge laid by TCIL in ***OMP(COMM) 119/2026***, insofar as it assails the findings on wrongful termination, rejection of counter-claims, and consequential directions including refund of the PBG with interest, is found to be devoid of merit and is accordingly rejected.

90. Likewise, the challenge raised by Frans in ***OMP(COMM) 555/2025***, insofar as it assails the rejection of its claims for damages, payment under invoices, and damages for loss of reputation, also does not disclose any ground warranting interference under Section 34 of the A&C Act, and is accordingly rejected.

91. In view thereof, both Petitions, being *OMP (COMM) 119/2026* and *OMP (COMM) 555/2025*, along with pending applications, if any, stand dismissed.

92. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 27, 2026/jk