



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 477 OF 2024

BETWEEN:

1. M/S. N.D. DEVELOPERS PVT. LTD.
REP. BY ITS MANAGING DIRECTOR
MR. M.K.K NAYEEM DURANI
OFFICE AT: 398, 1ST FLOOR
7TH CROSS, MICO LAYOUT
BTM 2ND STAGE, BENGALURU - 560 076

...APPELLANT

(BY SRI SRINIVASAN RAGHAVAN, SENIOR ADVOCATE A/W
SRI VEGADARSHI K, ADVOCATE FOR
SMT. MANEESHA KONGOVI, ADVOCATE)

AND:

1. M/S. G. M. INFINITE DWELLINGS
(INDIA) PVT. LTD.,
REP. BY ITS CHAIRMAN-MANAGING DIRECTOR
MR. GULAM MUSTAFA
OFIE AT: 06, G.M. PEARL
1ST STAGE, 1ST PHASE
BTM LAYOUT, BENGALURU 560 068

...RESPONDENT

(BY SRI J.P. DARSHAN, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURTS ACT, 2015 AND SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT 1996 PRAYING TO SET ASIDE THE JUDGMENT DATED 15.07.2024 PASSED BY THE LXXXVII ADDITIONAL CITY CIVIL & SESSIONS JUDGE AT BANGALORE (CCH NO.88) IN COM.A.P. NO.99 OF 2022 (ANNEXURE-A) AND ETC.



THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant [**NDPL**] has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning an order dated 15.07.2024 [**impugned order**] passed by the Court of LXXXVII Additional City Civil and Sessions Judge, Bengaluru [**Commercial Court**] in Com. A.P No.99/2022.

2. The respondent had filed the said application under Section 34 of the A&C Act seeking setting aside of the arbitral award dated 27.06.2022 passed in A.C No.285/2021 [**impugned award**] rendered by an arbitral tribunal comprising a sole arbitrator [**Arbitral Tribunal**] appointed by this Court by an order dated 08.10.2020 passed in CMP No.132/2018.

3. The impugned award was rendered in the context of the disputes that had arisen between the parties in connection with a



Memorandum of Understanding dated 02.05.2017 [the **Agreement**].

4. The respondent had filed its statement of claim, *inter alia*, praying as under:

"Pass an Award directing the Respondent to Assign the Development Rights of the Suit Schedule Properties to the Petitioner in terms of the Memorandum of Understanding and Assignment agreement dated 02.05.2017."

5. As is evident from the above, the respondent claimed an award for specific performance of the Agreement. The Arbitral Tribunal dismissed this claim. However, it awarded an amount of ₹9,30,00,000/- (Rupees nine crore thirty lakh only) along with interest at the rate of 6% per annum from 07.11.2017 until the date of payment, in favour of the respondent. The Arbitral Tribunal was of the view that although the claim for specific performance of the Agreement could not be granted, the respondent was entitled to a refund of the amount paid as part of the consideration due under the Agreement.

6. NDPL accepted the impugned award and did not prefer an application under Section 34 of the A&C Act to set it aside.



PREFATORY FACTS

7. NDPL is a company incorporated under the Companies Act, 1956 and is engaged in the business of developing real estate. NDPL had acquired development rights to construct a multi-storied apartment complex in respect of the subject land which is described below:

Sr No	Village	Survey No	Hissa No	Area	
				Acres	Guntas
1	Doddakannelli	117	2	0	29
2	Doddakannelli	115	2	0	27
3	Doddakannelli	117	2	1	15
3	Doddakannelli	118	1	2	00
4	Doddakannelli	119	0	0	16½
5	Doddakannelli	115	2	0	27
6	Doddakannelli	117	2	1	18
TOTAL				7	12½

8. The respective owners of the parcels of land comprising the subject land had executed joint development agreements with NDPL for the development of an apartment complex [**Project**] on the subject land.

9. Apparently, NDPL found it difficult to execute the development works due to paucity of financial resources and



therefore, entered into a Memorandum of Understanding dated 02.09.2014 [**the MoU**] with another company engaged in real estate development, M/s. G-Corp Developers Private Limited [**G-Corp**], for the development of the Project. According to NDPL, it entered into a settlement whereby G-Corp agreed to cancel the MoU for a consideration of ₹11,00,00,000/- (Rupees eleven crores only).

10. In the above background, the parties entered into the Agreement under which NDPL agreed to assign its development rights in respect of the subject land to the respondent. NDPL also represented that the MoU with G-Corp had not been acted upon and was mutually cancelled. NDPL had agreed to pay an amount of ₹11,00,00,000/- (Rupees eleven crores only) to G-Corp.

11. In terms of the Agreement, the respondent agreed to pay a sum of ₹47,00,00,000/- (Rupees forty seven crores only) as consideration for NDPL assigning the development rights.

12. The respondent paid a sum of ₹9,30,00,000/- (Rupees nine crore and thirty lakh only) and did not pay the balance amount. Resultantly, NDPL sent a notice dated 07.08.2017 calling upon the



respondent to pay the balance amount of ₹37,70,00,000/- (Rupees thirty seven crore and seventy lakh only) as agreed under the Agreement. Concededly, the respondent did not send any written response to the said notice. However, thereafter, the respondent issued a notice dated 07.11.2017, invoking the arbitration agreement and seeking consent to the appointment of a sole arbitrator. Thereafter, the respondents filed a petition under Section 11 of the A&C Act before this Court (CMP No. 132/2018), which was allowed. The respondent filed its statement of claims before the Arbitral Tribunal, and NDPL filed its statement of objections.

13. The arbitral proceedings culminated in the impugned award.

THE DISPUTE

14. The respondent filed a statement of claims stating that NDPL had represented that the MoU with G-Corp was cancelled for a payment of ₹11,00,00,000/-. It claimed that NDPL had given the respondent to understand that it would secure documents confirming the cancellation of the MoU dated 02.09.2014, which was entered into between NDPL and G-Corp. It claimed that NDPL had also assured that it would secure the signatures of the landowners to confirm the joint development agreements in favour



of the respondent. Additionally, it would extend full cooperation to the respondent until completion of the Project.

15. The respondent claimed that, under the Agreement, NDPL was required to secure rectification of the joint development agreements and general powers of attorney from the landowners, confirming the assignments of those agreements in favour of the respondent. It claimed that there were constant negotiations and communications between its officials and the representatives of the NDPL regarding progress in that regard. However, NDPL did not take the necessary steps to perform its obligations under the Agreement. The respondent claimed that NDPL's inaction led to the Agreement's terms being neglected.

16. The respondent also claimed that it had requested NDPL to settle the matter with G-Corp and forward the draft to the respondent but, NDPL neither forwarded the settlement agreement nor presented a concrete proposal to negotiate with G-Corp regarding the assignment of the development rights.

17. The respondent also acknowledged receipt of a notice dated 07.08.2017 and was ready and willing to pay the balance of the



consideration. However, it claimed that NDPL would be entitled to the same only on performance of its obligations under the Agreement.

18. The respondent filed a petition before the learned Commercial Court (AA No.346/2017) seeking interim measures of protection restraining NDPL from encumbering or transferring development rights in respect of the Project. The learned Commercial Court passed an *exparte* order dated 04.09.2017; however, it vacated the same on 14.08.2019.

19. Thereafter, the respondent also filed an appeal (MFA No.968/2020) seeking interim measures of protection. This Court passed an order dated 23.11.2020 restraining NDPL from transferring the development rights to any third party and extended the interim order for a period of six weeks to enable the respondent to approach the Arbitral Tribunal.

20. The respondent once again approached the learned Commercial Court in Com A.A.No.202/2021 for interim measures of protection. By an order dated 16.11.2021, the learned



Commercial Court restrained NDPL from encumbering or changing the nature of the subject land.

21. NDPL filed its written statement of objections to the respondent's claim for interim measures under Section 17 of the A&C Act. It claimed that the respondent had agreed to pay upfront consideration of ₹47,00,00,000/- out of which ₹11,00,00,000/- was required to be paid directly to G-Corp on or before 30.05.2015 to enable NDPL to complete the settlement with G-Corp for cancellation of the MoU between NDPL and G-Corp. However, the respondent failed to pay the amount of ₹11,00,00,000/- as agreed under Clause 6 of the Agreement. NDPL claimed that since the respondent had failed to make payment as agreed, it had lost all rights under the said Agreement.

THE IMPUGNED AWARD

22. The Arbitral Tribunal examined the rival contentions and framed the following issues for consideration:

"1. Whether the claimant proves that it is entitled to the assignment of the development rights of the of the suit schedule property in terms Memorandum of Understanding and the Assignment Agreement dated 02.05.2017?



2. Whether the respondent proves that the claimant has committed the breach of the MOU disentitling to it to claim any relief?
3. Whether the respondent proves that the MOU is not capable of specific performance?
4. Whether the respondent proves that this petition suffers from the non-joinder of necessary parties?"

23. The Arbitral Tribunal observed that the respondent had paid ₹9,30,00,000/- but failed to settle the remaining ₹37,70,00,000/- within the specified period. The Tribunal concluded that the respondent was not entitled to demand the assignment of development rights because it had not paid the agreed consideration and had not requested additional time to do so. Furthermore, the Arbitral Tribunal noted that the legal notice dated 07.08.2017 issued on behalf of NDPL elicited no response.

24. The Arbitral Tribunal accepted NDPL's contention that further steps for cancellation of the MoU between NDPL and G-Corp could not be taken as the respondent had failed to pay the amount of ₹11,00,00,000/- to G-Corp as agreed under Clause 6.3 of the Agreement. The Arbitral Tribunal also found that the respondent had failed to establish that it was ready and willing to perform its obligations of the Agreement. Accordingly, the first



issue – Whether the respondent was entitled to assignment of the development rights – was decided against the respondent. The Arbitral Tribunal faulted the respondent for failing to comply with its payment obligations under the Agreement. Notwithstanding the same, the Arbitral Tribunal held that the respondent would be entitled to a refund of the amount of ₹9,30,00,000/- even though it had not performed its obligations under the Agreement.

THE IMPUGNED ORDER

25. The learned Commercial Court examined the opposing arguments and ruled that the terms and clauses of the Agreement are reciprocal in nature, binding both NDPL and the respondent. The learned Commercial Court noted that since the Agreement was dated 02.05.2017 and NDPL issued a legal notice on 07.08.2017 demanding the respondent to settle the remaining payment, it indicated that during this period, NDPL had not fulfilled its obligations to secure signatures from the landowners or to attempt executing the cancellation deed with G-Corp. The learned Commercial Court also observed that NDPL's act of simply issuing a legal notice without taking steps to meet its responsibilities demonstrated a failure to perform its part of the obligations and



faulted the Arbitral Tribunal for not recognising this. The learned Commercial Court concluded that it was evident that both parties failed to carry out their respective obligations and faulted the Arbitral Tribunal for overlooking NDPL's failure to persuade the landowners and G-Corp to execute the required documents.

26. The learned Commercial Court referred to Sections 51 to 54 and Section 20 of the Indian Contract Act, 1872 [**the Contract Act**] and observed that no promisor is required to perform his promise unless the other party is ready and willing to perform the reciprocal promise. In this case, NDPL had also not come forward to perform its obligations for bringing the landowners and G-Corp to execute the assignment deed in favour of the respondent. The learned Commercial Court held that the impugned award was contrary to the specific terms of the Agreement and thus, was liable to be interfered with on the ground that it is patently illegal and opposed to the public policy of India.

27. The learned Commercial Court referred to the decisions of the Supreme Court in the case of **Associate Builders vs. Delhi**



Development Authority¹ and Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Limited² and held that the impugned award was contrary to the specific terms of the Agreement and opposed to public policy of India.

REASONS AND CONCLUSIONS

28. As apparent from the above, the dispute between the parties essentially centres around the terms of the Agreement.

29. The recitals of the Agreement clearly record that NDPL was required to pay a sum of ₹11,00,00,000/- to G-Corp for cancellation of the MoU.

30. The parties had agreed that NDPL would execute and register the assignment agreement assigning the joint development agreements and the powers of attorney on the terms and conditions set out in the Agreement. NDPL was referred to as the party of the first part, and the respondent was referred to as the party of the second part in the Agreement. The second recital and

¹ (2015) 3 SCC 49

² (2003) 5 SCC 705



some of the clauses of the Agreement, which are relevant to the dispute, are set out below:

"AND WHEREAS, the PARTY OF FIRST PART though acquired the development rights from the erstwhile owners in the manner above said have found it difficult to carry out the development works owing to their financial shortfall have with an intent to delegate the development rights to another Developer, had entered into a Memorandum of Understanding dated 02.09.2014 with one M/s.G:Corp Developers Pvt.Ltd and since the same was not acted upon, the said MOU was mutually cancelled by the PARTY OF FIRST PART and the said M/s.G:Corp Developers Pvt.Ltd and in lieu of the cancellation the PARTY OF FIRST PART has agreed to settle a sum of Rs.11,00,00,000/- (Rupees Eleven Crores only) to the said M/s. G:Corp Developers Pvt.Ltd.

xxx xxx xxx

- 2.1 The PARTY OF FIRST PART and PARTY OF SECOND PART shall duly execute and register an Assignment Agreement of the Joint Development Agreements and General Powers of Attorney on the terms and conditions contained herein.
- 2.2 That in pursuance of this Agreement and in consideration of the benefits accruing herein, the PARTY OF FIRST PART hereby agree to assign the Development rights to develop the Schedule Property for construction of apartment complex on the terms and conditions set-forth in the said Joint Development Agreements and the PARTY OF SECOND PART agrees to develop the Schedule Property in accordance with the terms of the said Joint Development Agreements and in accordance with the Applicable Laws.
- 2.3 That on registration of the Deed of Assignment of Joint Development Agreements, the PARTY OF SECOND PART shall be duly placed in the position of the PARTY OF FIRST PART and the PARTY OF SECOND PART shall be vested with all the rights, obligations and



powers acquired by the PARTY OF FIRST PART under the said Joint Development Agreements.

2.7 That the PARTY OF FIRST PART shall ensure that they shall bring the OWNERS and to secure their signatures whenever required to substantiate the Assignment of the Joint Development in favour of the PARTY OF SECOND PART and the PARTY OF FIRST PART shall be solely responsible to ensure that the OWNERS shall extend their full cooperation to the PARTY OF SECOND PART in joint development in all respect until the completion of the project."

31. It is clear from the above that the parties had agreed to execute a Deed of Assignment of Joint Development Agreements, and on the said deed being registered, the respondent would be vested with all rights and obligations of NDPL under the joint development agreements. In consideration of the same, the respondent had agreed to pay a sum of ₹47,00,00,000/-. Clause 6 of the said Agreement, which sets out the consideration to be paid by the respondent, is set out below:

"6. CONSIDERATION:

In Consideration of the OWNERS/ PARTY OF FIRST PART entering into this Assignment of Joint Development Agreement the PARTY OF SECOND PART shall pay upfront consideration of Rs.47,00,00,000/ (Rupees Forty-Seven Crores) to the PARTY OF FIRST PART in the following manner:

6.1. The PARTY OF SECOND PART has this day paid a sum of Rs.1,00,00,000/-(Rupees One Crore only) through-a-Cheque bearing No-002172, dated 02.05.2017 drawn at Bank of Baroda, BTM Layout



Branch, Bangalore to the PARTY OF FIRST PART and the receipt whereof is duly admitted and acknowledged by the PARTY OF FIRST PART towards the advance and part sale consideration.

6.2. The PARTY OF SECOND PART has also paid a sum of Rs.4,00,00,000/-(Rupees Four Crores only) to the PARTY OF THE FIRST PART in the following manner;

(a) A sum of Rs.2,00,00,000/-(Rupees Two Crores only) vide Cheque bearing No-002175, dated 04.05.2017 drawn at Bank of Baroda, BTM Layout Branch, Bangalore and

(b) A sum of Rs.2,00,00,000/-(Rupees Two Crores only) vide Cheque bearing No-002174, dated 10.05.2017 drawn at Bank of Baroda, BTM Layout Branch, Bangalore and the receipt whereof is duly admitted and acknowledged by the PARTY OF FIRST PART towards the part sale consideration.

6.3. The PARTY OF SECOND PART shall pay a sum of Rs. 11,00,00,000/-(Rupees Eleven Crore only) to the said M/s.G:Corp Developers Pvt.Ltd through the PARTY OF FIRST PART on or before 30th May 2017 for the purpose of settlement to the said M/s.G:Corp Developers Pvt.Ltd towards the final settlement for the cancellation of the Memorandum of Understanding entered between the Party of FIRST PART and the said M/s.G: Corp Developers Pvt.Ltd.

6.4. The PARTY OF SECOND PART shall pay a sum of Rs. 10,00,00,000/-(Rupees Ten Crores only) on or before 15th June 2017 to the PARTY OF FIRST PART towards the part Sale Consideration.

6.5. The PARTY OF SECOND PART shall pay the balance sum of Rs.21,00,00,000/-(Rupees Twenty One Crores only) to the PARTY OF FIRST PART within a period of 90 days from this date towards the total sale consideration for the assignment of the Joint Development pertaining to the Schedule Properties.



6.6. That the PARTY OF FIRST PART shall duly settle the agreed payment of Rs.11,00,00,000/- (Rupees Eleven Crores only) to the M/s.G.:Corp Developers Pvt.Ltd and cancel the Memorandum of Understanding dated 02.09.2014, under execution of necessary documents and deliver the same to the PARTY OF SECOND PART."

32. In addition to the above, the respondent had also undertaken to complete the entire development of the Project within thirty-six months of the plan sanction date, with a further six-month grace period.

33. Clause 8 of the Agreement is relevant and is reproduced below:

"8. TIME LINE FOR COMPLETION OF THE PROJECT:

8.1.The PARTY OF SECOND PART shall complete the entire -Development in respect of the Project within 36 months (construction period) from the Plan Sanction date/ Commencement Certificate obtained from Authority, with a further extension of 06 months grace period and in the case of any Force Majeure events the time shall be further extended based on the nature of the Force Majeure.

8.2.The PARTY OF SECOND PART shall at their cost engage architects, engineers and contractors who have, the necessary experience and expertise to construct the Residential Apartment If any dispute arises between the PARTY OF SECOND PART and architects, engineers, contractors, laborers and/or material suppliers engaged and/or appointed by the PARTY OF SECOND PART for execution of the development work on the Schedule Property and shall be resolved and/or settled by the



PARTY OF SECOND PART on his own and at his own costs."

34. It is apparent from the above that a specific timeline had been agreed for payment of the "upfront" consideration of ₹47,00,00,000/-. Clause 6.3 of the Agreement is relevant. In terms of the said clause, the respondent was required to pay a sum of ₹11,00,00,000/- directly to G-Corp "through NDPL" on or before 30.05.2017 towards the final settlement for the cancellation of the MoU entered into between NDPL and G-Corp. Plainly, NDPL could not execute and register the final deed of assignment prior to payment of the consideration.

35. It is not necessary for this Court to re-adjudicate the disputes between the parties, as that is not within the scope of proceedings under Section 34 or 37 of the A&C Act. The Arbitral Tribunal examined the dispute between the parties and found that the respondent failed to perform its obligations. The Arbitral Tribunal found that the respondent had failed to pay even the initial amount of ₹11,00,00,000/-, which was necessary for settling the amounts due for cancellation of the Memorandum of Understanding between NDPL and G-Corp.



36. NDPL had issued a notice calling upon the respondent to pay the balance amount. However, the respondent had not sent any written response to the said notice. Although the respondent stated that there were discussions and negotiations, no written communication was sent by the respondent calling upon the NDPL to comply with any specific obligation.

37. Although the learned Commercial Court had referred to Sections 51 to 54 of the Contract Act, it had not indicated which section would be applicable in the present case. Clearly, Sections 53 and 54 of the Contract Act have no application, as no one has claimed that the respondent was prevented by NDPL from performing its obligations. There is no dispute that the Agreement also contained obligations that NDPL was required to perform. However, the question whether the said obligations were required to be performed prior to receipt of consideration is a contentious issue.

38. Clause 6 of the Agreement expressly provided that the respondent "shall pay upfront consideration of ₹47,00,00,000/ (Rupees Forty-Seven Crores)". However, according to the respondent, the word



‘upfront’ was not descriptive of when the payment was to be made, but merely defined the consideration.

39. The Arbitral Tribunal examined the matter and found that the respondent had failed to perform its obligations. Clearly, it was not open for the learned Commercial Court to re-adjudicate the said issue and substitute its opinion in place of that of the Arbitral Tribunal. The Court was not required to act as a first appellate court, re-evaluate the evidence and material relied upon by the parties and re-adjudicate the disputes. In **MMTC Ltd. v. Vedanta Ltd.**³, the Supreme Court explained the scope of interference under Section 34 of the A&C Act as under:

"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*

³ (2019) 4 SCC 163



[*Associated Provincial Picture Houses v. Wednesbury Corpn.*, (1948) 1 KB 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. (See *Associate Builders v. DDA* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see *ONGC Ltd. v. Saw Pipes Ltd.* [*ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705] ; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation* [*Hindustan Zinc Ltd. v. Friends Coal Carbonisation*, (2006) 4 SCC 445] ; and *McDermott International Inc. v. Burn Standard Co. Ltd.* [*McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181])"

40. In **PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar**

Port Trust⁴, the Supreme Court reiterated the aforesaid principle of law and held as under:

"40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappraise the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public

⁴ (2023) 15 SCC 781



policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. The Arbitral Tribunal, in addition to a finding that the respondent had failed to perform its obligation, also held that the Agreement could not be specifically enforced. Undisputedly, the specific performance of the assignment of the development rights would require the consent of the owners of the parcels of land comprising the subject land. It is also the respondent's case that the performance of the Agreement required NDPL to bring the landowners and secure their signatures confirming the rectification of the joint development agreements executed between NDPL and the respective landowners. The Arbitral Tribunal could not have



issued any directions in this regard as the landowners were not parties to the Agreement. Thus, they could not be compelled to agree to the assignment of joint development rights to the respondent. The learned Commercial Court has not appreciated the Arbitral Tribunal's findings in this regard.

42. The Arbitral Tribunal also held that the respondent had failed to establish that it was ready and willing to perform its obligations. Concededly, the respondent had not produced any documents or materials to establish that it had made arrangements to pay ₹37,70,00,000/- that remained to be paid to NDPL.

43. Although the learned Commercial Court referred to the Supreme Court's decision in **Associate Builders** (*supra*), the decision to hold that the impugned award is patently illegal or opposed to public policy is contrary to the *ratio decidendi* of that decision. The impugned order travels beyond the scope of interference in an arbitral award, as explained in the said decision.

44. The fundamental premise that the impugned award is contrary to the provisions of the Contract Act is also not substantiated. The learned Commercial Court has not pointed the



provisions of the Contract Act, which the impugned award falls foul of.

45. We are unable to accept that the impugned award can be readily inferred as being contrary to the terms of the Agreement between the parties.

46. The learned Commercial Court has erred in embarking on the exercise, which is clearly in the nature of re-adjudication of the disputes between the parties. The adjudicatory exercise conducted by the learned Commercial Court is beyond the scope of Section 34 of the A&C Act. The learned Commercial Court was required to examine whether the impugned award is required to be set aside on the grounds as set out in Section 34 of the A&C Act and not re-adjudicate the dispute.

47. The contention that the impugned award is patently illegal and thus, liable to be set aside under Section 34(2A) of the A&C Act, is also unsustainable. We consider it apposite to refer to the following passage in the case of **Delhi Airport Metro Express (P)**



Ltd. vs. DMRC⁵, which explains the scope of the ground of patent illegality:

"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, 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 reappraise 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".

48. It is clear from the above that the ground of patent illegality is available only if the patent illegality goes to the root of the dispute, and the Arbitral Tribunal's view is not a plausible one.

⁵ (2022) 1 SCC 131



49. In the present case, we are unable to accept that the impugned award is vitiated by patent illegality on the face of the award.

50. The appeal is, accordingly, allowed and the impugned order is set aside.

51. The parties are left to bear their own costs.

52. The pending interlocutory application also stands disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**