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

Date of decision: 08th JULY, 2025

IN THE MATTER OF:

\+ **O.M.P. (COMM) 52/2025 & I.A. 2352/2025**

SHYAMA PRASAD MUKHERJEE COLLEGE .....Petitioner

Through: Mr. K.K. Sharma, Sr. Advocate with Ms. Bhanita Patowary, Mr. Ram Pravesh Rai, Mr. Pranav Pareek, Advocates.

versus

HARCHARANDASS GUPTA & ANR. .....Respondents

Through: Mr. Sunil K Mittal, Mr. Anshul Mittal, Mr. Sarthak Tagra, Ms. Khushi Aggarwal, Advocates.
Mr. Varun Nischal, Advocate for Respondent No.2 along with Mr Mukesh Kumar legal Incharge (HPL)

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition under Section 34 of the Arbitration & Conciliation Act, 1996 (*hereinafter referred to as 'the Arbitration Act'*) has been filed by the Petitioner challenging the impugned arbitral award dated 24.10.2024, (*hereinafter referred to as 'the Impugned Award'*) passed by the learned Sole Arbitrator.

2. The facts leading to the filing of the present petition are as follows:

   a. It is stated that the Petitioner, Shyama Prasad Mukherjee College for Women, is an educational institution functioning under the

aegis of the University of Delhi and aided by UGC. The Petitioner/College had, in or around the year 2010, resolved to undertake construction of an additional academic block within its premises and, for the said purpose, engaged Hindustan Prefab Limited (Respondent No. 2), a public sector undertaking, as the executing agency.

b. It is stated that an agreement was entered into between the Petitioner/College and Respondent No. 2 on 22.12.2010, whereby the latter was entrusted with the execution of the construction project. As per the terms of the agreement, Respondent No. 2 was responsible for executing the work as per CPWD norms, through an independent contractor, and ensuring timely completion in accordance with the approved estimates and administrative approvals granted by the Petitioner/College. The initial project cost was estimated at ₹6.31 crores.

c. It is further stated that in pursuance of the said engagement, Respondent No. 2 invited tenders in 2014 for the said project, and subsequently entered into a works contract dated 15.07.2014 with Respondent No. 1, Mr. Harcharan Dass Gupta, the selected contractor. It is not disputed that the Petitioner/College was not a party to the said contract dated 15.07.2014, nor was there any arbitration agreement to which the Petitioner/College was a signatory.

d. It is stated that the contract work was to be completed within a stipulated period of 11 months, i.e., by 15.06.2015, but delays ensued. The Respondent No.1 sought extensions, and work

reportedly continued until January 2017, with final handover claimed by Respondent No. 1 to have occurred in 2018. The Petitioner/College asserts that the delay led to significant administrative and academic inconvenience, and that the project suffered from numerous deficiencies and defects even post-completion.

e. It is submitted that the Petitioner/College, between 2014 and 2018, released cumulative payments amounting to ₹8.70 crores to Respondent No. 2, which included enhancement over and above the original approved cost. It is the Petitioner/College's case that no further financial liability was either sanctioned or communicated for approval beyond this amount. Respondent No. 2 did not place before the Petitioner/College any revised estimates, justifications, or deviation statements requiring further financial sanction, in terms of Clause 9.3 of the 2010 Agreement.

f. It is stated that disputes subsequently arose between Respondent No. 1 and Respondent No. 2 with respect to outstanding payments and execution claims. Arbitration proceedings were initiated by Respondent No. 1 under the arbitration clause contained in the contract dated 15.07.2014. Subsequently, on 11.01.2022, this Court appointed a sole arbitrator to adjudicate upon the disputes.

g. It is stated that in the course of the arbitral proceedings, Respondent No. 1 raised various claims against both Respondent No. 2 and the Petitioner/College, alleging that excess work had been executed by the Respondent No.1 with the knowledge and approval of the Petitioner/College, and that payments were

unjustly withheld. The arbitral proceedings culminated in an award dated 24.10.2024, whereby several claims were partially allowed against both Respondents.

h. The Petitioner raised a preliminary objection under Section 16 of the Arbitration Act contending that since the Petitioner/College is not a signatory to the contract, it cannot be proceeded against under the Arbitration Agreement. The Arbitral Tribunal rejected the Petitioner's objection and proceeded on the basis that the Petitioner/College was the ultimate beneficiary, source of funding, and the party exercising control over the execution of the project. The Arbitral Tribunal observed that the Petitioner/College had appointed Respondent No.2 as the executing agency under a prior agreement dated 22.12.2010, and that the contract with the Respondent No.1 was executed for the Petitioner/College's benefit and under its instructions. The Arbitral Tribunal held that such conduct brought the Petitioner/College within the purview of arbitration proceedings, notwithstanding its non-signatory status.

i. The Arbitral Tribunal framed the Respondent No.1's claims as the issues for determination and proceeded to render findings on each, after recording the evidence of the Respondent No.1 and Respondent No. 2, who submitted their respective affidavits. The Arbitral Tribunal, thereafter, proceeded to adjudicate claims against both Respondent No. 1 and the Petitioner/College, and passed a common award dated 24.10.2024 holding them jointly and severally liable, notwithstanding the Petitioner/College’s preliminary objection as to jurisdiction.

j. The Arbitral Tribunal held that the project was executed as per architectural drawings and specifications provided by the Petitioner College and that the work had been completed and handed over to the Petitioner College. Respondent No.1's evidence, supported by HPL's documentation, established that no rectification was carried out at the Claimant's cost and that the building was in use by the College. The Arbitral Tribunal found that Respondent No.2 was not responsible for any alleged deficiencies, which were minor maintenance issues arising post-occupancy.

k. The Arbitral Tribunal resultantly found both the Petitioner/College and Respondent No.2 jointly and severally liable to the Respondent No.1 for the awarded sums, including interest at 12% per annum and costs of ₹25,00,000/-.

l. The Arbitral Tribunal accordingly awarded monetary relief under several heads as follows:

    i. Sub Claim No. 1.1 (16th RA Bill): Rs.1,10,67,000/- was allowed based on certifications by Respondent No.2 and absence of objection from the Petitioner/College.

    ii. Sub Claim No. 1.3 (Claim towards Green Tax not reimbursed by Respondent No.2): Rs.2,74,200/- was awarded.

    iii. Sub Claim No. 1.4 (Claim towards balanced security not released by Respondent No.2): Rs.5,60,748/-/- was awarded.

iv. Sub Claim No. 1.5 (Incentive under Clause 2A): Rs.31,56,900/- awarded as the Respondent No.1 was not at fault for delays.

v. Claim Nos. 3(a) and 3(b) (Escalation under Clause 10C and 10CC): Rs. 14,12,271/- and Rs.10,11,362/- awarded despite the Petitioner/College's objection that escalation was not approved. The Arbitral Tribunal held that the escalation was absorbed in the increased work value of Rs.8.9 crores and could not be denied.

vi. Claim No. 4 (Overhead expenses for prolongation): Rs.37,71,208/- awarded as reasonable compensation for time extension.

vii. Claim No. 14 (claim for pre-suit interest) allowed upto 12% per annum on Claim Nos.10 and 11.

viii. Claim No.15 – Reimbursement of GST amount allowed.

ix. Claim 16 (Costs of arbitration): Rs.25,00,000/- was awarded to the Respondent No.1 and Rs.14,80,000/- was allowed to Respondent No.2 to be paid by the Petitioner/College due to the protracted and contested nature of the dispute.

x. Claim 17 (Future interest): initially awarded interest 12% per annum on Claim Nos.10 and 11, failing which it would go upto 18% per annum.

xi. The total awarded sum, inclusive of interest and costs, was held recoverable from both - the Petitioner and the Respondent No.2, jointly and severally.

m. The counterclaim raised by the Petitioner alleging defective and substandard work was carried out by the Respondent No.1 was rejected by the Arbitral Tribunal while noting that the witness produced by Respondent No.2, Mr. Ritesh Kapahi, admitted during cross-examination that no rectification had been carried out and that the work was in accordance with the approved drawings and specifications. The Arbitral Tribunal accepted the submissions of Respondent No.1 that any issues raised were post-handover maintenance concerns and not contractual defects.

n. The Arbitral Tribunal further held that both Respondent No.2 and the Petitioner/College had participated in the execution of the contract, with Respondent No.2 acting as the agent and the Petitioner/College as the principal and beneficiary. Relying on correspondence including a letter dated 25.09.2017 wherein the Petitioner/College sought additional UGC funds for pending dues, the Arbitral Tribunal found that the Petitioner/College was well aware of the unpaid liabilities. Consequently, the Petitioner/College and the Respondent No.2 herein were held jointly and severally liable for all awarded sums.

3. Aggrieved by the award dated 24.10.2024, the Petitioner/College has preferred the present petition under Section 34 of the Arbitration Act, challenging the award on multiple grounds, including want of jurisdiction, absence of privity of contract, violation of public policy, denial of opportunity to effectively present its case, and errors apparent on the face of the record.

4. Learned Senior Counsel for the Petitioner/College contends as under:

a. He contends that it is neither a signatory to the work contract dated 15.07.2014 executed between Respondent No. 1 (contractor) and Respondent No. 2 (Hindustan Prefab Limited), nor is it a party to the arbitration agreement contained therein. It is submitted that the reference to arbitration qua the Petitioner/College was non-est in law.

b. It is also contended that its only contractual relationship was with Respondent No. 2, under an agreement dated 22.12.2010, pursuant to which the Respondent No.1 was engaged solely as an executing agency by Respondent No.2. The Petitioner/College submits that the selection, engagement, and supervision of the contractor was the exclusive domain of Respondent No.2, and at no stage the Petitioner/College approved or participated in the award of contract to the Respondent No.1.

c. It is further submitted that the Petitioner/College released the entire revised sanctioned project cost of ₹8.70 crores to Respondent No. 2 between 2011 and 2018. No further request for approval or demand for additional funds was made, nor was any deviation statement or revised estimate placed before the Petitioner/College. Accordingly, it is contended that the Petitioner/College has fully discharged its obligations, and cannot be held liable for any additional amount.

d. The Petitioner/College asserts that under Clause 9.3 of its agreement with Respondent No. 2, any revision or escalation in the scope or cost of the project required prior written approval of

the Petitioner/College. The claims raised by the Respondent No. 1 before the Arbitral Tribunal pertain to unauthorized extra work, allegedly executed without any intimation, approval, or administrative sanction from the Petitioner/College.

e. It is further contended that the arbitral tribunal erroneously relied upon alleged admissions made by Respondent No. 2 in relation to outstanding payments, and used the same to fasten liability on the Petitioner/College. It is submitted that Respondent No. 2's internal communications or acknowledgments are not binding on the Petitioner/College, particularly in the absence of any formal approval or communication.

f. The Petitioner/College affirms that the arbitration proceedings were vitiated by collusion between Respondent No.1 and Respondent No. 2, aimed at inflating the value of claims and extracting unjustified amounts. It is stated that the Arbitral Tribunal did not test the veracity of documents relied upon by the Claimant(Respondent No. 1), and that several crucial invoices and site records were never served upon or approved by the Petitioner/College.

g. The Petitioner/College additionally contends that the arbitral tribunal failed to frame formal issues, and did not pass any order disposing of the Petitioner's application under Section 16 challenging jurisdiction. It is submitted that this omission deprived the Petitioner/College of a fair and full opportunity to contest the maintainability of claims, thereby vitiating the award on the ground of procedural impropriety.

h. It is also claimed that the project suffered from significant delay and structural defects, and despite repeated reminders, neither the contractor nor HPL addressed the shortcomings. It is submitted that in such circumstances, any claim for escalation, interest, or incentive lacks merit and is contrary to contractual stipulations.

i. The award of interest at 12% and 18% per annum, and costs of ₹25 lakhs, is stated to be arbitrary and disproportionate, particularly in view of the absence of contractual privity and lack of sanction for excess work. The Petitioner/College asserts that no justification was provided by the Tribunal for the quantum of costs awarded.

j. Finally, the Petitioner/College submits that the award is vitiated by errors apparent on the face of the record, and is in violation of the public policy of India, as it imposes financial liability on a public-funded institution without contractual basis, due process, or lawful authority.

5. *Per contra,* Learned counsel for Respondent No. 1 submits as under:

a. He states that Respondent No.1 was awarded the work contract dated 15.07.2014 by Respondent No. 2 for construction of the additional teaching block for the benefit of the Petitioner/College institution. The work was executed in accordance with CPWD norms, and the same was completed and handed over after due certification, with the last activity concluding in early 2018.

b. It is further contended that although the formal agreement was between the Respondent No.1 and Respondent No. 2, the Petitioner/College was the true beneficiary and funding

authority of the work. The Petitioner/College was regularly informed of the progress and deviations in the work, and was represented through its architect during all site visits and measurements. It is submitted that the Petitioner/College's role was not peripheral but integral and supervisory.

c. It is also argued that the Petitioner/College, despite raising a jurisdictional objection under Section 16, continued to participate in the proceedings by filing a written statement and cross-examining the witness. It is submitted that this amounted to implied consent or, at the very least, estoppel against contesting the Arbitral Tribunal's jurisdiction at this stage.

d. It is asserted that the claims awarded were based on work that was actually executed, duly recorded in measurement books, and verified through running bills certified by the architect and officials of Respondent No. 2. He emphasizes that there is no denial of benefit of the constructed structure by the Petitioner/College and that the Petitioner/College failed to raise any objections contemporaneously.

e. It is further submitted that while the Petitioner/College contends that ₹8.70 crores was the sanctioned amount, the contract and work execution naturally led to enhancement in scope and corresponding expenditure. It is also argued that once the Petitioner/College accepted the benefit of the constructed building and remained engaged throughout, it cannot avoid liability for the enhanced scope of work that it benefited from.

f. It is maintained that Respondent No. 2 acted merely as an agent or implementing arm of the Petitioner/College. Since the work was undertaken for the Petitioner/College, with its approval and funding, both Respondent No. 2 and the Petitioner/College were jointly and severally liable for dues arising from that work.

g. It is also maintained that the allegations of fraud, collusion, or misuse of internal documents are categorically denied. It is submitted that all documents relied upon were part of official correspondence and site records, and were never disputed by the Petitioner/College during the course of the execution or at any relevant stage.

h. It is further contended that the arbitral award is based on a fair adjudication of claims supported by documentary evidence, and there is no error apparent on the face of the record. The absence of formal issue framing does not vitiate the award, as the tribunal adopted a claim-wise adjudication that sufficiently addressed the controversies between the parties.

i. It is furthermore stated that the award of interest at 12% p.a. and post-award interest at 18% p.a., as well as costs of ₹25,00,000/- are fair, on the ground that the claims were wrongly withheld for several years, leading to financial hardship and prolonged litigation.

j. Lastly, Respondent No. 1 submits that the present petition is an attempt to re-agitate issues already decided by the Arbitral Tribunal on the basis of evidence. The grounds urged by the

Petitioner do not fall within the scope of interference permitted under Section 34, and hence, the petition deserves to be dismissed.

6. Heard the Learned Counsels for the parties and perused the material on record.

7. Upon consideration of the pleadings, record of arbitral proceedings, and the award dated 24.10.2024, this Court does not find any ground under Section 34 to warrant interference with the award. The Petitioner/College's primary contention that it was not a signatory to the arbitration agreement and hence could not have been impleaded in the arbitral proceedings is unsustainable. The arbitral tribunal has, after considering the evidence on record, rightly concluded that the Petitioner/College was not a stranger to the transaction. The Petitioner/College, being the ultimate beneficiary of the work, the funding agency, and an institution that had oversight through its appointed architect and administrative approvals, was clearly involved in the execution of the project. It is also pertinent to mention that while considering the application filed under Section 11 of the Arbitration and Conciliation Act, 1996 by Respondent No.1, the issue as to whether Respondent No.2 should be a party to the arbitral proceedings or not was considered by a Co-ordinate Bench of this Court. The Petitioner/College herein, who was Respondent No.2 therein, filed a reply stating that that it is not a signatory to the arbitration agreement and therefore, it is not required to be joined as a party to the arbitral proceedings. A Co-ordinate Bench of this Court vide Order dated 11.01.2022, in **ARB.P. 366/2019**, titled as M/S Harcharan Das Gupta (a Duly Registered Partnership Firm) through: Shri Lalit Mittal, A Registered Partner v. Hindustan Pre-Fab Limited, & Anr, observed as under:

"9. In view of the above, the controversy that is required to be addressed is whether Respondent no.2 is bound by the arbitration agreement included as clause 26 of the SCC and is required to be referred to arbitration.

10. It is not disputed that HPL had invited tenders for execution of the works for Respondent no.2 [Shyama Prasad Mukherjee College (for Women)]. The Agreement between the parties was executed on 15.07.2014 and was signed on behalf of Respondent no.2 by HPL. The terms of the Agreement also expressly indicate that HPL was acting on behalf of Respondent no.2. Clause 2.2 of the Agreement, defines the term 'Employer' as under:-

> *"2.2 Employer:- Means the Hindustan Prefab Limited, acting on behalf of Shyama Prasad Mukherji College and in the name of President of India."*

11. It is also necessary to refer to sub-clause (ii) of Clause 26 of the SCC. The relevant extract of the said sub-clause is set out below:

> *"Except where the decision has become final, binding and conclusive in terms of Sub Para(i) above disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the CMD, HPL on behalf of Shyama Prasad Mukherji College and with the consent of Shyama Prasad Mukherji College. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the*

reference from the stage at which it was left by this predecessor."

12. The Agreement also indicates that the arbitrator would be appointed by CMD of HPL on behalf of Respondent no.2. Considering that the works were executed for the benefit of Respondent no.2 and there is no dispute that it had engaged HPL. This Court is prima facie of the view that an arbitration agreement exists between the Petitioner and Respondent no.2.

8. The aforesaid finding has not been challenged by Petitioner/College and, therefore, this question now cannot be agitated again.

9. The Apex Court in ONGC Ltd. v. Discovery Enterprises (P) Ltd., **(2022) 8 SCC 42** has laid down the following tests while determining the question as to whether a non-signatory to arbitration agreement can be made a party to arbitral proceedings or not:

"(i) The mutual intent of the parties;

(ii) The relationship of a non-signatory to a party which is a signatory to the agreement;

(iii) The commonality of the subject-matter;

(iv) The composite nature of the transaction; and

(v) The performance of the contract."

10. As pointed out by the Co-ordinate Bench in ARB.P. 366/2019 that in the agreement between Respondent No.1 and Respondent No.2, the employer has been defined to mean either Respondent No.1 or the Petitioner/College herein. Further, as noted by the Co-ordinate Bench that Clause 26.2 of the Special Conditions of Contract (SCC) also states that

disputes between Respondent No.1 and Respondent No.2 will be referred to for adjudication through a Sole Arbitrator appointed by Respondent No.1 on behalf of the Petitioner/College herein and with the consent of the Petitioner/College herein.

11. The Apex Court in Cox & Kings Ltd. v. SAP India (P) Ltd., **(2024) 4 SCC 1** has observed as under:

> *"**122.** The general position of law is that parties will be referred to arbitration under the principal agreement if there is a situation where there are disputes and differences "in connection with" the main agreement and also disputes "connected with" the subject-matter of the principal agreement. [Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651] In Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] , this Court clarified that the principle of "composite performance" would have to be gathered from the conjoint reading of the principal and supplementary agreements on the one hand, and the explicit intention of the parties and attendant circumstances on the other. The common participation in the commercial project by the signatory and non-signatory parties for the purposes of achieving a common purpose could be an indicator of the fact that all the parties intended the non-signatory party to be bound by the arbitration agreement. Thus, the application of the Group of Companies doctrine in case of composite transactions ensures accountability of all parties who have materially participated in the negotiation and performance of the transaction and by doing so have evinced a mutual intent to be bound by the agreement to arbitrate.*

123. *The participation of the non-signatory in the performance of the underlying contract is the most important factor to be considered by the Courts and tribunals. The conduct of the non-signatory parties is an indicator of the intention of the non-signatory to be bound by the arbitration agreement. The intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such agreement. The UNIDROIT Principle of International Commercial Contract, 2016 [UNIDROIT Principles of International Commercial Contracts, 2016, Article 4.3.] provides that the subjective intention of the parties could be ascertained by having regard to the following circumstances:*

(a) preliminary negotiations between the parties;
(b) practices which the parties have established between themselves;
(c) the conduct of the parties subsequent to the conclusion of the contract;
(d) the nature and purpose of the contract;
(e) the meaning commonly given to terms and expressions in the trade concerned; and
(f) usages.

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126. *Evaluating the involvement of the non-signatory party in the negotiation, performance, or termination of a contract is an important factor for a number of reasons. First, by being actively involved in the performance of a contract, a non-signatory may create an appearance that it is a veritable party to the contract containing the arbitration agreement; second,*

> *the conduct of the non-signatory may be in harmony with the conduct of the other members of the group, leading the other party to legitimately believe that the non-signatory was a veritable party to the contract; and third, the other party has legitimate reasons to rely on the appearance created by the non-signatory party so as to bind it to the arbitration agreement.*

12. In view of the above, the principal contention agitated by the Petitioner/College herein that it, being a non-signatory to the arbitration agreement, cannot be made a party to the arbitral proceedings, cannot be accepted.

13. The allegations that the award violates the public policy of India or the fundamental policy of Indian law are equally devoid of merit. The Arbitral Tribunal has not imposed liability arbitrarily but has relied on measured and certified work, project records, and correspondence demonstrating that the Petitioner/College had knowledge of the scope, escalation, and continuation of the work. The Arbitral Tribunal's finding that both Respondent No. 2 and the Petitioner/College were jointly and severally liable is based on their respective roles—Respondent No. 2 as executing agency and the Petitioner/College as the approving authority and ultimate user of the constructed facility. There is no material on record to show that the impugned award shocks the conscience of the Court or causes manifest injustice, nor has any violation of statutory principles been demonstrated.

14. As regards procedural fairness, the Petitioner/College's claim that the Arbitral Tribunal failed to frame formal issues or decide the Section 16 application separately does not, in the opinion of this Court, amount to a

violation of natural justice. The arbitral proceedings were conducted in a claim-wise format, in which all the parties were afforded a full opportunity to present evidence and argue their case. The Arbitral Tribunal's reasons are clearly discernible on the face of the impugned award and demonstrate due application of mind.

15. Finally, the contention that the impugned award is vitiated by patent illegality is also untenable. The findings of the arbitral tribunal are based on documentary evidence, architectural certifications, and admissions in correspondence. The conclusions drawn are neither perverse nor irrational. The award of interest and costs falls within the Arbitral Tribunal's discretion under Section 31(7) of the Act, and no ground has been made out to disturb the same.

16. In a latest judgment of the Apex Court in DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., **(2024) 6 SCC 357**, the Apex Court while entertaining a curative petition has given the contours of interference under Section 34 of the Arbitrator and Conciliation Act, 1996. The Apex Court has observed as under:

> ***"34.*** *The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by "patent illegality" appearing on the face of the award.*

35. *In Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:*

(i) based on no evidence;

(ii) based on irrelevant material; or

(iii) ignores vital evidence.

36. *Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned.*

37. *A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] observed : (SCC pp. 75 & 81, paras 31 & 42)*

"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important

and requires some degree of explanation. It is settled law 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.

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42.1. ... 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside."

(emphasis supplied)

38. *In Ssangyong Engg. & Construction Co. Ltd. v. NHAI [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , a two-Judge Bench of this Court endorsed the position in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , on the scope for interference with domestic awards, even after the 2015 Amendment : (Ssangyong Engg. & Construction Co. case [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , SCC p. 171, paras 40-41)*

"40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a

possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. ... Thus, 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 on the ground of patent illegality. Additionally, 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."

(emphasis supplied)

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. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149.] 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 his jurisdiction or violating a fundamental principle of natural justice.*

40. *A judgment setting aside or refusing to set aside an arbitral award under Section 34 is appealable in the exercise of the jurisdiction of the court under*

Section 37 of the Arbitration Act. It has been clarified by this Court, in a line of precedent, that the jurisdiction under Section 37 of the Arbitration Act is akin to the jurisdiction of the Court under Section 34 and restricted to the same grounds of challenge as Section 34. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14 : (2019) 2 SCC (Civ) 293; Konkan Railway Corpn. Ltd. v. Chenab Bridge Project Undertaking, (2023) 9 SCC 85, para 18 : (2023) 4 SCC (Civ) 458 : 2023 INSC 742, para 14.]"

17. In view of the foregoing discussion and analysis, this Court is of the considered opinion that the impugned arbitral award dated 24.10.2024, rendered by the learned Sole Arbitrator does not suffer from any infirmity warranting interference under Section 34 of the Arbitration Act. The findings of the arbitral tribunal are based on evidence, detailed reasoning, and a just appreciation of the parties' respective roles and conduct.

18. The other major contention raised by the Petitioner/College that it cannot be held liable to pay the amount over and above Rs.8.9 crores cannot be accepted. As correctly pointed out by the Arbitral Tribunal that all the work was being done on behalf of the Petitioner/College and Respondent No.2 was, therefore, only an agent of the Petitioner/College. The fact that the Union of India has only sanctioned a specific amount cannot absolve the Petitioner/College of the liability for the work which has been done by Respondent No.2 as Respondent No.2 is only an executing agency.

19. Be that as it may, it is always open for the Petitioner/College to recover the amount from Respondent No.2 by taking steps in accordance with law.

20. As a result, the Petitioner/College's challenge, premised on the absence of contractual privity, alleged denial of natural justice, and purported violation of public policy, is found to be untenable. The objections raised fall outside the limited scope of judicial review under Section 34 and, in substance, amount to a re-argument on merits, which is impermissible in law.

21. Accordingly, the petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 08, 2025
JP