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

% ***Judgment reserved on: 09.01.2026***
Judgment pronounced on:30.01.2026

\+ O.M.P. (COMM) 453/2017

GORKHA SECURITY SERVICES .....Petitioner

Through: Mr. Tarkeshwar Nath, Mr.Harshit Singh and Mr.Anant Dev, Advocates.

versus

DIRECTORATE OF HEALTH SERVICES .....Respondent

Through: Mr. Dhruv Rohatgi, Panel Counsel with Mr. Dhruv Kumar and Mrs. Chandrika Sachdev, Advocates for GNCTD.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present petition has been filed under Section 34(2) of the **Arbitration and Conciliation Act, 1996**[1], seeking to set aside the **Arbitral Award dated 18.08.2017**[2], to the extent of the Petitioner's claims which were rejected or not considered, passed by the learned Arbitral Tribunal in the matter titled "*M/s Gorkha Security Services v. Directorate of Health Services*".

2. At the outset, it is noted that during the course of oral arguments, the Petitioner expressly confined its submissions solely to

[1] Act
[2] Impugned Award

the findings rendered by the learned Arbitrator in respect of Claim No.4 in the Impugned Award.

BRIEF FACTS:

3. The **Directorate of Health Services**[3], under the aegis of the Government of N.C.T. of Delhi, issued a **Notice Inviting Tender**[4] seeking bids to provide security manpower to be deployed across various dispensaries operated by the Respondent in Delhi.

4. **M/s Gorkha Security Services**[5] is a partnership firm engaged in the business of providing security and manpower services. The Petitioner participated in the said bidding process and stood successful, pursuant to which *vide* a **Letter of Award dated 21.12.2010**[6], the contract for providing **Sweeper-cum-Chokidar**[7], was awarded to the Petitioner for an initial period of two years from 01.01.2011 to 31.12.2012. The said period was extended from time to time till 31.03.2015.

5. The terms and conditions of the Agreement were the same as provided for in the NIT. The Petitioner, as per a pre-requisite compliance to the Agreement, deposited an amount of Rs. 27,11,000/- as security in the form of FDR in favour of the Respondent.

6. The Petitioner raised monthly bills in terms of the Agreement for the services provided at various dispensaries of the Respondent, against which the Respondent failed to release payments for five out of the eight districts in which the said services were provided.

7. The Respondent failed to pay the Petitioner the enhanced

[3] Respondent
[4] NIT
[5] Petitioner
[6] Agreement
[7] SCC

contractual rates, which were in line with prevailing minimum wages, before November 2014, which is stated to be against the terms and conditions of the NIT. The relevant terms state that if the minimum wages are revised by the Government of N.C.T. of Delhi or the Government of India, the incremental wages will be provided to the service providers. The Respondent only paid the incremental wages from November 2014 onwards.

8. In light of this non-payment of enhanced minimum wages, the Petitioner was forced to raise monthly bills at unrevised value to the Respondent, while paying the deployed SCCs the prevailing enhanced minimum wages and statutory contribution from its pocket.

9. Aggrieved by the non-payment of various monthly bills and enhanced minimum wages, various representations were made by the Petitioner to the Respondent, but no heed was paid and no representation was addressed.

10. The Petitioner, thereafter, served legal notices dated 18.03.2015 and 14.04.2015 demanding the due payment against bills raised and the payment as per the enhanced minimum wages, but the payments were still not paid. Consequently, *vide* letter dated 26.03.2015, the Petitioner expressed its intention to withdraw the services of SCC from all the dispensaries due to non-payment of the dues.

11. Aggrieved by the same, *vide* letter dated 22.07.2015, the Petitioner invoked Clause 50 of the terms and conditions of the NIT, which contained the '*Arbitration Clause*'; however, no Arbitrator was appointed.

12. Thereafter, the Petitioner approached this Court *vide* Arb. P. No.494/2015 under Section 11 of the Act for appointment of an

Arbitrator, pursuant to which, the learned Arbitrator was appointed by this Court *vide* Order dated 11.01.2016.

13. The Petitioner herein, Claimant before the Arbitral Tribunal, put forth four claims *viz.*, Claim No. 1 for payment of the pending bill amount of Rs. 1,46,87,834/-, Claim No. 2 for payment of incremental wages from February, 2011 to October, 2014, Claim No. 3 for refund of Security Deposit, and Claim No. 4 for payment of **Interests on the outstanding amount till its realisation**[8] and **payment for Cost of Arbitration**[9].

14. The Arbitral Tribunal *vide* Arbitral Award dated 18.08.2017 decided as follows:

(i) Allowed Claim No. 1 amounting to Rs. 1,46,87,834 with a proviso that 5% of the wages shall be retained by the Respondent so as to verify the payment of workers' contribution and employers' contribution to EPF and ESIC in respect of each individual employee.

(ii) Allowed Claim No. 2 amounting to Rs. 2,01,81,258 in respect to the payment of incremental wages as per notification of the Government of N.C.T. of Delhi from February, 2011 to October, 2014.

(iii) Claim No. 3 was held to be not sustainable since the performance security amount had already been returned by the Respondent to the Petitioner.

(iv) Disallowed Claim No. 4 regarding the claim of Interest and Cost against the Petitioner.

15. Being partially aggrieved by the Impugned Award, the Petitioner

[8] Interest
[9] Cost

has approached this Court by way of the present petition under Section 34 of the Act.

CONTENTIONS ON BEHALF OF THE PETITIONER:

16. Learned counsel appearing on behalf of the Petitioner would contend that by way of its Statement of Claim filed before the learned Arbitrator, the Petitioner had demanded interest at the rate of 18% p.a. from the date amounts became due respectively and payable till their realisation, and the cost of the Arbitration proceeding. However, no cogent or intelligible reasoning was provided by the learned Arbitrator while disallowing its Claim No.4.

17. Learned counsel, aggrieved by the said lack of reasoning, would primarily contend that the Arbitral Award, to the extent of Claim No. 4, passed by the learned Arbitrator may be set aside under Section 34(2)(b)(ii) of the Act on the ground of it being against the public policy of India.

18. Learned counsel would contend that the decision arrived at by the learned Arbitrator with respect to Claim No. 4 is perverse for want of reasoning, which is in contravention of Section 31(3) of the Act, which makes it mandatory that the Arbitral Award shall state the reasons upon which it is based.

19. Learned counsel would further place reliance on the decision of this Court in ***Gorkha Security Services vs. Govt. of NCT of Delhi***[10], specifically on paragraph no. 16, which reads as below:

> "**16.** A plain reading of the impugned award reveals that no reason has been penned as to the non-grant of pre-award interest. It's not the case of the parties that they had consented that no reasons be given as per sub-clause (a) of Section 31(3), A&C Act. The stating of

[10] 2023 SCC OnLine Del 8104

reasons indicates and shows application of mind to the attending facts and circumstances by an arbitrator. An unreasoned award suffers from the vice of patent illegality. Reference in this regard may also be made to the decision of Supreme Court in ***Dyna Technologies Pvt. Ltd. V. Crompton Greaves Ltd.***, and the relevant extract reads as under:-

> "xxx
>
> **34.** The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.
>
> 35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue… On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."

20. Learned counsel would further contend that the learned Arbitrator ignored the fact that the incremental wages for the period from February, 2011 to October, 2014, were not paid by the Respondent to the Petitioner, while the increased minimum wages were paid by the Petitioner from its own pocket to the SCCs. It would be

contended that this fact was specifically pleaded in the Statement of Claims, but the learned Arbitrator failed to take it into account and consideration.

21. Consequently, learned counsel would contend that the learned Arbitrator failed to take into account the monetary loss and the added financial burden suffered by the Petitioner due to the non-sanctioning of the said incremental minimum wages by the Respondent.

22. It would also be contended that the Respondent withheld the said incremental payments deliberately and with *malafide* intentions, and therefore, the Petitioner be granted Interest and Costs for the loss of use of the principal money and damages incurred by it due to additional financial burden.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

23. ***Per contra***, the learned counsel appearing on behalf of the Respondent would contend that the scope of interference into an Arbitral Award while exercising discretion under Section 34 of the Act is very limited. The Court ought not to interfere with the findings reached by the learned Arbitrator merely on the ground of denial of a claim or that the Court opines the learned Arbitrator has committed a mistake of law or fact.

24. Learned counsel would further contend that the finding of the Learned Arbitrator with respect to Claim No. 4 is not against the public policy of India and was disallowed by the learned Arbitrator after taking into consideration all the facts, documents and evidence. It cannot be held to be an unreasoned or an unintelligible award and is therefore not perverse.

25. Learned counsel would contend that incremental minimum

wages, on the basis of which the Petitioner is claiming the Interest and Costs were unpaid to the Petitioner due to its own fault. The Respondent, time and again, informed the Petitioner to furnish documentary evidence regarding payment of wages along with proof of deposit of statutory dues, which the Petitioner failed to provide.

26. Learned counsel, in support of his contentions, would rely upon the decision of this Court in ***Kunal Food Products Pvt. Ltd. Vs. Delhi Development Authority***[11], specifically paragraph no. 9. The same is reproduced herein under:

> "**9.** I am unable to accept this contention. The learned arbitrator has stated his reason for denial of pre-reference and pendente lite interest, which is that the petitioner itself was partly responsible for the delay in completion of the project. The Supreme Court has held, in several judgements, that interpretation of a contract and consequent determination of the claims on the basis thereof is the domain of the arbitral tribunal. The Court is entitled to interfere with an award, only if it is entirely devoid of reasoning, or the reasons are perverse or arbitrary, in the sense that no reasonable tribunal could have arrived at the same conclusion'. The fact that the Court might have reached a conclusion different from that of the learned arbitrator, or even that, in the opinion of the Court, the learned arbitrator has committed a mistake of law and/or fact, which is short of the standard of arbitrariness and perversity as outlined above, is insufficient to warrant interference under Section 34 of the Act. The learned arbitrator's finding that both parties were partially responsible for the delay in completion of the project is a plausible reason for declining interest until the date of the award. I find no ground to interfere with the same."

27. In conclusion, learned counsel would contend that the learned Arbitrator has committed no error whatsoever, which would render the Impugned Award, to the extent of Claim No. 4 only, liable to be set aside. The Impugned Award does not fall under any of the statutory provisions providing the grounds for setting aside the Arbitral Award as provided for under Section 34 of the Act.

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[11] O.M.P (COMM) 352/2024

ANALYSIS:

28. Heard learned counsel appearing for both the parties at length and perused the material available on record with their able assistance.

29. At the outset, it is apposite to emphasise that this Court remains acutely conscious of the narrow and circumscribed contours of its jurisdiction under Section 34 of the Act. The statutory provision does not envisage a re-appreciation of evidence or a reassessment of the merits of the Arbitral Award, rather judicial interference is permissible only on the limited and well-settled grounds expressly delineated therein, and consistent interpretations thereof by various Courts of law.

30. The judicial discretion vested in the Courts under Section 34 of the Act is confined to examining the legality and procedural aspect of the arbitral process, and not to sit in appeal over the conclusions reached by the arbitral tribunal. It is also a well-settled principle of law that Courts exercising jurisdiction under Section 34 of the Act must refrain from interfering with the arbitral awards unless the perversity alleged is of such a nature that it strikes at the very root of the matter, rendering the award fundamentally flawed or contrary to the basic tenets governing arbitral adjudication.

31. Before adverting further, it would be appropriate to notice the relevant statutory framework. Accordingly, the pertinent portion of Section 34 of the Act is extracted hereinbelow:

> "**Section 34. Application for setting aside arbitral award.—**
> (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
> (2) An arbitral award may be set aside by the Court only if—
> xxx
> b) the Court finds that—
> (i) the subject-matter of the dispute is not capable of settlement

by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[**Explanation 1**.—For the avoidance of any doubt, it is clarified that an award is in conflict with thepublic 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.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]"

32. A bare reading of Section 34(2)(b)(ii) of the Act makes it evident that this Court is vested with the jurisdiction to set aside an arbitral award if the same is found to be in conflict with the public policy of India. Further, Clause (iii) of Explanation 1 to Section 34(2)(b)(ii) clarifies that an arbitral award shall be deemed to be in conflict with the public policy of India if it contravenes the most basic notions of morality or justice.

33. The Hon'ble Supreme Court in a catena of decisions including ***Dyna Technology Private Limited v. Crompton Greaves Limited***[12], has succinctly crystallised the legal position governing the scope of interference under Section 34 of the Act. The relevant observations, in ***Dyna Technology*** *(supra)*, which delineate the contours of judicial review in arbitral matters, are reproduced hereinbelow for ready reference:

"**24.** There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact

[12] (2019) 20 SCC 1

> that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.
>
> **25.** Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

34. Further, elucidating the contours of the expression 'fundamental policy of Indian law', under Section 34(2)(b)(ii), the Hon'ble Supreme Court, in ***OPG Power Generation (P) Ltd. vs. Enexio Power Cooling Solutions (India) (P) Ltd.***[13], has clarified the circumstances which may fall within its scope. The Court observed that violations of the principles of natural justice, disregard of orders passed by superior courts in India or the binding effect of their judgement, as well as infraction of laws intrinsically linked to public good or public interest would constitute a breach of the fundamental policy of Indian law, and thereby render the Courts with jurisdiction to interfere with the arbitral award and to set them aside. The relevant observation contained in paragraph no. 52 of the said decision is reproduced herein under:

> "**52.** 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

[13] (2025) 2 SCC 417

> 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. 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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> ***(emphasis supplied)***

35. Having discussed the settled jurisprudence governing the scope of interference under Section 34 of the Act, three primary questions now arise for consideration before this Court. *First*, whether an unreasoned or unintelligible Impugned Award warrants interference under the limited jurisdiction of Section 34(2)(b)(ii) of the Act, on the ground that it is in conflict with the fundamental public policy of India. *Second*, whether the reasons assigned by learned Arbitrartor in determining Claim No. 4 is unintelligible or inadequate, and if in affirmative, *third*, whether the portion of the Arbitral Award impugned before this court, which is the rejection of Claim No. 4 of the Petitioner, is severable from the remainder of the Award, so as to permit partial setting aside, in light of the principles enunciated by the Hon'ble Supreme Court in ***Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited***[14]**.**

[14] 2025 SCC OnLine SC 986

An Unreasoned or Unintelligible Arbitral Award is against the Public Policy of India

36. It is a trite law that the requirement of a reasoned and speaking order constitutes a fundamental facet of the principles of natural justice. The obligation to disclose sound reasons forming the basis of an arbitral award lies at the very heart of the arbitral process and is integral to both letter and spirit of the Act. This statutory mandate finds explicit recognition in Section 31 of the Act, which underscores the necessity for an arbitral award to be reasoned. The relevant provision reads as under:

> "**31. Form and contents of arbitral award.—**
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> xxx
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> (3) The arbitral award shall state the reasons upon which it is based, unless-
>
> (a) the parties have agreed that no reasons are to be given, or
>
> (b) the award is an arbitral award on agreed terms under Section 30."

37. In addition to the statutory provisions, the requirement that an arbitral award must be reasoned and intelligible has been discussed and appreciated, time and again, by the Hon'ble Supreme Court in a gamut of judgements, including ***Dyna Technologies Pvt. Ltd.*** *(supra)*. The Court has emphasised that reasons are the lifeblood of an award and an indispensable safeguard against arbitrariness. The relevant observations, which illuminate this principle, are:

> "**36.** When we consider the requirement of a reasoned order three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decision making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all.

> Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."

38. Further, the Hon'ble Supreme Court in ***OPG Power*** *(supra)*, while affirming the principles enunciated in ***Dyna Technologies*** *(supra)* and elaborating upon the requirement of a reasoned award, categorised arbitral awards into three distinct classes, based on the nature and adequacy of reasons furnished therein and the corresponding extent of their vulnerability to judicial interference. The relevant observations of the Court, which explicate this categorisation, are reproduced herein under:

> "**71.3.** We find ourselves in agreement with the view taken in ***Dyna Technologies*** (supra), as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:
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> (1) where no reasons are recorded, or the reasons recorded are unintelligible;
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> (2) where reasons are improper, that is, they reveal a flaw in the decision- making process; and
>
> (3) where reasons appear inadequate.
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> **71.4.** Awards falling in category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the 1996 Act. Therefore, such awards are liable to be set aside under Section 34, unless (a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award on agreed terms under Section 30.

> **71.5.** Awards falling in category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act.
> **71.6.** Awards falling in category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair-reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award."

39. In view of the foregoing discussion, it stands well-settled by virtue of the statutory framework as well as by consistent judicial interpretation that an arbitral award cannot be sustained where it is unreasoned, inadequately reasoned, or unintelligible to the extent that the link between the reasons accorded, the conclusions drawn and the ultimate decision arrived at by the arbitral tribunal is rendered obscure. It is against the basic public policy of India as well as basic notions of justice as well.

40. Where the language employed is vague, the articulation flawed, or the reasoning incoherent to the extent that it defeats meaningful comprehension, such an award fails to meet the minimum threshold of a reasoned determination and becomes vulnerable to interference under Section 34 of the Act for being in conflict with the public policy of India.

41. The insistence on reasons is not a mere empty formality. Reasons are the connective tissue between facts and conclusions; they illuminate the path taken by the decision-maker and demonstrate that the conclusion is the product of reasoned deliberation rather than arbitrary

fiat. A reasoned award reassures the parties that their submissions have been duly considered, enables effective judicial review, and acts as a safeguard against caprice.

42. Accordingly, in the considered view of this Court, backed by the judicial precedents noticed herein above, the absence of a reasoned arbitral award expressly mandated under Section 31 of the Act and constituting a foundational pillar of the principles of natural justice would amount to a clear infraction of the statutory framework and legislative intent. Such a contravention strikes at the fairness and transparency of the arbitral process and, therefore, falls within the ambit of conflict with the public policy of India.

43. Therefore, by way of foregoing discussion, two aspects emerge with clarity and stand established. *First*, even within the limited and circumscribed scope of interference under Section 34 of the Act, this Court is competent to interfere with and set aside an arbitral award where it is found to be in contravention of the public policy of India or the most basic notions of morality or justice. *Second*, the absence of a reasoned or intelligible determination on any point arising for adjudication in arbitral proceedings is antithetical to the basic notions of justice. It runs contrary to the statutory mandate, offends the settled judicial precedents laid down by superior courts, and consequently places the arbitral award in conflict with the public policy of India.

Reason Assigned for Determination of Claim No. 4 is Unintelligible

44. The question that now arises for consideration is whether the determination rendered by the learned Arbitrator in respect of Claim No. 4 suffers from the vice of being unreasoned, unintelligible, or inadequately reasoned. The discussion pertaining to Claim No. 4 finds

place in paragraph no. 58 of the Impugned Award. The relevant extract thereof is reproduced below for the sake of clarity and completeness:

> "**58.** Regarding the claim of interest and cost, it is to be mentioned that in this case, there has been information gap on both sides so as to obtain sufficient clarity on the entitlement of wages and payment of the same by adopting the procedure prescribed in the contract. Therefore, there is no clear case of payment of interest to the claimant. So, also, there is no case for imposition of costs."

45. A bare perusal of the aforesaid extract reveals that, while disallowing the Petitioner's claim for Interest and Cost, *namely*, Claim No. 4, the learned Arbitrator has confined the reasoning to a solitary observation that there exists an *"information gap on both sides"*. Beyond this cursory assertion, the Award does not disclose any further articulation or analysis underpinning the conclusion reached.

46. Significantly, the Impugned Award does not advert to any specific contractual provision governing entitlement to Interest or Costs, nor does it record any finding as to delay, default, or conduct attributable to either party. There is no discussion as to whether the contract contemplated payment of interest, whether such interest was discretionary or mandatory, or whether any pre-conditions stood fulfilled or breached.

47. Additionally, the denial of costs is unaccompanied by any consideration of the manner in which the proceedings were conducted or the principles ordinarily governing the award of costs. The reasoning, such as it is, thus stops short of analysis and begins and ends in assertion, leaving this Court to speculate as to the basis of the decision.

48. There appears to be no discussion to the effect as to how the alleged deficiency in information bears upon the contractual or legal

entitlement to interest, nor is there any analysis linking the facts on record to the conclusion that *"there is no clear case of payment of interest"*. Such cryptic observations, unsupported by intelligible reasoning, render the finding on Claim No. 4 opaque and unintelligible.

49. In the considered view of this Court, the determination rendered in respect of Claim No. 4 squarely falls within Category 1, as delineated by the Hon'ble Supreme Court in **OPG Power** *(supra)*, *namely*, cases where either no reasons are recorded or the reasons furnished are so unintelligible as to be incapable of meaningful comprehension. As noticed herein above, the Hon'ble Supreme Court has categorically held that arbitral awards falling within Category 1 are in direct conflict with the mandate of Section 31(3) of the Act and, consequently, are vulnerable to interference and liable to be set aside under Section 34 of the Act.

50. Accordingly, the Impugned Award, insofar as it relates to the determination of Claim No. 4, stands vitiated for being in conflict with the public policy of India, due to the absence of intelligible reasoning and for being in clear contravention of Section 31(3) of the Act. The said portion of the Impugned Award, therefore, cannot be sustained and is liable to be set aside to the extent of Claim No. 4.

Impugned Award severable insofar as to the Determination of Claim No. 4

51. Now, turning to the question of severability of the Arbitral Award insofar as it pertains to the discussion of Claim No. 4, it becomes necessary to advert to the principles governing partial setting aside of arbitral awards. In this regard, reliance is placed on paragraph nos. 33, 34 and 35 of the decision of the Hon'ble Supreme Court in

Gayatri Balasamy *(supra)*, which elucidates the doctrine of severability. The said paragraphs are reproduced herein under for ready reference:

> "**33.** We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award.
> **34.** To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.
> **35.** However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be inter-dependent or intrinsically intertwined. If they are, the award cannot be set aside in part."

52. In the considered view of this Court, the impugned portion of the Arbitral Award pertains solely to the grant of Interest and Costs of arbitration. The re-adjudication of this limited aspect is not so intrinsically interwoven with the determination of the remaining claims as to necessitate a re-appreciation of the entire evidentiary record or to unsettle the findings related to other claims. The disallowance of Interest and Cost under Claim No. 4 is, therefore, clearly severable from the remainder of the Impugned Award and is capable of being dealt with independently, without in any manner impacting the discussion with respect to all the other claims.

53. Further, the judgment in ***Gayatri Balasamy*** *(supra)* examined situations akin to the present case and held that such matters are

suitable to be remanded to the learned Arbitral Tribunal for fresh consideration. The relevant portion of the said judgment is reproduced hereunder:

> "**VI.** ***To modify or to remit? Addressing the Court's quandary***
>
> **56.** As elucidated above, if a fog of uncertainty obscures the exercise of modification powers, the courts must not modify the award. Instead, they should avail their remedial power and remand the award to the Tribunal under Section 34(4). Under the sub-section, either party—whether the one challenging the award under Section 34 or the one defending against such a challenge—may request the Court to adjourn the proceedings for a specified period. If the court deems it appropriate, it may grant such an adjournment, allowing the Arbitral Tribunal to resume proceedings or take necessary corrective measures to eliminate the grounds for setting aside the award. Thus, Section 34(4) provides a second opportunity for a party to seek recourse through arbitral channel.
>
> **57.** However, the power of remand permits the Court only to send the award to the Tribunal for reconsideration of specific aspects. It is not an open-ended process; rather, it is a limited power, confined to limited circumstances and issues identified by the Court. Upon remand, the Arbitral Tribunal may proceed in a manner warranted by the situation — including recording additional evidence, affording a party an opportunity to present its case if previously denied, or taking any other corrective measures necessary to cure the defect. In contrast, the exercise of modification powers does not allow for such flexibility. Courts must act with certainty when modifying an award — like a sculptor working with a chisel, needing precision and exactitude. Therefore, the argument that remand powers make modification unnecessary is misconceived. They are distinct powers and are to be exercised differently.
>
> **58.** Section 34(4), derived from the Model Law, is discretionary in nature. This is evident from the use of the word "may" in the provision. The Court may invoke this power when it identifies a defect in the award that could lead to its setting aside. In such cases, the Court may seek to prevent this outcome by granting the Arbitral Tribunal an opportunity to rectify the defect.
>
> **59.** While it is not appropriate to establish rigid parameters or a straitjacket formula for the exercise of this power, it is clear that Section 34(4) does not authorise the Arbitral Tribunal to rewrite the award on merits or to set it aside. Rather, it serves as a curative mechanism available to the Tribunal when permitted by the Court. The primary objective is to preserve the award if the identified defect can be cured, thereby avoiding the need to set aside the award. Accordingly, a court may not grant a remand when the defect in the award is inherently irreparable. A key consideration is

the proportionality between the harm caused by the defect and the means available to remedy it.

60. While exercising this power, the Court must also remain mindful that the Arbitral Tribunal has already rendered its decision. If the award suffers from serious acts of omission, commission, substantial injustice, or patent illegality, the same may not be remedied through an order of remand. Clearly, there cannot be a lack of confidence in the Tribunals' ability to come to a fair and balanced decision when an order of remit is passed.

61. Thus, an order of remand should not be passed when such order would place the Arbitral Tribunal in an invidious or embarrassing position. Additionally, remand may be inappropriate when it does not serve the interests of the parties, particularly in time-sensitive matters or where it would lead to undue costs and inefficiencies. Once an order of remand is granted, the Arbitral Tribunal has the authority to vary, correct, review, add to, or modify the award. Notably, under Section 34(4), the Tribunal's powers, though confined, remain nonetheless substantial. This stands in contrast to the Court's narrow role under the rest of Section 34.

62. This Court in *Kinnari Mullick* v. *Ghanshyam Das Damani* [*Kinnari Mullick* v. *Ghanshyam Das Damani*, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , referred to and laid down the preconditions for exercising the power of remand under Section 34(4). It held that the Court cannot exercise the power of remand suo motu in the absence of a written request by one of the parties. Secondly, once an application under Section 34(1) has been decided and the award set aside, the Court becomes functus officio and cannot thereafter remand the matter to the Arbitral Tribunal. Consequently, the power under Section 34(4) cannot be invoked after the Court has disposed of the Section 34(1) application.

63. We are unable to accept the view taken in *Kinnari Mullick* [*Kinnari Mullick* v. *Ghanshyam Das Damani*, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , which insists that an application or request under Section 34(4) must be made by a party in writing. The request may be oral. Nevertheless, there should be a request which is recorded by the Court. We are also unable to agree that the request must be exercised before the application under Section 34(1) is decided. Section 37 (**Annexure A**) permits an appeal against any order setting aside or refusing to set aside an arbitral award under Section 34. To this extent, the appellate jurisdiction under Section 37 is coterminous with, and as broad as, the jurisdiction of the Court deciding objections under Section 34. Hence, the contention that the Tribunal becomes functus officio after the award is set aside is misplaced. The Section 37 Court still possesses the power of remand stipulated in Section 34(4). Of course, the appellate court, while exercising power under Section 37, should be mindful when the award has been upheld by the

> Section 34 Court. But the Section 37 Court still possesses the jurisdiction to remand the matter to the Arbitral Tribunal."

DECISION:

54. In view of the foregoing submissions advanced before this Court, the discussion undertaken on the issues which arose for consideration, and the judicial precedents noticed hereinabove, the present Petition is allowed and the Impugned Award, insofar as it pertains to the decision rendered on Claim No. 4, is set aside.

55. Further, the matter is remanded back to the learned Arbitral Tribunal, for fresh consideration, to the limited extent of Claim No. 4 of the Impugned Award, in accordance with law.

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

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 30, 2026/DJ