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

Date of decision: 29.04.2026

\+ O.M.P. (COMM) 552/2024, I.A. 49381/2024 (Delay of 29 days in filing the petition) & I.A. 49382/2024 (Delay of 24 days in Re-filing the petition)

DEEPAK CABLES (INDIA) LIMITED .....Petitioner

Through: Mr. Aditya Verma, Ms. Ilma Khan and Ms. Parkhi Rai, Advs.

versus

POWER GRID CORPORATION OF INDIA LIMITED .....Respondent

Through: Mr. S. B. Upadhyay, Sr. Adv. with Mr. Pranay Kishore Mishra, Adv.
Mr. Prashant Mishra, Chief Manager Law of Respondent

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\+ O.M.P. (COMM) 553/2024, I.A. 49441/2024 (Delay of 29 days in filing the petition) & I.A. 49442/2024 (Delay of 24 days in Re-filing the petition)

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Mr. Prashant Mishra, Chief Manager Law of Respondent

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGMENT (Oral)**

1. The present Petitions, being *O.M.P. (COMM.) 552/2024* and *O.M.P. (COMM.) 553/2024*, have been instituted under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], challenging the respective Arbitral Awards, both dated 20.07.2024. The said Awards have been rendered by a three-member Arbitral Tribunal constituted in terms of the Contract Agreements dated 21.12.2011 and 07.03.2012, *respectively*.

2. It is pertinent to note that the Impugned Awards emanate from two distinct Contractual Agreements executed between the same parties. Although the agreements are separate, the findings returned by the learned Arbitral Tribunal in both Awards are substantially similar, particularly with respect to the limited issues raised in the present Petitions by the Petitioner.

3. In view of the similarity of the issues involved, the identity of the parties, and the fact that both Awards have been rendered by the same Arbitral Tribunal, these petitions were heard together with the consent of the parties and are being disposed of by this common judgment.

4. For the sake of convenience, clarity, consistency, and ease of reference, this Court proposes to refer primarily to the facts and pleadings as set out in ***O.M.P. (COMM.) 553/2024*** while adjudicating the present matters.

[1] Act

5. Needless to state, the findings and conclusions arrived at in *O.M.P. (COMM.) 553/2024*, insofar as they relate to issues common to both petitions, shall equally govern and apply to *O.M.P. (COMM.) 552/2024*, having regard to the fact that the underlying factual matrix, the reasoning adopted in the respective Arbitral Awards, and the nature of the challenge laid by the Petitioner are substantially similar in both matters. Accordingly, the conclusions reached in *O.M.P. (COMM.) 553/2024* shall apply *mutatis mutandis* to *O.M.P. (COMM.) 552/2024*.

SUBMISSIONS BY THE PARTIES:

6. Learned counsel appearing on behalf of the Petitioner submits that the challenge to the Impugned Arbitral Award is, in substance, confined to two principal claims. First, the denial of interest on the extension charges incurred towards the bank guarantee (*Claim No. 2 before the learned Arbitral Tribunal*), and second, the rejection of the claim for loss of profit (*Claim No. 7 before the learned Arbitral Tribunal*).

7. Elaborating upon the aforesaid challenge, learned counsel for the Petitioner contends that the learned Arbitral Tribunal, while rejecting both claims, has primarily relied upon Clause 26 of the **General Conditions of Contract**[2] and has adopted an interpretation thereof which is contrary to the settled principles of contractual interpretation.

8. It is submitted that the Tribunal has construed the said clause in an unduly restrictive and legally untenable manner, thereby excluding

[2] GCC

categories of claims which, in law, are otherwise recoverable. In order to appreciate the basis of the Tribunal's reasoning, it would be apposite to reproduce the relevant extract of the Impugned Award:

> "**12.5** Let us, in the first place, deal with the objection regarding the limitation created by Clause 26 of the GCC. Clause 26 of the GCC. It reads as under:
>
> "**26. Limitation Liability**
>
> 26.1 Except in cases of gross negligence or wilful misconduct,
>
> (a) the Contractor and the Employer shall not be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and
>
> (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent: infringement."
>
> **12.6** A bare reading of the above makes it clear that in cases of gross negligence or wilful misconduct, all kinds of loss or damage are to be compensated for. As discussed under Issue No. (i), the Respondent has committed breach of conditions of the Contract causing delay in the performance of the Contract, but there being no case of gross negligence or willful misconduct, focus has to be on Sub-clause (a) of Clause 26.1 (ibid), to find out what kind of loss or damage is compensable.
>
> **12.7** As canvassed by the Ld. Sr. Counsel for the Respondent, the words "indirect or consequential loss" qualify the words "loss of use, loss of production" and not "loss of profits or interest costs", which means that the loss of profits or interest costs cannot be claimed at all whether the same are indirect or direct.
>
> **12.8** Per contra, Ld. Counsel for the Claimant strenuously argued that the phrase "indirect or consequential" qualifies "loss of profits" and the rest of the Clause as well, which means that direct and reasonably foreseeable losses which arose naturally as a result of the Respondent's breach can be claimed.
>
> **12.9** It has to be appreciated that the word 'any' is a determiner that introduces or specifies the succeeding words 'indirect or

> consequential'. The words 'indirect or consequential' are adjectives specifying type or nature of 'loss or damage'. In other words, the general terms 'loss or damage' are being modified by the words 'indirect or consequential'. So, the words 'any indirect or consequential loss or damage', are general in nature which are followed by the specific words such as 'loss of use' 'loss of production'. It is settled that where the general terms precede specific terms, the meaning of the specific terms has to be restricted to that of the same clause or kind. Therefore, the words, 'loss of use', 'loss of production' have to be construed as instances of indirect or consequential loss or damage. However, after the words 'loss of production' there is an oxford comma followed by the words 'or loss of profits or interest cost'. The placement of 'or' between the words 'loss of production' and 'loss of profits or 'interest costs' indicates that loss of profit or interest cost are intended to be separate from the category of 'indirect or consequential loss or damage'. This suggests that the Clause is aiming to cover both indirect/consequential loss or damage and loss of profits or interest cost as distinct categories of the excluded liability. Therefore, the Tribunal is inclined to agree with the Ld. Counsel for the Respondent that loss of profits and interest costs cannot be claimed whether direct or indirect, other than the direct loss or damage, which can be claimed."

9. Learned counsel for the Petitioner assails the aforesaid interpretation as being manifestly erroneous and unsustainable in law. It is contended that the learned Tribunal has misapplied settled principles of contractual construction, including the rule of harmonious interpretation, and has attributed an artificial and grammatically strained meaning to Clause 26 of the GCC.

10. According to the Petitioner, a proper and purposive reading of the clause would indicate that the exclusion is confined only to "indirect or consequential" losses, and that the subsequent expressions, *namely*, loss of use, loss of production, loss of profits, and interest costs, are merely illustrative of such excluded categories, rather than constituting independent and absolute exclusions.

11. It is thus submitted that the learned Tribunal's conclusion that loss of profits and interest costs are barred even when they arise as direct and natural consequences of breach is contrary to both the language of the clause and established legal principles, and has resulted in an unjustified rejection of the Petitioner's legitimate claims.

12. It is also submitted that the specific line of reasoning adopted by the learned Arbitral Tribunal while interpreting the said clause was not expressly urged by the Respondent before the Tribunal. On this basis, it is contended that the interpretation ultimately adopted travels beyond the scope of the pleadings and submissions of the parties and, therefore, falls outside the learned Tribunal's competence.

13. *Insofar as Claim No. 2 is concerned*, learned counsel for the Petitioner submits that, apart from the alleged misinterpretation of Clause 26 of the GCC, the learned Arbitral Tribunal has erroneously conflated Claim Nos. 2 and 3, which, according to the Petitioner, are distinct both in nature and in their evidentiary foundation.

14. It is contended that such conflation has resulted in an improper denial of interest in respect of the charges incurred towards the extension of the bank guarantee. For a proper appreciation of the learned Tribunal's reasoning, the relevant portion of the Impugned Award, wherein Claim Nos. 2 and 3 have been dealt with conjointly, is reproduced herein below:

> "**CLAIMS NO. 2 & 3:**
>
> **13.16** It is trite that for a claim of compensation, every loss or damage has to be substantiated with evidence. In cases where contemporaneous documentation is feasible, it must be presented as a proof. However, in certain justified cases, the Tribunal may invoke section 114 of the Evidence Act. Therefore, even in the absence of direct evidence, it can be presumed, with the

support of section 114 of the Evidence Act that every bank guarantee requires security of assets, including cash margin. Nevertheless, it cannot be presumed in every case that margin money is used from overdraft account leading to imposition of interest by Bank.

13.17 Even if the contention of the Claimant that the margin money was paid from the overdraft account on which interest was paid, is to be accepted, the question would still arise as to whether this was interest loss, or interest cost. The difference is of vital importance considering the fact that Clause 26 of the GCC specifically excludes liability for interest cost. Taking the pleadings of the Claimant on its face value that the Claimant had to pay interest on the margin money, then it would partake the character of interest cost, attracting the bar of Clause 26 of the GCC.

13.18 In so far as Claim No. 2, i.e., interest on extension charges is concerned, the Claimant has failed to bring on record any evidence to substantiate that the extension charges were financed through borrowing thus, incurring interest payments. It goes without saying that the Tribunal cannot presume payment of interest merely because some expenditure was incurred. Therefore, even if the extension charges are considered to be expenses, which the Tribunal has already held so while discussing Claim No. 1, it cannot be presumed that the Claimant had to pay interest thereon. In any case, the interest out go on the extension charges would be an indirect or consequential loss, which too, is not reimbursable in view of Clause 26 of the GCC. Resultantly, Claims No. 2 and 3 are rejected."

15. Learned counsel for the Petitioner contends that the reasoning adopted by the learned Arbitral Tribunal suffers from a fundamental infirmity inasmuch as the observations pertaining to margin money, as discussed in paragraphs 13.16 and 13.17, have been mechanically extended to Claim No. 2 in paragraph 13.18.

16. It is submitted that the issue of margin money, relevant to Claim No. 3, stands on a materially different footing from the issue of extension charges under Claim No. 2. Despite this distinction, the learned Tribunal has, according to the Petitioner, impermissibly applied a common line of reasoning, thereby resulting in an erroneous denial of interest on extension charges.

17. Learned counsel further submits that the learned Arbitral Tribunal, having already accepted the extension charges as a legitimate and recoverable expenditure under Claim No. 1, ought, as a necessary corollary, to have granted interest thereon. It is urged that once the principal expenditure is acknowledged as validly incurred on account of the Respondent's conduct, the denial of interest on such amount is both inconsistent and contrary to principles of compensatory relief.

18. It is also contended that the learned Arbitral Tribunal has adopted an unduly rigid approach by insisting upon strict proof of actual interest payment, without due regard to the commercial realities attendant upon such transactions.

19. According to learned counsel for the Petitioner, in commercial practice, the furnishing and extension of bank guarantees necessarily entail financial implications, including the locking of funds or utilization of credit facilities. In such circumstances, once it is established that funds were deployed for the purposes of maintaining and extending bank guarantees, the learned Tribunal ought to have drawn a reasonable inference as to the associated financial burden, instead of insisting upon direct and specific proof of interest outflow in each instance.

20. In support of the aforesaid submissions, reliance is placed by the learned counsel for the Petitioner upon the Judgment of the Hon'ble Supreme Court in ***Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.***[3], wherein the scope and

[3] (2019) 11 SCC 465

manner of exercise of discretion in awarding interest has been delineated. The relevant extract reads as follows:

> **"9.** The discretion of the arbitrator to award interest must be exercised reasonably. An Arbitral Tribunal while making an award for interest must take into consideration a host of factors, such as: (*i*) the "*loss of use*" of the principal sum; (*ii*) the types of sums to which the interest must apply; (*iii*) the time period over which interest should be awarded; (*iv*) the internationally prevailing rates of interest; (*v*) whether simple or compound rate of interest is to be applied; (*vi*) whether the rate of interest awarded is commercially prudent from an economic standpoint; (*vii*) the rates of inflation; (*viii*) proportionality of the count awarded as interest to the principal sums awarded."

21. Placing reliance on the aforesaid principle, learned counsel for the Petitioner submits that the learned Arbitral Tribunal has failed to exercise its discretion in a reasonable, judicious, and legally sustainable manner. It is contended that the denial of interest on extension charges, despite acknowledgment of the underlying expenditure and without due consideration of the "*loss of use*" of money and commercial realities, renders the Impugned Award vulnerable to interference under Section 34 of the Act.

22. *Insofar as Claim No. 7 is concerned*, learned counsel for the Petitioner submits that the learned Arbitral Tribunal has erroneously rejected the Petitioner's claim for loss of profit by placing undue reliance on its interpretation of Clause 26 of the GCC, while simultaneously failing to correctly appreciate and apply the legal principles applicable to such claims.

23. It is contended that the learned Tribunal has adopted an unduly restrictive and technical approach, thereby defeating a legitimate claim arising out of contractual breach and delay attributable to the Respondent. For the sake of ready reference, the relevant findings of

the learned Arbitral Tribunal in respect of Claim No. 7, as recorded in the Impugned Award, are reproduced herein below:

> "**Claim No. 7**
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> *****
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> **TRIBUNAL'S FINDINGS:**
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> **13.26** Claims for loss of profit arise in two situations: (i) due to illegal termination of contract, (ii) due to prolongation of contract for which the claimant himself was not at fault. In the former case, the claim is for loss of expected profit from the unexecuted work resulting from premature/illegal termination. In the later case, the claim is for reduction in the estimated profit margin due to prolongation of contract, or a claim for loss of opportunity to take up other projects during the extended period where the Claimant could have earned profit.
>
> **13.27** As discussed above, where it is possible to prove actual damage/loss, such proof is not dispensed with and the claimant must establish actual loss in order to sustain claim for loss of profit. However, the nature and the adequacy of proof required in both the situations, i.e., premature termination of contract and prolongation of contract is different. In the first case as long as the breach is clearly established, no further evidence as to proof of actual loss is required. In such a case, the Tribunals make a broad evaluation instead of delving into intricate details. The logic is that in a works contract, a reasonable expectation of profit is implicit. The Tribunals only need to determine the percentage of profit to compute the loss of profit on unexecuted work. On the other hand, in the case of prolongation the claimant is not only to prove the causation for the loss, but also the extent of loss so occurred through contemporaneous documents, to show that he could not take up other work on account of prolongation of the contract in hand. In the first instance, any of the recognized formulae can be applied, but in the latter, the proof is a precondition.
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> ***
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> **13.31** In view of the law expounded by the Hon'ble Supreme Court in Unibros **(**supra) and Batliboi (supra), there remains little doubt that the widely recognized formulae can be useful to assess losses only if the contractor has shown, with evidence, the loss of profits/ opportunity it suffered owing to prolongation. As observed above, in the present case, instead of providing even a semblance of evidence of the nature highlighted in paragraph 17 of Unibros decision, extracted above, regarding loss of profits it suffered owing to prolongation of the Contract, the Claimant has relied upon Hudson's formula to compute compensation for loss of profit. Tested on the touchstone of the statement of law in the aforesaid decisions, the Tribunal holds that in the absence of any credible

> supporting evidence, the Claim for loss of profit, determined only on the basis of Hudson's formula, cannot be accepted."

24. Assailing the aforesaid findings, learned counsel for the Petitioner submits that, in the context of works contracts, a reasonable expectation of profit is inherent and well-recognized, and the learned Tribunal has erred in disregarding this settled principle by insisting upon an unduly stringent standard of proof.

25. It is further urged that, in cases of prolongation, the assessment of loss of profit necessarily involves a degree of estimation and approximation, and the learned Tribunal ought to have adopted a pragmatic and commercially realistic approach, rather than rejecting the claim solely on the ground of absence of strict and specific evidence.

26. ***Per contra***, learned senior counsel appearing on behalf of the Respondent opposes the contentions advanced by the Petitioner in respect of both the claims.

27. Learned senior counsel seeks to justify the findings rendered by the learned Arbitral Tribunal, contending that the same are founded upon a proper and detailed appreciation of the material available on record, including the relevant contractual provisions and the evidence adduced by the parties.

28. It is submitted by the learned senior counsel for the Respondent that the conclusions arrived at by the learned Arbitral Tribunal represent a plausible and reasoned view, well within the scope of its jurisdiction, and do not suffer from any infirmity, perversity, or patent illegality so as to warrant interference by this Court in exercise of its limited jurisdiction under Section 34 of the Act.

ANALYSIS:

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

30. 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 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.

31. 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.***[4], 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 Petitions, made certain pertinent observations, which are reproduced hereunder:

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

[4] (2025) 2 SCC 417

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."

32. In the backdrop of the aforesaid settled legal position concerning the nature and scope of examination under Section 34 of the Act, this Court shall proceed to examine the limited challenges raised by the Petitioner in the present proceedings.

Interpretation of Clause 26 of the GCC

33. This Court has carefully considered the submissions advanced on behalf of the Petitioner.

34. At the outset, it must be underscored that the interpretation of contractual terms lies primarily and squarely within the domain of the learned Arbitral Tribunal, which is the chosen forum of the parties for adjudication of disputes arising out of the contract. The scope of interference by this Court under Section 34 of the Act is circumscribed and does not extend to re-appreciation of contractual interpretation merely because an alternative view is possible.

35. Interference under this jurisdiction is warranted only in exceptional circumstances, where the interpretation adopted by the

learned Tribunal is demonstrated to be perverse, wholly unreasonable, implausible on the face of the record, or in conflict with the fundamental policy of Indian law. Absent such vitiating factors, the Court is bound to defer to the view taken by the Arbitral Tribunal, even if another interpretation may appear more appealing.

36. In the present case, a perusal of the Impugned Award reveals that the learned Arbitral Tribunal has undertaken a detailed and structured examination of Clause 26 of the GCC, including a close analysis of its language, structure, sequence of expressions, and internal syntax.

37. The learned Tribunal has specifically examined the interplay between the expressions "*indirect or consequential loss or damage*", "*loss of use*", "*loss of production*", and "*loss of profits or interest costs*", and has arrived at the conclusion that "*loss of profits*" and "*interest costs*" constitute distinct and independent heads of excluded liability, and are not merely illustrative of "*indirect or consequential loss*".

38. This conclusion is founded upon a reasoned interpretative exercise, including reliance on grammatical construction, punctuation, and the use of disjunctive conjunctions within the clause. Such an approach falls squarely within the permissible bounds of contractual interpretation. Merely because the learned Tribunal has relied upon grammatical nuances and syntactical arrangement to discern the meaning of the clause cannot render its interpretation perverse or arbitrary. On the contrary, the view adopted by the learned Tribunal is a plausible one, supported by a rational line of reasoning, and

therefore does not call for interference under the limited jurisdiction of this Court.

39. The further contention of the Petitioner that the specific line of reasoning adopted by the learned Arbitral Tribunal was not expressly urged by the Respondent also does not commend acceptance. It is well settled that an Arbitral Tribunal is not constrained to choose between the rival interpretations canvassed by the parties in a rigid or mechanical manner.

40. Rather, it is empowered to independently analyse and interpret the contractual provisions in light of the material on record and the applicable legal principles. So long as the parties have had a fair and adequate opportunity to address the relevant contractual clause and advance their respective submissions, the learned Tribunal's independent reasoning cannot be faulted.

41. In the present case, Clause 26 of the GCC was central to the dispute, and both parties were fully aware of its relevance and had the opportunity to make submissions thereon. No case of denial of opportunity, procedural unfairness, or violation of the Principles of Natural Justice has been made out. Consequently, the challenge on this ground is devoid of merit and does not warrant interference by this Court.

Denial of interest on extension charges of the bank guarantee (Claim 2 before the learned Arbitral Tribunal)

42. Having given due consideration to the submissions advanced on behalf of the Petitioner, this Court finds no merit in the challenge insofar as it pertains to Claim No. 2.

43. A plain and holistic reading of Paragraphs 13.16 to 13.18 of the Impugned Award demonstrates that the learned Tribunal has addressed the claim for interest in a structured and reasoned manner. The learned Tribunal has, at the threshold, examined the foundational requirement underlying any claim for interest, *namely*, whether the Petitioner had in fact incurred an identifiable and additional financial burden so as to justify such a claim. This inquiry has been undertaken in the context of both components pressed by the Petitioner, i.e., the alleged interest on margin money and the interest claimed on account of extension charges of the bank guarantee.

44. The learned Tribunal has correctly held that a claim for interest cannot be sustained on the basis of mere assumption or presumption arising from the incurrence of an expenditure. It has been emphasized that the burden squarely lay upon the Petitioner/Claimant to establish, by cogent and credible material, that the expenditure in question resulted in an actual outflow towards interest. In the facts of the present case, the learned Tribunal has recorded a clear finding that no material was placed on record to demonstrate that the relevant amounts were sourced through borrowings, or that any interest liability was in fact incurred or discharged. This finding is essentially one of fact, based upon an appreciation of the evidentiary record, and does not suffer from any perversity, arbitrariness, or patent illegality warranting interference under Section 34 of the Act.

45. The learned Tribunal has further drawn a clear and cogent distinction between "*interest cost*", signifying an actual and demonstrable payment of interest, and "*interest loss*", denoting a notional or assumed financial detriment. Proceeding on this analytical

distinction, the learned Tribunal has observed that even if the Petitioner's case were to be accepted at its highest, the claim would, at best, fall within the category of "*interest cost*". As per the learned Tribunal, in terms of Clause 26 of the GCC, such claims stand expressly excluded from the scope of recoverable damages.

46. In the opinion of this Court, the application of this contractual exclusion cannot be said to be either implausible or contrary to law; rather, it constitutes a possible and reasonable interpretation of the contractual stipulations agreed between the parties. In exercise of its limited jurisdiction under Section 34, this Court cannot supplant such an interpretation with its own merely because another view may also be conceivable.

47. The submission advanced on behalf of the Petitioner that, once extension charges were allowed under Claim No. 1, the grant of interest ought to have followed as a matter of course, is misconceived and legally untenable. The learned Tribunal has clearly delineated the distinction between the admissibility of the principal claim and the independent requirement of establishing entitlement to interest thereon.

48. While the learned Tribunal has accepted that the extension charges themselves were recoverable as a legitimate expenditure, it has simultaneously held that the claim for interest is not automatic and must be supported by proof of actual financial burden, which is conspicuously absent in the present case. The learned Tribunal has also observed that any such claim for interest would, in any event, partake the character of an indirect or consequential loss, which stands excluded under Clause 26 of the GCC. This reasoning is internally

consistent, supported by the evidentiary record, and firmly anchored in the contractual terms between the parties.

49. Insofar as the reliance placed by the Petitioner on the judgment of the Hon'ble Supreme Court in ***Vedanta Limited*** *(supra)* is concerned, this Court is of the considered view that the said decision does not advance the Petitioner's case. The extracted passage merely enumerates certain factors that an Arbitral Tribunal may take into account while exercising its discretion to award interest. It does not lay down any inflexible or mandatory rule that interest must be awarded in all circumstances, irrespective of the facts of the case or the terms of the contract.

50. In the considered opinion of this Court, the observations in ***Vedanta Limited*** *(supra)* are, therefore, in the nature of guiding principles intended to inform the exercise of arbitral discretion; they neither curtail such discretion nor override the express contractual stipulations agreed upon between the parties. In the present case, the learned Tribunal has exercised its discretion upon due consideration of the material on record and in consonance with the contractual terms as between the parties. Consequently, the reliance placed by the Petitioner on the said judgment is misplaced and does not warrant interference with the Impugned Award.

51. In view of the foregoing discussion, this Court is satisfied that the conclusions arrived at by the learned Tribunal are neither perverse nor contrary to the fundamental policy of Indian law, nor do they suffer from any patent illegality apparent on the face of the Award. The challenge mounted by the Petitioner, in substance, seeks a re-appreciation of evidence and a re-interpretation of contractual

provisions, which is impermissible within the narrow confines of judicial review under Section 34 of the Act. Accordingly, no ground for interference is made out regarding claim 2.

Rejection of the claim towards loss of profit *(Claim 7 before the learned Arbitral Tribunal)*

52. Insofar as the rejection of the claim for loss of profit is concerned, it is evident from the Impugned Award that the learned Tribunal has undertaken a nuanced and legally informed analysis by drawing a clear distinction between claims arising out of termination of a contract and those arising out of its prolongation.

53. The learned Tribunal in the Impugned Award has observed, in line with settled legal principles, that while in cases of wrongful termination a broad assessment of expected profits may suffice upon proof of breach, claims founded on prolongation stand on a materially different footing. In such cases, the claimant is required to establish not only the causal link between the delay and the alleged loss, but also the actual extent of such loss by way of cogent and contemporaneous evidence.

54. In the considered opinion of this Court, the finding of the learned Tribunal that the Petitioner failed to produce any such material, and instead relied exclusively on a formula-based computation, constitutes a pure finding of fact based on appreciation of the evidentiary record and does not disclose any perversity or patent illegality.

55. The learned Tribunal has further held that, in the absence of foundational evidence demonstrating either loss of opportunity to undertake other works or a demonstrable reduction in profit margins

attributable to the prolongation, the invocation of standard formulae such as *Hudson's* formula would be wholly unjustified.

56. This Court finds that this approach is in consonance with the law laid down by the Hon'ble Supreme Court in ***Unibros v All India Radio***[5] and ***Batliboi Environmental Engineers v HPCL***[6], wherein it has been clearly held that such formulae cannot be applied in a vacuum and must be preceded by proof of actual loss. The reasoning adopted by the learned Tribunal, therefore, reflects a due application of binding precedent and cannot be said to suffer from any infirmity warranting interference under Section 34 of the Act.

57. Further, the reliance placed by the Petitioner on the decision in ***M/S A.T. Brij Paul Singh and Ors. v. State of Gujarat***[7] is misconceived and misplaced. The said judgment pertains to a case involving the termination of a contract, where the legal framework of assessment of loss of profit is materially distinct. In contrast, the present case arises out of an alleged prolongation of the contract, where the evidentiary threshold is more stringent and requires specific proof of loss and causation. The principles applicable to termination cannot be mechanically or indiscriminately extended to cases of delay or prolongation, as the nature of the claim and the underlying factual matrix differ significantly.

58. In view of the aforesaid discussion, this Court is of the considered opinion that the interpretation accorded by the learned Arbitral Tribunal to Clause 26 of the GCC, as well as its decision to reject the claim for loss of profit, represents a plausible, reasoned, and

[5] 2023 SCC OnLine SC 1366
[6] (2024) 2 SCC 375
[7] (1984) 4 SCC 59

legally sustainable view based on the material available on record. The conclusions so arrived at do not suffer from perversity, patent illegality, or any conflict with the fundamental policy of Indian law or the public policy of India.

59. The challenge laid by the Petitioner, when examined in substance, amounts to seeking a re-appreciation of the contractual terms and a re-evaluation of the evidentiary record, which is impermissible within the narrow and supervisory scope of jurisdiction vested in this Court under Section 34 of the Act. Consequently, no ground for interference is made out concerning claim 7 as well.

CONCLUSION:

60. In view of the foregoing discussion, this Court finds no merit in the challenge laid by the Petitioner to the Impugned Arbitral Award dated 20.07.2024 in *O.M.P. (COMM.) 553/2024*. The grounds urged by the Petitioner do not disclose any perversity, patent illegality, or conflict with the public policy of India so as to warrant interference by this Court in exercise of its limited jurisdiction under Section 34 of the Act.

61. As noted earlier, the findings and conclusions arrived at in *O.M.P. (COMM.) 553/2024*, insofar as they pertain to issues common to both petitions, shall equally govern and apply to *O.M.P. (COMM.) 552/2024*. This is in view of the fact that the underlying factual matrix, the reasoning adopted in the respective Arbitral Awards, and the nature of the challenge laid by the Petitioner are substantially similar in both matters. Accordingly, the conclusions reached in *O.M.P. (COMM.) 553/2024* shall apply *mutatis mutandis* to *O.M.P. (COMM.) 552/2024*. Consequently, since *O.M.P. (COMM.) 553/2024*

has been found to be devoid of merit, *O.M.P. (COMM.) 552/2024*, being founded on identical grounds, must also fail as a natural corollary.

62. In light of the above, the present Petitions, being ***O.M.P. (COMM.) 552/2024*** and ***O.M.P. (COMM.) 553/2024***, along with pending Application(s), if any, stand dismissed.

63. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 29, 2026/JYH/kr