



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 30<sup>TH</sup> DAY OF APRIL, 2026**

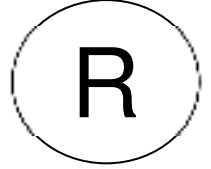
**PRESENT**

**HON'BLE MRS. JUSTICE ANU SIVARAMAN**

**AND**

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**COMMERCIAL APPEALS NO. 147 OF 2021**



**BETWEEN:**

M/S. SAHASRA GASTROENTEROLOGY  
AND OBESITY CLINIC PRIVATE LIMITED.,  
A PRIVATE LIMITED COMPANY REGISTERED UNDER  
THE COMPANIES ACT, 1956,  
PRESENTLY HAVING ITS OFFICE AT NO.219,  
7<sup>TH</sup>CROSS, TEACHERS COLONY,  
BANASHANKARI 2<sup>ND</sup>STAGE,  
REPRESENTED BY ITS  
MANAGING DIRECTOR,  
DR.SRIKANTH GADIYARAM.

...APPELLANT

(BY SRI. P.S.RAJAGOPAL., SENIOR COUNSEL FOR  
SRI. MADHUKAR.M.DESHPANDE., ADVOCATE)

**AND:**

1. DR. JAYA BALASUNDARAM  
W/O LATE DR.A.N.BALASUNDARAM,  
AGED ABOUT 87 YEARS,  
REPRESENTED BY HER SON AND  
CONSTITUTED ATTORNEY,  
DR.SREEKAR,  
RESIDING AT NO.1633,  
18<sup>TH</sup>MAIN, BANASHANKARI 2<sup>ND</sup>STAGE,  
BENGALURU-560070.
2. DR. B.SREEKAR  
S/O LATE DR.A.N.BALASUNDARAM,  
AGED ABOUT 48 YEARS,  
RESIDING AT NO.1633, 18<sup>TH</sup>MAIN,



BANASHANKARI 2<sup>ND</sup>STAGE,  
BENGALURU-560070.

3. DR. ASHWINI SREEKAR  
W/O DR. B.SREEKAR,  
AGED ABOUT 47 YEARS,  
RESIDING AT NO.1633, 18<sup>TH</sup>MAIN,  
BANASHANKARI 2<sup>ND</sup>STAGE,  
BENGALURU-560070.

...RESPONDENTS

(BY SRI. DHANNJAY JOSHI., SENIOR COUNSEL FOR  
SMT. KAVITHA DAMODARAN., ADVOCATE FOR C/R1 TO R3)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 R/W SECTION 37(1)(C) OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO CALL FOR RECORDS IN COM.A.S.NO. 172/2019 ON THE FILE OF LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-84) AND RECORDS IN A.C.NO. 146/2018 ON THE FILE OF ARBITRATION CENTRE, BENGALURU. SET ASIDE THE JUDGMENT DATED 17/07/2021 PASSED BY THE LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-84) IN A.S.NO. 172/2019 AND ARBITRAL AWARD DATED 28/08/2019 PASSED BY THE SOLE ARBITRATOR IN A.C.NO. 146/2018 AND CONSEQUENTLY, DISMISS THE CLAIM STATEMENT FILED BY THE RESPONDENTS AND ALLOW THE COUNTER CLAIM OF THE APPELLANT, ANDPASS SUCH OTHER ORDER AS THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 25.03.2026, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:



CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN  
&  
HON'BLE MS. JUSTICE TARA VITASTA GANJU

**CAV JUDGMENT**

**(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)**

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**I. PREFACE:**

1. This Commercial Appeal under Section 13(1A) of the Commercial Courts Act, 2015 read with Section 37 (1) (c) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "A&C Act"), impugns a Judgment dated 17.07.2021 passed in COM.AS.No.172/2019 (hereinafter referred to as "Impugned Judgment") by the LXXXIII Additional City Civil And Sessions Judge at Bengaluru City (CCH-84) (hereinafter referred to as "the Commercial



Court”), which has dismissed the Petition under Section 34 and 37 of the A&C Act filed by the appellant, and upheld the Arbitral Award dated 28.08.2019 (hereinafter referred to as “Arbitral Award”) with costs, passed by the Sole Arbitrator in favour of the claimants/respondents. The Counter Claim filed by the appellant has also been dismissed. This Appeal seeks to challenge both dismissals.

## **II. BRIEF FACTS:**

2. This Court has, by the order dated 01.09.2021, admitted the appeal and granted a stay of operation and execution of the Impugned Judgment and the Arbitral Award subject to the appellant depositing a sum of Rs.32,61,705/- within two weeks from the date of the order.

3. The brief relevant facts are that a claim petition was filed by claimants/respondent Nos.1 to 3 on 28.09.2018 against the appellant seeking a direction to the appellant, to pay the claimants/respondent Nos.1 to 3 a sum of Rs.1,20,55,753/- along with interest at the rate of 18% per annum from the date of claim petition till the date of payment. Directions were also sought to declare that for the



period of the subsistence of the Deed of Reconstitution dated 13.05.2015 (hereinafter referred to as "the Reconstitution Deed"), the appellant is bound and liable to pay monthly remuneration to the claimants/respondent Nos.1 to 3 along with interest. The prayers as set out in the Statement of Claim are extracted below:

*"a) directing the Respondent to pay the Claimants a sum of Rs.1,20,55,753/- (Rupees One Crore Twenty Lakhs Fifty Five Thousand Seven Hundred and Fifty Three) together with interest thereon at the rate of 18% from the date of the Claim Petition until payment;*

*(b) declaring that, for the period during the subsistence of the Deed of Reconstitution, dated 13.05.2015, the Respondent is bound and liable to pay monthly remuneration to the Claimants in the manner provided therein, failing which the Respondent is liable to pay the same together with interest at the rate of 18% per annum;*

*(c) directing the Respondent to furnish to the Claimants, promptly on demand, all information and records pertaining to the partnership firm, M/s. JBS Nursing Home;*

*(d) directing the Respondent to indemnify and keep the Claimants wholly indemnified from all losses, claims, costs, etc. that may be raised on and / or claimed from them in relation to the partnership firm, M/s. JBS Nursing Home;*

*(e) directing the Respondent to bear and pay the entire costs of these proceedings, including all actual costs borne by the Claimant; and*

*(f) pass such further and other orders and / or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*



3.1. It is the case of the claimants/respondent Nos.1 to 3 that they entered into a Memorandum of Understanding dated 13.02.2015 (hereinafter referred to as 'the MOU') with the appellant, to induct the appellant into the claimants/respondent Nos.1 to 3's partnership firm. Subsequently, the parties entered into a Reconstitution Deed of the Partnership Firm- M/s. JBS Nursing Home on 13.05.2015. The terms of the Reconstitution Deed were that the claimants/respondent Nos.1 to 3 would surrender the complete control and management of the Hospital-M/s. JBS Nursing Home to the appellant and 99% of the profits were also surrendered. It was further agreed that the claimants/respondent Nos.1 to 3 would be paid a monthly remuneration of Rs.5,04,000/- by the appellant.

3.2. The claimants/respondent Nos.1 to 3 averred that the remuneration was not paid regularly and that even a non-refundable deposit of Rs.50,40,000/- as was set out in the MOU was not paid and only Rs.17,64,500/- was paid, leaving a balance of Rs.32,75,500/- as outstanding.



3.3. Since the Reconstitution Deed contained an Arbitration clause, the claimants/respondent Nos.1 to 3 took steps for appointment of an Arbitrator. A retired Judge of this Court was appointed as the Sole Arbitrator for adjudication of the disputes *inter-se* the parties.

### **III. IMPUGNED JUDGMENT :**

4. The claim petition was contested by the appellant by filing Statement of Objections and a Counter Claim. It was contended that the Statement of Claim filed by the claimants/respondent Nos.1 to 3 is not maintainable either on law or on facts. In addition, a Counter Claim was filed seeking audited books of accounts; and a report from with regard to the profit and loss statement *qua* about the reconstituted partnership in the following manner:

#### **"PRAYER**

*Wherefore the claim statement filed by the claimants may be dismissed and this Hon'ble Tribunal may be pleased to grant counter claim as under:*

*(i) Direct the Claimant No.1 & 2 to provide audited balance sheet and profit & loss accounts for the financial year 2014-15 as at 31.03.2015 (financial year 2014-15) upto the date of reconstitution deed (13.05.2015) of the erstwhile partnership firm is made available of the erstwhile partnership firm, namely, JBS Nursing Home (PAN AAFFJ8715D) along with books of accounts;*



*(ii) Appoint a Commissioner, preferably a Chartered Accountant, to examine receipts and expenditure of the reconstituted partnership firm for the period 2015-16, 2016-17 and 2017-18, submit a report showing the total profit and loss of the reconstituted partnership firm and detailed report regarding the amounts paid to the partners beyond their entitlement of profits and*

*(iii) Grant such other reliefs as this Hon'ble Tribunal deems fit to grant in the interest of justice;"*

5. During the pendency of the Arbitral proceedings, the appellant filed an application under Section 16 of the A&C Act seeking rejection of the claim stating that the dispute is beyond the scope of Clause 20 of the Reconstitution Deed and thus not arbitrable. The Arbitral Tribunal, by its order dated 17.12.2018, dismissed the application under Section 16 of the A&C Act. It was held that the question raised by the appellant would be examined along with the main matter since it revolves around the consideration of various clauses of the Reconstitution Deed and the effect of the MOU.

6. After examining the pleadings between the parties, the Arbitral Tribunal framed the following issues:

**"ISSUES**

*1. Whether the Claimants are entitled for payment of a sum of Rs.1,20,55,753/- together with interest thereon at*



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*the rate of 18% from the Respondent from the date of the claim petition until payment?*

*2. Whether the Claimant proves that the Respondent is bound and liable to pay monthly remuneration to the Claimants in the manner provided in the Deed of Reconstitution dated 13.05.2015, failing which the Respondent is liable to pay the same together with interest at the rate of 18% per annum for the period during the subsistence of the Deed of Reconstitution?*

*3. Whether the Claimant proves that the Respondent is to be directed to furnish to the Claimants, promptly on demand, all information and records pertaining to the partnership firm, M/s JBS Nursing Home?*

*4. Whether the Claimant proves that Claimants are entitled to be indemnified by the Respondent and keep the Claimants wholly indemnified from claims raised by the statutory authorities in terms of Clause 17 of the Deed of Reconstitution?*

*5. Whether the Respondent proves that the claim by the Claimant has to be rejected for non-joinder of the partnership firm M/s JBS Nursing Home in as much as the Tribunal will have no jurisdiction to try the dispute in the absence of the said firm being a party to the proceeding?*  
**(recast on 06.03.2019)**

*6. Whether the Respondent proves that payment of remuneration is the obligation of the firm only and not that of the Respondent Company?*

*7. Whether the Respondent proves that obligation to pay remuneration to the Claimant is dependent upon the firm making profit?*

*8. Whether the Respondent proves that the reconstituted firm was unable to carry out business and make any profit between June 2015 to December 2016?*

*9. Whether the Respondent proves that the claimants failed to perform their duties as working partners and are therefore not entitled to claim the remuneration?*

*10. Whether the Respondent proves that it is entitled for direction against the Claimants 1 and 2 to provide audited balance sheet and profit and loss accounts for the financial*



*year 2014-15 upto the date of Reconstitution Deed (13.05.2015) of the erstwhile Partnership firm, namely, M/s JBS Nursing Home as claimed in the counter-claim?*

*11. What order/Award?"*

7. By the Arbitral Award, the Arbitral Tribunal found that the claimants/respondent Nos.1 to 3 are entitled to a payment of Rs.60,40,195/- along with interest at the rate of 18% from 13.05.2015 along with *pendente lite* and future interest. The Arbitral Award further directed the appellant to furnish copies of the records pertaining to M/s JBS Nursing Home and related documents in terms of Clause 15 of the Reconstitution Deed. It was also directed that the claimants/respondent Nos.1 to 3 were entitled for being indemnified against losses arising out of failure of the appellant in discharging its duties. Costs were also awarded by the Arbitral Tribunal.

7.1. So far as concerns the Counter Claim, the Arbitral Tribunal found that since the Profit and Loss Statement of the reconstituted partnership Firm for the periods 2015-16, 2016-17 and 2017-18 had already been placed on record, there was no requirement for allowing the Counter Claim, which was thus dismissed.



8. This led to the appellant filing a Petition under Section 34 of the A&C Act seeking to set aside the Arbitral Award and to allow the Counter Claim of the appellant. The learned Commercial Court after examining the contentions of the parties, held that the jurisdiction to set aside an Arbitral Award is limited to the grounds and under Section 34 of the A&C Act if a contrary view based on facts is taken by an Arbitral Tribunal, unless there are compelling reasons, the Court cannot interfere. The learned Commercial Court further held that the Reconstitution Deed (Ex.P2) is the result of the MOU (Ex. P1) and since the Arbitral Tribunal found that they are the result of the understanding reached between the parties, it cannot be stated that the MOU is only an agreement to agree, while the Reconstitution Deed is the contract entered into between the parties. Relying on Clause 5 to 10 specifically 6.3 of the Reconstitution Deed, the Commercial Court gave a finding of the partnership between the claimants/respondent Nos.1 to 3 and appellant being a 'pseudo-partnership' and in the nature of Proprietorship, giving 99% of profit to the appellant. It was held that there was an obligation to pay for all expenses



including remuneration to the claimants/respondent Nos.1 to 3, regardless of the status of the Partnership Firm and since the fixed remuneration was not paid in terms of Clause 7, the obligation to pay interest at 18% was also there. The Commercial Court examined the Award and found that the Arbitral Award is not against public policy of India and thus cannot be set aside. The dismissal of the Counter Claim was also upheld stating that since the appellant only became a partnership on 13.02.2015, the accounts for the previous periods cannot be directed to be given. Thus, the petition under Section 34 of the A&C Act was dismissed.

#### **IV. CONTENTIONS OF THE APPELLANTS :**

9. The learned Senior Counsel for the appellant has raised the following grounds in challenge to the Arbitral Award and the Impugned Judgment.

9.1 Firstly, it is contended that the non-payment of remuneration was not an arbitral dispute since the Reconstitution Deed was not executed between the Partnership Firm and the appellant but between the existing partners and the incoming partners *inter-se*. It was thus



contended that the Arbitral Tribunal had no jurisdiction to pass the Award. It was further contended that the Reconstitution Deed was between the partners including the appellant and claimants/respondent Nos.1 to 3 and that Clause 20 of the Reconstitution Deed which is an Arbitral Clause, refers disputes amongst Partnership Firm and the partners and not the partners *inter-se*. Thus, there is no arbitral clause in existence.

9.2 Secondly, it was contended that in the Impugned Judgment, the Commercial Court erred in referring to the Partnership Firm as 'pseudo-partnership'. Reliance in this behalf was placed on Paragraph Nos.20 and 23 of the Impugned Judgment to submit characterization of partnership as a 'pseudo-partnership' is contrary to the express contractual terms and ignoring that the parties had consciously agreed to a valid partnership structure.

9.3 The learned Senior Counsel for the appellant has further averred that the MOU ceased to exist when the Reconstitution Deed was signed and that no payments were



due to be made by the appellant to the claimants/respondent Nos.1 to 3.

9.4 Lastly, it was contended that the Arbitral Tribunal has gone beyond the terms of the contract, rewritten the terms of the contract and thus, the Impugned Award is required to be set aside. Reliance in this behalf is placed on the judgments of the Court of Appeal of the United Kingdom in ***Green Vs. Hertzog and Others***<sup>1</sup>, a judgment of the Madras High Court in ***Lakshmanan Chetty Vs. Nagappa Chetty***<sup>2</sup> judgments of the Supreme Court in ***Speech and Software Technologies (India) Private Ltd., Vs. NEOS Interactive Limited***<sup>3</sup>, in the case of ***M. Gnanasambandam Vs. M. Raja Appar***<sup>4</sup> and the case of ***Patel Engineering Limited Vs. North Eastern Electric Power Corporation Limited***.<sup>5</sup>

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<sup>1</sup>(1954)1 WLR 1309

<sup>2</sup> AIR 1918 MAD 167

<sup>3</sup> (2009) 1 SCC 475

<sup>4</sup> (2009) (2) CTC 819

<sup>5</sup> (2020) 7 SCC 167



**V. CONTENTIONS OF THE RESPONDENTS:**

10. Learned Senior Counsel appearing for the claimants/respondent Nos.1 to 3 on the other hand has contended that the appellant through its Director, approached the claimants/respondent Nos.1 to 3 who were running SBS clinic in the City, to purchase their business including its liabilities. The agreement was that the claimants/respondent Nos.1 to 3 would get a fixed remuneration and for this reason they surrendered 99% of the profits of the firm.

10.1 It was further contended that the Reconstitution Deed was an extension of the MOU, being only three months apart, and that there was no question of it coming to an end or being superseded by the Reconstitution Deed. Relying on the Clauses of the Reconstitution Deed, It is contended that Clause 20.1 of the Reconstitution Deed provides for all disputes and differences or claims amongst partners to be resolved through arbitration and that since this was a claim *inter-se* the partners, it could not be stated to be a dispute



which was not arbitrable or outside the purview of the contract.

10.2 The learned Senior Counsel further contended that the scope of interference in Arbitral Awards under Sections 34 and 37 of the A&C Act is limited and once the Tribunal has examined the Award, unless the Award is patently illegal or against public policy or that the Award shocks the conscience of the Court, it could not be interfered with by this Court. Reliance in this behalf was placed on the judgment of the Supreme Court in ***Associate Builders Vs. Delhi Development Authority***<sup>6</sup>, ***MMTC Limited Vs. Vedanta Limited***<sup>7</sup>, ***Dyna Technologies Private Limited Vs. Crompton Greaves Limited***<sup>8</sup> and ***UHL Power Company Limited Vs. State of Himachal***<sup>9</sup>. Reliance was also placed on the judgment of a Co-ordinate Bench of this Court in ***M/s. Parthiba Industries Limited Vs. Ms. Amrutha Constructions***<sup>10</sup> to submit that if the view taken

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<sup>6</sup> (2015) 3 SCC 49

<sup>7</sup> (2019) 4 SCC 163

<sup>8</sup> (2019) 20 SCC 1

<sup>9</sup> (2022) 4 SCC 116

<sup>10</sup> COMAP 302/2025 : NC:2025:KHC:29774-DB



by the Arbitral Tribunal is a possible and reasonable view, the Court, in exercise of jurisdiction under Sections 34 and 37 of the A&C Act, cannot substitute its own interpretation or re-appreciate the evidence to arrive at a different conclusion.

#### **VI. ISSUE FOR CONSIDERATION :**

11. The issue that arises for consideration before this Court is, whether the Arbitral Award is liable to be set aside under the provisions Sections 34 and 37 of the A&C Act?

#### **VII. ANALYSIS AND FINDINGS:**

12. At this stage, it is apposite to extract Sections 34 and 37 of the A&C Act which read as under:

*"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-**

*(a) the party making the application establishes on the basis of the record of the arbitral tribunal that-*

*(i) a party was under some incapacity, or*

*(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force, or*

*(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*



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(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

**(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 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.**

**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.**

**(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:**

**Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.**

(3)....

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**37. Appealable orders.** (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

(a) refusing to refer the parties to arbitration under section 8;  
(b) granting or refusing to grant any measure under section 9;  
**(c) setting aside or refusing to set aside an arbitral award under section 34.**

(2) Appeal shall also lie to a court from an order of the arbitral tribunal-

**(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or**

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court."

[Emphasis Supplied]

12.1 The scope of interference under Section 34(2)(b)(ii) of the A&C Act, is limited and circumscribed by the statutory grounds set out herein. This power can thus be exercised on several grounds including if the Award is in contravention with the fundamental policy of Indian law or the most basic notions of morality and justice. This will however not entail a review on merits of the dispute by the Court. In addition, an Award may be challenged on the grounds of patent illegality on the face of the Award, provided that such challenge is not on the ground of erroneous application of law or of the re-appreciation of the evidence. The Supreme



Court in the **DMRC Ltd. v. Delhi Airport Metro Express**

**P. (Ltd.)**<sup>11</sup> has while discussing the powers of a Court under

Section 34 of the Arbitration Act held the following:

*"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."*

[Emphasis Supplied]

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<sup>11</sup> (2024) 6 SCC 357



12.2. A Coordinate Bench of the Delhi High Court in ***Pragya Electronics v. Cosmo Ferrites Ltd***<sup>12</sup> has held that the scope of interference under Section 34(2)(b)(ii) of the A&C Act is extremely limited. In addition, an arbitral award may be set aside on the ground of “public policy of India” only when it is in conflict with the fundamental policy of Indian law, the interests of India, or the most basic notions of justice or morality, including where it suffers from patent illegality going to the root of the matter. Such interference however does not entail a review on merits and is confined to cases where the findings of the arbitral tribunal are arbitrary, capricious, perverse, or shocks the conscience of the Court. If the view taken by the Arbitral Tribunal is a possible and reasonable view based on the material on record, no interference is warranted. The relevant extract of the **Pragya Electronics** case is set out below:

*"11. The scope and ambit of a challenge under Sections 34 and 37 of the Arbitration Act is no longer res integra. In a recent decision rendered by the Supreme Court in the matter of PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin<sup>5</sup>, the*

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<sup>12</sup> 2023 SCC Online Del 1680



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Supreme Court has reiterated its view, in *MMTC Limited* case (*supra*), and held as follows:

"41. It will be relevant to refer to the following observations of this court in the case of *MMTC Limited* (*supra*):

"11. As far as Section 34 is concerned, the position is well-settled by now **that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii)** i.e., if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, **a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award.** Additionally, the concept of the fundamental policy of Indian Law would cover compliance with statutes and judicial precedents, **adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., [1948] 1 K.B. 223 (CA)] reasonableness.** Furthermore, **patent illegality itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.**

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), **but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the**



**arbitrator is a possible view based on facts.**

...."

[Emphasis Supplied]

13. It is necessary to examine the contention of the parties in light of the settled law. The principal contention that has been raised by the appellant is that the non-payment of remuneration as claimed by the claimants/respondents was not an arbitrable dispute since the claim was that the Reconstitution Deed was entered into between the partners *inter-se* and the payment of remuneration was to be made by the partnership firm M/s JBS Nursing Home and not the appellant. It is also the case of the appellant that the Arbitral Tribunal and the learned Commercial Court have gone beyond the terms of the contract between the parties and thus, the Arbitral Award and the Impugned Judgment are liable to be set aside.

14. The contentions raised before this Court were also raised by the appellant both before the Arbitral Tribunal and the learned Commercial Court. In fact, the appellant had also filed an application under Section 16 of the A&C Act in



this behalf. The learned Arbitral Tribunal, however, after examining these contentions, by its order dated 17.12.2018, dismissed the application setting out that it is not a jurisdictional issue that has been raised by the appellant but the question has been raised regarding the effect of absence of the partnership firm which is not a party to these proceedings and that the effect would only be examined after examining the evidence. The relevant extract of the order dated 17.12.2018 in this behalf is set out below:

*"4. It is also urged that the Memorandum of Understanding (MOU) dated 13-02-2015 was superseded by executing a Deed of Reconstitution dated 13-5-2015 hence the MOU became redundant. **In addition, it is urged that as the MOU was entered into between JBS Nursing Home and the respondent, claimants not being parties to the same, any dispute regarding the MOU could be only between JBS Nursing Home and the respondent.***

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*10. **No issue is raised regarding the jurisdiction of this Tribunal to entertain the dispute. The question raised by the applicant regarding the effect of absence of the partnership firm which is not made party to this proceeding** will have to be examined along with the main matter as the same necessarily revolves around consideration of various clauses of the Reconstitution Deed, the effect of the MOU; how the parties conducted themselves in terms of their rights and obligations under the agreement. **All these things can be examined only after recording evidence.***

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**12. Accordingly, the Application filed under Section 16 of the Arbitration and Conciliation Act is dismissed, reserving liberty to the respondent to raise necessary grounds in this regard in the defence statement to be filed.”**

[Emphasis Supplied]

15. The contention raised by the appellant is that as per the Clauses 6 and 7 of the Reconstitution Deed, the remuneration of the partners is to be made by the partnership firm and not the appellant. It has been averred that since the claimants/respondents are parties to the MOU, the dispute for compensation can only be between the partnership firm M/s JBS Nursing Home and its partners, the claimants/respondents herein and not the appellant.

16. An examination of the MOU shows that it is entered into between M/s. JBS Nursing Home represented by its partners Dr. M.V. Jayamma @ Dr. Jaya Balasundaram and Dr. Srihar Balasundaram and the appellant. It further states that the understanding in the MOU shall be incorporated into a partnership deed. The payments to the existing partners has been set out in Clauses 1.1 and 1.3 while Clause 4.4 provides for the fact that existing partners



shall enter into a new deed. The relevant extract is set out below:

**"JBS NURSING HOME:** a partnership firm, having its principal place of business at.27/B 39<sup>th</sup> Cross, VIII Block, Jayanagar, Bangalore 560 082, represented by its **partners, Dr. M V Jayamma @Jaya Balasundaram and Dr. Sreekar Balasundaram:**

AND:

**SAHASRA GASTROENTEROLOGY AND OBESITY CLINIC PRIVATE LIMITED,** a company incorporated under the Companies Act, 1956, having its registered office at 302 Team Emerald Apartments, Rustumba Main Road, Kodihalli, Bangalore 560008, and **represented by its Director, Dr. Srikanth Gadiyaram.**

JBS Nursing Home is referred to herein as '**the Partnership Firm**' or '**the Firm**', Dr. Jaya Balasundaram and Dr. Sreekar Balasundaram are referred to herein as '**the Existing Partners**', and **Sahasra Gastroenterology and Obesity Clinic Private Limited is referred to, herein as the 'Incoming Partner']** .

WHEREAS:

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**C. The Incoming Partner has approached the Existing Partners with a proposal to set up and operate a gastroenterology and obesity hospital in the Premises.**

**D. The Existing Partners and the Incoming Partner have negotiated the terms for the induction of the Incoming Partner into the Partnership Firm and all the Parties are agreed that the Incoming Partner will take over the management and business of the Partnership Firm in entirety and operate it as a gastroenterology and obesity hospital under the brand name, Sahasra.**

**E. The Parties have agreed that, upon the induction of the Incoming Partner, it shall have a substantial entitlement to the profits/losses of the Partnership Firm (say, 99%) and the collective rights of the Existing Partners will be reduced accordingly.**



**F. The parties have expressed their understanding in this MOU, which shall, in appropriate detail, form and manner, be incorporated in the Partnership Deed recording the induction of Incoming Partner into the Partnership Firm.**

NOW THIS MEMORANDUM OF UNDERSTANDING  
WITNESSETH :

1. Payments to Existing Partners:

**1.1. Regardless of the status of the business of the Partnership Firm, the Existing Partners will be paid a fixed remuneration of Rs.5,04,000/- (Rupees Five Lakhs Four Thousand) per month (Remuneration), to be shared equally between the Existing Partners.**

1.2 The Remuneration will be subject to escalation at the rate of 10% per annum effective from the 25<sup>th</sup> month from the date of the signing of the **Deed of Reconstitution of Partnership (Deed). (defined below)**

1.3. Towards enabling the Incoming Partner to mitigate and manage its costs, **the Parties have agreed that the payment of Remuneration shall be in accordance with the following timeline determined from the date of signing the Deed.**

| Period                                          | Remuner-<br>ation | Waived   | Deferre<br>d | Catc-<br>hup | Payable  |
|-------------------------------------------------|-------------------|----------|--------------|--------------|----------|
| 1 <sup>st</sup> - 3 <sup>rd</sup><br>month      | 5,04,000          | 5,04,000 |              |              | 0        |
| 4 <sup>th</sup> - 6 <sup>th</sup><br>month      | 5,04,000          | 2,01,600 |              |              | 3,02,400 |
| 7 <sup>th</sup> -18 <sup>th</sup><br>month      | 5,04,000          |          | 2,01,600     |              | 3,02,400 |
| 19 <sup>th</sup> -<br>24 <sup>th</sup><br>month | 5,04,000          |          |              | 2,01,6<br>00 | 7,05,600 |
| 25 <sup>th</sup> -<br>30 <sup>th</sup><br>month | 5,54,500          |          |              | 2,01,6<br>00 | 7,05,600 |
| 31 <sup>st</sup><br>month<br>onwards            | 5,54,500          |          |              |              | 5,54,500 |

**1.4. The incoming partner agrees that the remuneration shall be paid to the Existing Partners**



**within the 5<sup>th</sup> of every month following the month for which the Remuneration relates.**

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4.1. Disputes, differences, claims, etc. if any, arising out of and/or **connected with this MOU, shall be subject to arbitration in Bangalore under the Arbitration & Conciliation Act, 1996.**

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**4.4. The parties will enter into the Deed within a period of 30 days from the date the Existing Partners obtain the renewal of the lease referred to hereinabove."**

[Emphasis Supplied]

16.1 Thus, both the recital 'F' as well as 'Clause 4.4' set out that the parties will enter into a fresh deed with additional terms.

17. This was carried out in the form of the Reconstitution Deed which was executed between the four partners - respondent Nos.1 and 2 on the one part as the 'existing partners', as well as respondent No.3 as 'incoming partner No.1' and the appellant as 'incoming partner No.2', clearly, thus specifying that the partnership firm M/s J.B. Nursing Home had been reconstituted. The terms of the Reconstitution Deed also set out that the partnership shall be at 'will' and the nature of the business of the partnership



firm would be the operating of a hospital in the premises available. The incoming partner No.2 (appellant) would introduce capital into the firm as well as take 99% share of profit in the firm and meet all future requirements in the capital (clauses 5.1 and 5.2 of the Reconstitution Deed).

18. Under the Reconstitution Deed, all the partners would be entitled to a remuneration, the existing partners as well as incoming partner No.1 (respondent Nos.1 to 3) would be entitled to a fixed remuneration which would be subject to escalation every 25 months. The clause of remuneration is exactly the same as set out in the MOU clause 1.3. The Reconstitution Deed also provided sharing of profits and losses in this behalf. The Reconstitution Deed also sets out that there is no goodwill being developed in the name of the partnership firm and that the appellant may use his brand name 'Sahasra' for the business and no goodwill shall be transferred. The relevant clauses of the Reconstitution Deed are set out below:

**"B. The Existing Partners have agreed to admit the incoming Partners to the partnership on the terms and conditions mutually agreed between them which they are now setting out in writing.**



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**3.2. All the partners agree, admit and acknowledge that, while the partnership may commence with some other business at some other location, no activity other than that of a hospital shall be carried on in the premises.**

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## **5. CAPITAL**

**5.1. The Incoming Partner II shall introduce a capital of Rs.50,000 and shall be entitled from the date of this reconstitution deed to 99% share of the profits of the firm. The Incoming Partner I shall introduce such capital as will be mutually decided by all the partners.**

**5.2. All future requirements of capital shall be met only by the Incoming Partner II and the other partner viz., the Existing Partners and the Incoming Partner I shall not be obliged to make any further contributions towards capital of the partnership firm.**

## **6. MANAGEMENT OF THE PARTNERSHIP :**

6.1 All the Partners shall be Working Partners and shall be entitled to remuneration.

**6.2 The Incoming Partner II shall be solely and absolutely responsible for the day-to-day operations of the partnership firm in relation to its activities in the Premises.**

**6.3 The Incoming Partner II acknowledges that the Existing Partners have built the partnership business to its current levels in the Premises and that all further costs, expenses, Investments, including all taxes, cess and all other outgoings in relation to the partnership business in the Premises shall be borne only by the incoming Partner II and the partnership firm and the Existing Partners and the incoming Partner I shall not be obliged to make any contributions in that regard. All Partners agree and acknowledge that the Incoming Partner I and Incoming**



*Partner II will not be liable for any dues or obligation, of any nature whatsoever that may be owed by the partnership to anyone prior to the date of the signing of this Deed.*

*6.4 Subject to Clause 3.2 above, the Incoming Partner II shall be free and entitled to take all decisions in relation to the operation of the hospital activity in the Premises. The Partners reiterate that any decision to commence with any other activity either in the Premises or at any other location, in the name of the partnership firm, shall be taken only by a unanimous decision of all the Partners.*

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### **7. REMUNERATION OF PARTNERS:**

*7.1 Regardless of the status of the business of the of he partnership firm, the Existing Partners **as well as the Incoming Partner I will be paid an aggregate fixed remuneration of Rs,5,04,000/- (Rupees five Lakhs four thousand) per month (Remuneration), to be shared amongst the Existing Partners and Incoming Partner I in such proportion as they may agree amongst themselves.***

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**7.3. The partners have agreed that the payment of Remuneration shall be in accordance with the following timeline determined from the date of this Deed."**

| <b>Period</b>                                          | <b>Remuner<br/>ation</b> | <b>Waived</b> | <b>Deferred</b> | <b>Catch<br/>up</b> | <b>Payable</b> |
|--------------------------------------------------------|--------------------------|---------------|-----------------|---------------------|----------------|
| <i>1<sup>st</sup> - 3<sup>rd</sup><br/>month</i>       | 5,04,000                 | 5,04,000      |                 |                     | 0              |
| <i>4<sup>th</sup> - 6<sup>th</sup><br/>month</i>       | 5,04,000                 | 2,01,600      |                 |                     | 3,02,400       |
| <i>7<sup>th</sup> -18<sup>th</sup><br/>month</i>       | 5,04,000                 |               | 2,01,600        |                     | 3,02,400       |
| <i>19<sup>th</sup> -<br/>24<sup>th</sup><br/>month</i> | 5,04,000                 |               |                 | 2,01,600            | 7,05,600       |
| <i>25<sup>th</sup>-<br/>30<sup>th</sup><br/>month</i>  | 5,54,500                 |               |                 | 2,01,600            | 7,05,600       |



|                                      |          |  |  |  |          |
|--------------------------------------|----------|--|--|--|----------|
| 31 <sup>st</sup><br>month<br>onwards | 5,54,500 |  |  |  | 5,54,500 |
|--------------------------------------|----------|--|--|--|----------|

[Emphasis Supplied]

18.1. Clause 20.1 of the Reconstitution Deed provided that disputes and differences amongst the partners are to be resolved through arbitration in the following manner:

**"20.1. All disputes, differences and/or claims amongst the Partners, whether during the subsistence of the partnership or thereafter, shall be resolved through arbitration to be conducted under the provisions of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall comprise of a Sole Arbitrator to be nominated by mutual consent of all the parties to the dispute."**

[Emphasis Supplied]

19. The contention of the appellant that the liability to pay remuneration was not on the appellant, but on the partnership firm - M/s. JBS Nursing Home, cannot be sustained. It is settled law that a partnership firm is not a separate legal entity unlike a company and is merely an association of persons for carrying out the business. In law, the firm's name is just a compendious method of describing a partner. The Supreme Court in ***Dhansingh Prabhu Vs.***



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**Chandrasekar**<sup>13</sup> has while discussing this issue, held that reference to partners in their capacity as partners of a firm would be sufficient to impute the liability on the partner. Unlike a company, a partnership firm has no independent legal existence separate from its partners. It is apposite to set out the relevant extract of **Dhansingh Prabhu** case below:

**"41. A partnership firm, unlike a company registered under the Companies Act, does not possess a separate legal personality and the firm's name is only a compendious reference for describing its partners.** This fundamental distinction between a firm and a company rests on the premise that the company is separate from its shareholders. In that context, the words of Lord Macnaghten in *Aron Salomon (Pauper) v. Salomon & Co. Ltd.* [*Aron Salomon (Pauper) v. Salomon & Co. Ltd.*, 1897 AC 22 (HL)] ("*Salomon*") are instructive: (AC p. 51)

**"... The company is at law a different person altogether from the subscribers ... and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands receive the proceeds, the company is not in law, the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act."**

42. This distinction does not, however, continue to hold true for a partnership firm. In the seminal case of *Bacha F. Guzdar v. CIT* [*Bacha F. Guzdar v. CIT*, (1954) 2 SCC 563 : (1955) 27 ITR 1 : (1955) 25 Comp Cas 1], this Court had an opportunity to briefly address this distinction between a partnership firm and a company, wherein it was observed thus: (SCC p. 570, para 13)

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<sup>13</sup> (2025) 10 SCC 96



"13. It was argued that the position of shareholders in a company is analogous to that of partners inter se. This analogy is wholly inaccurate. **Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners.** Such is, however, not the case of a company which stands as a separate juristic entity distinct from the shareholders."

**43. The partnership name being only a compendious method of describing the partners, it stands to reason that a reference to the partners in their capacity as partners of the firm will be sufficient to impute liability on the partners themselves,** whereas Directors of a company are made liable vicariously through the company, upon whom falls the primary liability. Thus, the partners and the partnership firm are one and the same. **Unlike a company, a partnership firm has no independent corporate existence and has no distinct legal persona independent of its partners.** Similarly, the partners of a firm are co-owners of the property of the firm unlike shareholders in a company who are not co-owners of the property of the company. This principle was also explained by the Calcutta High Court in *Kondoli Tea Co. Ltd., In re [Kondoli Tea Co. Ltd., In re, ILR (1886) 13 Cal 43]* where the transferors of a tea estate claimed that they were eligible to claim exemption from payment of ad valorem duty because the transferee was a company in which they themselves were shareholders. Negating this contention, it was held that the company was a separate person and the transfer of the tea estate was a conveyance and in substance, a transfer to another person."

[Emphasis Supplied]

20. The Arbitral Tribunal has succinctly dealt with the contentions of the appellant and has held that a MOU and the Reconstitution Deed are the result of a single understanding reached between the parties and thus are not two separate contracts. In addition, it was held that the



argument raised by the learned counsel for the appellant that the partnership firm is required to pay the claim is without basis since the partnership firm has no independent existence. It was further held that since both the partners of partnership firm M/s. JBS Nursing Home were parties to the MOU, there was no need for the partnership firm to be impleaded as a party. The relevant extract of the Arbitral Award in this behalf of is set out below:

*"32. The contention of the Respondent that Ex.P1 and P2 are two separate contracts and therefore, the MOU and the conditions stated therein cannot be made subject matter of this arbitration **proceedings cannot be accepted. A plain reading of the two agreements make it clear that Ex.P1 sets out the broad terms of understanding which is fructified into Ex.P2.** It is not the case of the Respondent that Ex.P2 substituted Ex.P1. The main contention urged by the **Respondent is that Ex.P1 MOU is entered into by M/s.JBS Nursing Home with the Respondent with Claimants 1 and 2 as its partners, whereas, Ex.P2 deed of reconstitution has been entered into by Claimants 1 and 2 with the Respondent and also Claimant No.3, Dr. Ashwini Sreekar, therefore, parties to both the agreements being different and the partnership firm M/s. JBS Nursing Home not being party to the present proceedings this Tribunal has no jurisdiction to deal with the dispute and the dispute itself is liable to be rejected for non-joinder of necessary party.** In my considered view, this argument is not legally tenable in as much as M/s. JBS Nursing Home consisted of two partners namely Claimants 1 and 2. It is Claimants 1 and 2 for their firm for and on behalf of their firm executed the MOU. The firm **M/s. JBS Nursing Home has no existence independent of its partners. Since both the partners of erstwhile M/s. JBS Nursing Home were parties to the MOU, there was no need for M/s. JBS Nursing Home to be impleaded as a party Respondent.***



*Question of firm becoming a necessary or proper party to this proceeding would have arisen, if there was any claim against the firm. No part of the claim by the parties is directed against the firm. Particularly, the entire claim made by the Claimants **based on the MOU and the deed of reconstitution is wholly against the Respondent who has specifically undertaken to pay the amount to the Claimants as stipulated in Exs.P1 and P2.***

[Emphasis Supplied]

20.1 In addition, it was held by the Arbitral Tribunal that there was no agreement between the parties that the Claimants' remuneration would be dependent on the profits of the firm. The MOU and the Reconstitution Deed expressly mandate payment of a fixed, escalating remuneration to the Claimants in terms of the stipulated timeline, irrespective of the firm's business results. Since the Respondent retained the right to exclusively manage the affairs of the firm and to appropriate nearly the entire profits to the extent of 99%, it cannot be contended that the remuneration payable to the Claimants was to be discharged by the reconstituted firm or exclusively out of the profits generated by it in the following terms:

*33. It has to be noticed that when parties have bound themselves to the terms of the contract entered into by them, the determination of their respective rights and obligations in the arbitration proceedings would be clearly circumscribed by the terms of the agreements. None of*



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the parties can request this Tribunal to travel beyond the terms and conditions specifically agreed to by them in determining their liability. **As already extensively referred to above respondent have specifically undertaken to run the entire business on its own taking over the hospital which was hitherto run by Claimants 1 and 2 through the firm M/s. JBS Nursing Home. The Respondent has also specifically undertaken to pay fixed remuneration to the Claimants as per the schedule of payment enumerated in the MOU and reiterated in the deed of reconstitution. It is not agreed between the parties that the remuneration payable to the Claimants shall be out of the profits of the firm. In the wake of specific clause contained in Exs.P1 and P2 specifying that irrespective of the business of the firm fixed remuneration along with provision for escalation shall be paid to the Claimants as per the timeline fixed in the agreements; it is not open for the Respondent to contend or for that** matter for this Tribunal to hold that such remuneration would be payable only out of profit and subject to the firm making profit. Such an interpretation would be against the agreed terms of the contract by the parties. When a running hospital is taken over by the Respondent to manage it exclusively by making such investment, availing such loan as the Respondent deemed fit with no liability for the costs and consequences on the Claimants and with a specific stipulation that 99% of the profit shall go to the Respondent and that only fixed remuneration apart from 1% of the profit shall be payable to the Claimants who are the other partners of the firm, merely, because all the partners are termed as working partners it cannot be inferred, that the remuneration payable will be only subject to the firm making profit and only out of profit derived. **As per Section 11 of the Indian Partnership Act, 1932, the mutual rights and duties of the partners of a firm may be determined by the contract between the parties. As per Section 12 right of a partner to take part in the conduct of the business is subject to the contract.** Similar is the position under Section 13 which deals with mutual rights and liabilities of the partners. The partners' rights to share profits, his obligation to indemnify the firm, his right to receive remuneration which a partner normally is not entitled for taking part in the conduct to the business, are subject to the contract between the partners. **Therefore, when the parties have expressly agreed that**



**Claimants 1 to 3 shall be entitled for fixed remuneration and the Respondent shall enjoy almost entire profit of 99% derived by the firm with the right to exclusively manage the affairs of the firm, it is not open to hold that the remuneration is payable by the reconstituted firm and from out of the profits derived by the firm. The argument of the learned senior counsel for the respondent emphasising the word working partners used in Ex.P2 to describe the role of the claimants is also of no avail in the light of the express stipulation contained in Ex.P2.**

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**35. It is also relevant to notice here that merely because while reconstituting the firm Dr.Ashwini Sreekar is inducted as one of the partners of the firm along with the Respondent herein, it cannot be said that the present arbitration proceedings cannot deal with the rights and obligations flowing from the MOU to which Dr. Ashwini Sreekar is not a party. Admittedly, the two agreements are interconnected. The underlying purpose and venture of both the agreements are one and the same. Ex.P2 is the result of Ex.P1. Dr. Ashwini Sreekar who is inducted as a partner under the deed of reconstitution is provided with a right to have her clinic in an area of 500 sq.ft. of the hospital building in the ground floor with parking facilities for two cars. There is no dispute with regard to this area and the right to use the same by Claimant No.3. So far as remuneration payable what is stipulated in Exs.P1 and P2 are one and the same. Hence, it is not open for the Respondent to contend that Claimant No.3 not being a party to MOU, the entire claim is liable to be rejected and that this Tribunal will not have jurisdiction to entertain the dispute. In the case of Amit Lalchand Sha and Vs. Rishab and Another Civil Appeal No.4602/2018, the Supreme Court has held that where the agreements were interconnected with a similar under lined purposes would bind all the parties to the agreements, even though one of them might be lacking an arbitration clause or any entity is not party to all such agreements. Useful reference can be made to paragraphs 12 to 18 and 24 to 26 of the said judgment of the Apex Court in this connection. In the instant case, Arbitration clause is found in Exs.P1 and P2. It is only that Claimant No.3 was not a party to Ex.P1. Having regard to the facts and circumstances stated above and**



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*the nature of two documents, I am of the view that both the contracts deal with the same purpose and venture and they are interconnected; both contain arbitration clause. Claimant No.3 is not enforcing any of her individual or independent right. Hence, it cannot be stated that these proceedings are not maintainable or that this tribunal has no jurisdiction to decide the matter because of non-joinder of the firm."*

[Emphasis Supplied]

21. The Arbitral Tribunal further held that the terms of agreement reached between the parties make it clear that the appellant was responsible for carrying out the renovation and furnishing of the hospital and the claimants/respondents would not be responsible for this purpose and that the delay in commencing of the hospital business was already taken into consideration by the claimants/respondents by deferring the payment of remuneration for the first three months. The relevant extract of the Arbitral Award in this behalf is set out below:

**"36. As regards the liability of the Respondent to pay remuneration in terms of the stipulation made in Exs.P1 and P2, it is clear from the details of remuneration made payable with escalation along with provisions for wavier for few months and deferment for certain other months that the Respondent who has undertaken to make such payment is bound by the terms of the agreement. He cannot wriggle out of these terms by contending that he was required to make huge investment for renovating, furnishing, and securing new equipment for the hospital. The terms of the agreement reached between the parties make it specifically clear that it would be the entire**



**responsibility of the Respondent to make such investment for developing the hospital and that claimants shall not be responsible for any such investments.** It is further expressly agreed that the Respondent could avail loan for any such development and the claimants shall not be responsible for any such claim. In the wake of such specific terms and conditions contained in Ex.P2, it is not open for the Respondent to contend that he had undertaken large-scale renovation of the hospital building including installation of new lifts requiring certain structural alteration in the building and therefore operation of the hospital was delayed till the end of December, 2016. **No material is produced by the Respondent to establish that there was a separate contract or understanding between the Claimant and Respondent where under they agreed to relax the terms and conditions of Exs.P1 and P2 regarding the timeline for payment of remuneration or for that matter regarding renovation and structural alternation for installation of lifts thereby Claimants' agreeing to forego any part of the remuneration payable to them or to postpone payment of remuneration for certain specified months. On the contrary, the timelines stipulated in Exs.P1 and P2 takes note of the probable delay in commencing the hospital business and accounts for it by waving payment of remuneration for the first three months and by deferring the payment of part of the remuneration by few months with a provision to make up the same in future. In the light of such terms and conditions contained in Exs.P1 and P2 and in the absence of any other contract or understanding reached between the parties it is not open for this tribunal to hold that because the Respondent invested money for renovation and for installation of lifts which delayed commencement of business in the hospital. The Respondent shall not be held liable to pay remuneration to the Claimants."**

[Emphasis Supplied]

22. The interpretation of the clauses of the Reconstitution Deed by the Arbitral Tribunal is cogent, reasonable and based on the evidence placed before it.



23. Besides, an examination of the Legal Notice (Ex.P6) sent on 22.03.2017 by the respondents to the appellant shows that it sets out the appellant was in breach of the terms of the Reconstitution Deed especially in the context of making payment of the agreement remuneration. In response to the Legal notice, an email was issued on 23.03.2017 (Exhibit- P7) by the appellant, wherein the appellant has stated that it has incurred expenses in renovating the hospital and had suggested a payment schedule for payment of its pending dues. This was also reflected in the Notice dated 23.03.2017 (Exhibit-P7). Clearly thus, the contention that no amounts were due as remuneration by the appellant was an afterthought. The relevant extract of the notice (Exhibit-P7) in this behalf, is set out below:

**"2. The costs incurred by you on renovating the hospital building are of no relevance to our Clients. Our Clients' entitlement to the payments, as set out in the MOU, dated 13.02.2015 and the Deed of Reconstitution, dated 13.05.2015, is not dependent or in any manner linked to either any costs incurred by you or the performance of the hospital.**

*3. Without prejudice to the above, our Clients state that, prior to approaching our Clients with your proposal, it is not as if you were not aware of the status of the hospital building and / or the extent of costs that you would have had to or wanted to incur to operate the hospital as per*



*your requirements. In fact, **while finalising the MOU, on your request, our Clients had, graciously, agreed to a lower monthly remuneration in the beginning as you claimed that you would require utilise your funds for carrying out certain improvements to the hospital building.***

4. Further, you have, incorrectly, mentioned that you have taken the hospital building on rent. Please note that the hospital building has not been let out to you on rent. The remuneration payable to our Clients under the said Deed is not by way of rent, but is in consideration for having inducted you in their partnership. As you are aware, the hospital building is not partnership property. This is explicitly stated in the said Deed. **The hospital building is our Clients' personal property and you have been merely granted permission / licence to enter upon and operate the hospital that was already being run by our Clients quite successfully in the past. Such permission / licence is revocable at any time by notice. Our Clients state that any attempt on your part to suggest any claim on their hospital property will force our Clients to forthwith revoke the permission and demand your immediate eviction from the property."**

[Emphasis Supplied]

24. The dispute thus was *inter-se* the appellant who was the incoming partner into the partnership firm and who was obligated to conduct his business in terms of the Reconstitution Deed. In fact, the Reconstitution Deed also contained a Clause for indemnification of the respondents by the appellant being Clause 17 that the appellant will indemnify the claimants/respondents from losses, claims, costs and expenses on account of negligence in the management or otherwise which is why 99% of the share



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of the profits were the entitlement of the appellant and not the claimants/respondents.

25. Given the examination of the clauses of the MOU and Reconstitution Deed as are reproduced in paragraphs above, this Court does not find any infirmity with the interpretation of the MOU and Reconstitution Deed given by the Arbitral Tribunal.

26. It cannot also be said that the Arbitral Tribunal went beyond the terms of the contract or has re-written the contract. The Arbitral Tribunal has given its interpretation of the terms of the contract and its interpretation is based on the intention of the parties as is set out in the contract entered between the parties. Thus, the judgments in the ***Green Vs. Hertzog*** and ***Lakshmana Chetty*** cases would not be applicable in the facts of the present case.

27. The contention that the learned Commercial Court has termed the partnership firm as a 'pseudo-partnership' in the Impugned Judgment and hence, the Impugned Judgment suffers from an infirmity, also is without merit. Regardless



of the nomenclature used, the findings in the Impugned Judgment were based on an examination of the MOU including Clauses 7 to 10 of the Reconstitution Deed.

28. As set out above, it is no longer *res integra*, that the scope of interference in an Arbitral Award under Sections 34 and 37 of the A&C Act is limited. Amongst the grounds provided in the A&C Act for interference with Arbitral Award is patent illegality, which is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. [See: **PSA SICAL Terminals Pvt. Ltd. v Board of Trustees of V.O. Chidambranar Port Trust Tuticorin<sup>14</sup> and MMTC Limited v. Vedanta Limited<sup>15</sup>**].

29. The Arbitrator examines the quality and quantity of evidence placed before him when he delivers his Arbitral Award and a view, which is possible on the facts as set forth by the Arbitrator must be relied upon. In **Delhi Airport**

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<sup>14</sup> (2023) 15 SCC 781

<sup>15</sup> (2019) 4 SCC 163



***Metro Express Limited vs. DMRC<sup>16</sup>*** case, the Supreme Court has held that the very object of the Act is that there should be minimal judicial interference with an Award. It is further held that the Arbitral Tribunal holds the final authority in both facts and law and contravention of law not linked to public policy is beyond the scope of judicial interference under “patent illegality”:

*"28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the Arbitral Awards. The limited grounds available to Courts for annulment of Arbitral Awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. **There is a disturbing tendency of Courts setting aside Arbitral Awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with Arbitral Awards.** That apart, several judicial pronouncements of this Court would become a dead letter if Arbitral Awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.*

*29. **Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition,***

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<sup>16</sup>(2022) 1 SCC 131



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**contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the Arbitral Award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An Arbitral Award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".**

[Emphasis Supplied]

29.1 In the case of **State of Jharkhand & Ors. v. HSS Integrated Sdn & Anr.**<sup>17</sup>, the Supreme Court held that the Arbitral Tribunal is the master of evidence and a finding of fact arrived at by an arbitrator is on an appreciation of the evidence on record, and is not to be scrutinized as if the Court was sitting in appeal.

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<sup>17</sup>2019 (9) SCC 798



30. A similar view was taken by the Supreme Court in ***Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd. & Ors.***<sup>18</sup> It was held that the findings arrived at by the Arbitral Tribunal on the basis of the evidence on record are not to be scrutinized as if the Court was sitting in appeal. It was observed and held as under:

*"51. Categorical findings are arrived at by the Arbitral Tribunal to the effect that insofar as Respondent 2 is concerned, it was always ready and willing to perform its contractual obligations, but was prevented by the appellant from such performance. Another specific finding which is returned by the Arbitral Tribunal is that the appellant had not given the list of locations and, therefore, its submissions that Respondent 2 had adequate lists of locations. In fact, on this count, the Arbitral Tribunal has commented upon the working of the appellant itself and expressed its dismay about lack of control by the Head Office of the appellant over the field offices which led to the failure of the contract. **These findings of facts which are arrived at by the Arbitral Tribunal after appreciating the evidence and documents on record. From these findings it stands established that there is a fundamental breach on the part of the appellant in carrying out its obligations, with no fault of Respondent 2 which had** invested whopping amount of Rs.163 crores in the project. A perusal of the award reveals that the Tribunal investigated the conduct of the entire transaction between the parties pertaining to the work order, including withholding of DTC locations, allegations and counter-allegations by the parties concerning installed objects. The arbitrators did not focus on a particular breach qua particular number of objects/class of objects. Respondent 2 is right in its submission that the fundamental breach, by its very nature, pervades the entire contract and once committed, the contract as a whole stands abrogated. It is on the*

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<sup>18</sup>2018 (3) SCC 133



*aforesaid basis that the Arbitral Tribunal has come to the conclusion that the termination of contract by Respondent 2 was in order and valid. **The proposition of law that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinized as if the Court was sitting in appeal now stands settled by a catena of judgments pronounced by this Court without any exception thereto.***

[Emphasis Supplied]

31. Interpretation of a contract is a matter for an Arbitrator to determine. Even if such interpretation gives rise to an erroneous application of law, the Courts will generally not interfere, unless the error is palpably perverse or illegal and goes to the root of the matter. It is therefore to be seen whether the interpretation given by the Arbitral Tribunal is such that a fair minded or reasonable person could conclude as well, or if the interpretation by the Arbitral Tribunal is patently illegal.

32. In a recent judgment, the Supreme Court in ***Hindustan Construction Co. Ltd. v. NHAI***<sup>19</sup> recapitulated the prevailing view that Courts should not customarily interfere with Arbitral Awards that are well reasoned, and contain a plausible view. The Supreme Court observed, that

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<sup>19</sup> (2024) 2 SCC 613



judges, by nature, may incline towards using a corrective lens, however, under Section 34 of the Arbitration Act, this corrective lens is inappropriate especially under Section 37 of the Arbitration Act. It was held that the error in interpreting a Contract is considered an error within its jurisdiction. Therefore, judicial interference should be avoided unless absolutely necessary, ensuring the arbitrator's decision remains final and binding. The relevant extract of the ***Hindustan Construction*** case reads as follows:

*"26. The prevailing view about the standard of scrutiny — not judicial review, of an award, by persons of the disputants' choice being that of their decisions to stand — and not interfered with, (save a small area where it is established that such a view is premised on patent illegality or their interpretation of the facts or terms, perverse, as to qualify for interference, courts have to necessarily choose the path of least interference, except when absolutely necessary). **By training, inclination and experience, Judges tend to adopt a corrective lens; usually, commended for appellate review. However, that lens is unavailable when exercising jurisdiction under Section 34 of the Act. Courts cannot, through process of primary contract interpretation, thus, create pathways to the kind of review which is forbidden under Section 34.** So viewed, the Division Bench's approach, of appellate review, twice removed, so to say (under Section 37), and conclusions drawn by it, resulted in displacing the majority view of the tribunal, and in many cases, the unanimous view, of other tribunals, and substitution of another view. As long as the view adopted by the majority was plausible — and this Court finds no reason to hold otherwise (because concededly the work was completed and the finished embankment was made of composite, compacted*



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*matter, comprising both soil and fly ash), such a substitution was impermissible.*

**27. For a long time, it is the settled jurisprudence of the courts in the country that awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with, lightly...**

[Emphasis Supplied]

33. The Supreme Court in ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum***<sup>20</sup>, had held that where the terms of a contract are capable of more than one interpretation, the Court cannot interfere with the Award only if the Court is of the opinion that another interpretation would have been a better one. Reliance is placed on the following extract of the ***Indian Oil*** case:

*"45. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. **Whereas contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the Arbitral Award, only because the Court is of the opinion that another possible interpretation would have been a better one.**"*

[Emphasis Supplied]

34. A similar view was also taken by the Co-ordinate Bench of this Court in the case of ***M/s. Pratibha***

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<sup>20</sup> (2022) 4 SCC 463



***Industries Limited vs. M/s. Amrutha Constructions<sup>21</sup>***

has held that the Arbitral Tribunal is the final arbiter of disputes and unless the Court finds that no reasonable person could have interpreted the contract in the same manner, the interpretation of the Arbitral Tribunal of the contractual terms cannot be interfered with. The relevant extract of the ***Pratibha Industries*** case is set out below:

**"19. It is also a well-settled principle of law that challenge cannot be laid to the award only on the ground that the arbitrator has drawn his own conclusion or failed to appreciate the relevant facts. Nor can the Court substitute its own view on the conclusion of law or facts as against those drawn by the arbitrator, as if it is sitting in appeal. This aspect has been highlighted in State of Rajasthan v. Puri Construction Co. Ltd. [State of Rajasthan v. Puri Construction Co. Ltd., (1994) 6 SCC 485], where it has been observed thus: (SCC pp. 500-501, para 26)**

**"26. The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In Sudarsan Trading Co. v. State of Kerala [Sudarsan Trading Co. v. State of Kerala, (1989) 2 SCC 38] it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain**

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<sup>21</sup> COMAP NO.302 OF 2025 - order dated 01.08.2025



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*between the parties. Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of evidence.*

*The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a Judge on the evidence before the arbitrator."*

*(emphasis in original and supplied)*

**20. As long as the arbitrator has taken a possible view, which may be a plausible view, simply because a different view from that taken in the award, is possible based on the same evidence, would also not be a ground to interfere in the award.** In *Arosan Enterprises Ltd. v. Union of India* [*Arosan Enterprises Ltd. v. Union of India*, (1999) 9 SCC 449], this Court has held as follows: (SCC p. 475, para 36)

*"36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award."*

**23. We are unable to accept that the view expressed by the Arbitral Tribunal is perverse or that it fails the Wednesbury test; that is, no reasonable person could**



**possibly hold the said view.** *It is also material to note that the claim of the appellant was for subcontractor charges. The Arbitral Tribunal's view that the charges were for performing the contractual obligations of executing the project cannot be held to be perverse or an implausible one."*

[Emphasis Supplied]

35. The Arbitral Tribunal examined and interpreted the provisions of the contract and the learned Single Judge upheld all the findings of the Arbitral Tribunal after examining the same. The findings of the Arbitral Tribunal are not patently illegal or against public policy. The view taken by the Arbitral Tribunal in its interpretation also does not ignore any vital evidence.

36. So far as concerns the contention of the appellant that the MOU ceases to exist when the Reconstitution Deed was signed, thus, no payments were due to be made, cannot also be sustained either. As stated above, the MOU was executed by the partnership firm represented by its partners respondent Nos.1 and 2 and the appellant. The MOU clearly stated that the partners were going to enter into a separate agreement within 30 days from the date they obtained the renewal of lease of the premises and such a separate agreement was executed as Reconstitution Deed



about three months thereafter. The Reconstitution Deed as its name suggests, was a Deed of Reconstitution of the partnership firm and the Reconstitution Deed was executed by the claimants/respondents as well as the appellant. Thus, this Court is unable to interfere with the findings given by the Arbitral Tribunal.

37. So far as concerns the counter claim of the appellant which was for a direction to produce audited balance sheets and profit and loss accounts of the reconstituted partnership as of 31.03.2015 and to appoint a Commissioner examining the reconstituted partnership firm's receipt and expenditure for the period 2015-16 to 2017-18, both Arbitral Tribunal as well as the learned Commercial Court have found that the direction to claimants/respondent Nos.1 and 2 to produce audited balance sheets and profit and loss accounts of the partnership firm in the financial year 2015 was not requisite since the firm was reconstituted in May 2015 and reconstituted firm would have to maintain its accounts with effect of its date of reconstitution. There is no claim made by the appellant towards payment since none was



envisaged in the contract between the parties. Thus, there would be no purpose to obtain these records as was claimed by the appellant. In any event, this issue was not pressed before this Court.

**VIII. CONCLUSION :**

38. In view of the aforesaid discussions, this Court finds no infirmity with the findings of the Arbitral Tribunal which were affirmed by the learned Commercial Court, that would merit interference by this Court. The Appeal is accordingly ***dismissed***. All pending applications stand closed.

39. However, in the circumstances of the case, there shall be no order as to costs.

Digitally signed by ANU  
SIVARAMAN  
Location: High Court of  
Karnataka  
**(ANU SIVARAMAN)**  
**JUDGE**

Digitally signed by TARA  
VITASTA GANJU  
Location: HIGH COURT  
OF KARNATAKA  
**(TARA VITASTA GANJU)**  
**JUDGE**

KS/JJ