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

Date of Judgement: 23rd April, 2018

+ **FAO(OS) 259/2017 & CM No. 34818/2018**

**NATIONAL PROJECTS CONSTRUCTION
CORPORATION LTD**

.....Appellant

Through: Mr.Anup J. Bhambhani, Senior
Advocate with Mr.Rajat Arora,
Advocate

Versus

HARVINDER SINGH & COMPANY

...Respondent

Through: Mr. Bhrighu Dhami and Mr.
Ankur Nagar, Advocates

**CORAM:-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR JUSTICE C. HARI SHANKAR**

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(JUDGMENT)

C. HARI SHANKAR, J.

1. We had, after hearing learned counsel for the parties, pronounced our order, on 23rd April, 2018, dismissing the present appeal, for reasons to be recorded separately. This judgment proceeds to record the reasons for our decision.

2. M/s Container Corporation of India Ltd. (hereinafter referred to as “CONCOR”) invited tenders for construction of the pavement for development of the DCT, Okhla, New Delhi. Among others, the appellant herein, M/s National Project Construction Corporation Ltd., submitted its tender for the said project. Side by side, the appellant entered into a Memorandum of Understanding (MOU), dated 4th December, 2003, with the respondent herein, M/s Harvinder Singh & Company, for a “pre-tender tie up” for execution of the aforementioned work of construction of the pavement for development of the DCT, Okhla, New Delhi. Clauses 1 to 5, 8, 9, 12, 18 and 21 of the said MOU, which are self-speaking, may be reproduced as under:

“1. NPCC, Limited has decided to participate in the tender for the work of construction of Pavement for development of DCT Okhla, New Delhi on CONCOR.

2. M/ HSC’s offer has been accepted for pre-tender tie up for the execution of above said work at rates quoted in their offer dated 2.12.03 and on the terms and conditions as contained in the N.I.T of “Client” issued to NPCC Limited and subsequently issued by “NPCC Limited to M/s HSC”. M/s. HSC further confirmed that rates quoted by them are inclusive of taxes, duties, levies, and royalties including WCT/TOT etc. Total TOT/WCT payable on NPCC’s contract value with client shall be responsible of M/s. HSC. In case NPCC pays any WCT/TOT on the above project, the same shall be recovered from M/s. HSC by deduction from bills.

3. In the event of NPCC Limited being successful in getting the work, NPCC Limited has agreed to award M/s. HSC at the rates quoted by M/s. HSC in their offer dated

2.12.03 on back to back basis after proportionate reduction to the extent NPCC Limited may have to reduce their rates in consultation with M/s. HSC to bag this work and on the terms and conditions contained in the original tender documents issued to NPCC Limited by the client and additional conditions as contained in the MOU, which shall prevail over the conditions in tender document.

4. EMD for the tender as part of NIT conditions will be arranged by M/s. HSC in the name of NPCC. EMD shall be refunded to M/s. HSC after receiving from the client, in case works are not allotted to NPCC Limited.

5. This Memorandum of Understanding shall be valid till the award of work to NPCC Limited by the client and signing of the detailed agreement between NPCC Limited and M/s. HSC and become part of the agreement. In case the work is allotted by the client to any other agency, this MOU will automatically end without any liability to either side.”

3. Consequent on acceptance of the appellant’s bid by CONCOR, the appellant issued a Letter of Intent (LOI), dated 8th April, 2004, to the respondent, which reads thus:

*“M/s. Harvinder Singh & Co.
7-A, Tamoor Nagar, Opp. Gurudwara,
Near Friends Colony,
New Delhi – 110065.*

Sub: Letter of intent for the work of Construction of Pavement for development of DCT Okhla, New Delhi.

*Ref: i) Tender No. CON/EP/OKH/132C/PAV/2003
ii) Your offer dated 2.12.03.
iii) MOU signed on dated 4.12.2003
iv) Your letter dated 13.01.04
v) Your letter dated 15.01.04*

- vi) Your letter dated 19.02.04
- vii) Your letter dated 22.03.04
- viii) Your letter dated 22.03.2004
- ix) Your letter dated 05.04.04.

Dear Sir,

We are pleased to award you the above cited work as per your offers for the work as referred above on term and conditions as contained in the tender document of M/s CONCOR for the subject work, additional conditions as contained in MOU signed on dated 4.12.03, and LOI as issued by client dated 02.03.2004 for totals value of Rs. 599.39 lacs. The rate payable to you for the contract items shall be 5.50% (five point five zero percent) below the rates payable to NPCC by M/s. CONCOR. The rates for extra items and claims shall be as per MOU. The work shall be completed in all respect by 01.03.2005.

You are requested to immediately submit CPM/PERT chart indicating clearly the manner in which all the activities will be carried out by you to ensure completion of work by the scheduled date.

You are further requested to mobilize at site and to start work immediately and contact unit office- NPCC Limited, CONCOR Unit New Delhi for taking further instructions in this regard. The detail work order / agreement shall be issued to you in due course.

The LOI is being issued to you in duplicate, you are requested to return one copy of the same duly signed and stamped as token of your acceptance.

*Thanking you,
Yours faithfully,*

*(N.K.S.Gahlot)
Dy. General Manager (CO)''*

4. As required by the MOU, dated 4th December, 2003 (*supra*), the appellant and the respondent entered into a formal agreement dated 1st September, 2004. The said agreement may be reproduced, in *extenso*, thus:

*“NATIONAL PROJECTS CONSTRUCTION CORPORATION
LIMITED*

AGREEMENT FOR WORK

This agreement No. 799/Cont/made on this 1st day of Sept, 2004 between National projects Construction Corporation Limited Company registered under the Companies Act 1956 and having its registered office at Raja House, 30-31, Nehru Place, New Delhi – 110 019 in the State of Delhi on one part (hereinafter referred to as “NPCC Limited” which expression shall unless the context require otherwise include its administrators, successors and assigns) and M/s Harvinder Singh & Co. (a partnership firm) having its office at 7-A, Tamoor Nagar, Opp. Gurudwara Near Friends Colony, New Delhi – 110 065 (hereinafter referred to as “M/s HSC” which expression shall unless the context requires otherwise include its administrators, successors and assigns) of the other part.

WHEREAS M/s HSC has submitted the tender for the performance of the work i.e. Construction of Pavement for development of DCT Okhla, New Delhi (hereinafter referred to as said work).

WHEREAS the NPCC Limited has issued a letter of intent to M/s HSC vide NPCC Limited letter no. 799/Cont/1353 dated 8.4.2004 and this letter of intent is accepted unconditionally by M/s HSC, NPCC Limited issued LOI bearing no. 799/cont/1353 dated 8.4.2004 on back to back basis at the total cost of Rs. 599.39 lacs i.e. 5.50 % (five point five zero percent) below the rates payable to NPCC from M/s CONCOR and M/s HSC has agreed and confirmed their unconditional acceptance to the NPCC Limited’s said letter of intent.

NOW THIS INDENTURE WITNESSETH that in consideration of the payment to be made by NPCC Limited to M/s HSC's aforesaid letter of acceptance the M/s HSC will duly perform the said work and shall execute the same with great promptness care and accuracy in workman like manner to the satisfaction of NPCC Limited and complete the same in accordance with the said specification, drawing, site instruction and conditions of contract and complete the same within Eleven months from the date of issue of acceptance letter of client i.e. 02.02.2004 and further will observe to and keep all the conditions contained in the NPCC LIMITED'S letter of accepts which shall be deemed and taken as to be integral part of the agreement).

The following shall be the part of the agreement,

- 1. HSC's offer dated 2.12.03.*
- 2. NPCC Limited letter of intent no. 799/cont/1353 dated 08.04.04 duly accepted by M/s HSC.*
- 3. Tender No. CON/EP/OKH/132C/PAV 2003*
- 4. MOU signed on 4.12.2003 between NPCC Limited and M/s. HSC.*
- 5. M/s. HSC's letter dated 13.01.04.*
- 6. M/s HSC's letter dated 15.01.04.*
- 7. M/s HSC's letter dated 19.02.04.*
- 8. M/s HSC's letter dated 22.03.04.*
- 9. M/s HSC's IInd letter dated 22.03.04.*
- 10. M/s HSC's letter dated 05.04.04.*
- 11. NPCC agreement with M/s. CONCOR for this work terms, conditions, specification etc, as applicable to NPCC Limited.*
- 12. Additional terms and conditions of NPCC Limited.*
- 13. Schedule 'A' – Schedule of Items, Rates and Quantities based on NRSOR – 96*
- 14. Schedule 'B' – Schedule of Items, Rates and Quantities (non schedule items).*

AND THE NPCC LIMITED do hereby agree that if M/s. HSC shall duly perform the same work in the manner aforesaid and observe to keep the said terms and conditions NPCC Limited will pay cause to be paid to M/s HSC for the said work, due in

that respect, the rates payable to NPCC by the M/s. CONCOR minus the percentage as agreed to foregoing para.

It is hereby agreed that all the provision of the said conditions, specifications which have been carefully read and understood by M/s. HSC and bill of quantities shall be all binding upon M/s. HSC and upon NPCC LIMITED and if the same has been repeated herewith shall be read as part of these presents.

*For M/s HSC
Witnesses:
13/9/04*

*For M/s. NPCC Limited
Witnesses:
13/9/04”*

5. Additional terms and conditions were also attached, to the said agreement, clauses 22, 26, 29, 35 and 36 whereof read as under:

“22) All terms and conditions agreed between client and NPCC Limited shall be binding to M/s. HSC on back to back basis. Payment for all variations, shall be made by NPCC Limited to M/s. HSC on pro rata basis in proportion to their quoted price to NPCC Limited and NPCC Limited’s price to client. For all extra items and claims the margin of NPCC Limited shall be 10% and 15% respectively.

26) M/s HSC shall provide all clarifications / confirmations etc. as required by client and shall join NPCC Limited in meeting with them as when required for this work. Also, they shall be available for meeting with NPCC Limited as and when required at their own cost.

29) All payments shall be made to M/s. HSC within five working days of receipt of payment of NPCC Limited from client after necessary deductions as per agreed terms and NPCC LIMITED shall get a clear margin of 5.5% (five point five zero percent) on gross amount of the bills paid by clients. The payments for the quantities paid by clients to NPCC Limited, but payments in respect of extra items and claims shall be made as per clause No.22 of this additional terms and conditions.

35) All other terms and conditions will be same as applicable between NPCC Limited and Container Corporation of India Limited on back-to-back basis.

36) The additional terms & conditions shall supersede all conditions applicable between NPCC LIMITED and client in case of any variance. ”

6. The respondent voiced certain complaints, against the appellant, in relation to the work sub-contracted by the appellant to it. This resulted in termination, by the appellant, of the said contract on 31st March, 2005. The respondent, thereupon, raised a number of grievances, against the appellant, to wit, that the appellant had failed to ensure that the site, free of all hindrances, was made available on time; there were various problems which they had to face with the Municipal Corporation of Delhi (MCD); mandatory permission to utilise fly ash was delayed; the batching plant was installed, as per the instructions of the appellant, on one side of the site, whereas the work was to be executed on the other side; the site had several live railway tracks, which were being used by the Railways, resulting in inability, on the part of the respondent, to use the short passage for reaching the work site and resulting in consequential delay; change of drawings from time to time; and that the termination of the contract, by the appellant, on 31st March, 2005, was illegal.

7. On the said grievances remaining unresolved between the appellant and the respondent, the matter was referred, in accordance with the arbitral clause, contained in the agreement dated, 1st

September, 2004 (*supra*), to a learned Sole Arbitrator, for arbitration and decision on the claims of the respondent. Counter-claims were also filed, by the appellant, before the learned Sole Arbitrator.

8. It is also relevant to note that, in the interregnum, CONCOR terminated its agreement with the appellant, on the ground that the appellant had sub-let the contract to the respondent, in contravention of the proscription, against such sub-letting, contained in the contract between CONCOR and the appellant.

9. Of the various claims raised by it, the learned Sole Arbitrator awarded, to the respondent, only Claim Nos. 1 and 10. The counter-claims filed by the appellant, before the learned Sole Arbitrator, were rejected.

10. The learned Sole Arbitrator found substance in the grievances voiced by the respondent, noting that they were substantiated by the various communications addressed by the appellant to CONCOR. It was noted that there was, in fact, a live railway track, on the site, which had not been removed, and which prevented trucks from crossing over 500 metres of the area from the site of the batching plant to the site of work, and that no efforts were made to regulate the flow of traffic on the live tracks, or to deploy staff so as to facilitate passage of the respondent's trucks, resulting in the respondent being compelled to take a longer route to transport the material to the site. The learned

Sole Arbitrator also found merit, in the submission of the respondent, that necessary permissions had not been obtained from the MCD, and that there had been frequent changes in the plans and drawings from time to time.

11. Claim No.1, as raised by the respondent, was for payment outstanding against work executed by it. The learned Sole Arbitrator held that payments to the respondent were, indeed, outstanding, but it was found that certain payments had already been made, resulting in reduction of the balance amount payable to the respondent by the appellant to ₹16,08,789/-.

12. The appellant raised, before the learned Sole Arbitrator, an objection, to the effect that payment, by the appellant to the respondent, was contingent and conditional on payment, by CONCOR to the appellant. This, we may note, was, in fact, the only contention advanced, before us, in the present appeal by Mr. Anup Bhambhani, learned senior counsel appearing for the appellant.

13. The termination, by CONCOR, of its agreement with the appellant, it was sought to be contended, resulted in the extinguishing of all liabilities of the appellant to the respondent. The learned Sole Arbitrator rejected this submission, holding that there was no privity of contract between the respondent and CONCOR, and that, so far as the respondent was concerned, he was executing work for the appellant, and the liability, to make payment therefor, was of the

appellant and not of CONCOR. Holding that the clauses of the agreement between the appellant and the respondent had to be reasonably interpreted, the learned Sole Arbitrator, in his Award, dated 10th November, 2008, rejected the submission of the appellant that it was entitled to withhold payments due to the respondent, merely because CONCOR had defaulted in making payments to it. Resultantly, Claim No.1, of the respondent, was allowed for ₹ 16,08,789/-.

14. Claim No.10 of the respondent related to refund of security deposit. The only ground, urged by the appellant, before the learned Sole Arbitrator, for failing to refund the security deposit to the respondent, was that it was payable by CONCOR at the end of the defect liability period. The learned Sole Arbitrator rejected this submission, as well, holding that, as the contract between the appellant and the respondent was terminated by the appellant, the appellant could not withhold the security amount of the respondent (which was ₹ 5,60,000/-), which had, necessarily, to be refunded to the respondent. Claim no.10 was, therefore, also allowed to the extent ₹ 5,60,000/-.

15. As already noted above, the counter claims of the appellant were rejected by the learned Sole Arbitrator.

16. The aforementioned Award dated 10th November, 2008 of the learned Sole Arbitrator, was challenged by the appellant as well as by

the respondent, by way of OMP No.352/2009 and OMP No.256 /2009 respectively.

17. Inasmuch as it is the appellant alone who has carried the matter further before us, it is not necessary to refer any further to OMP No.256/2009.

18. Before the learned Single Judge, the appellant reiterated its contention that its liability, towards the respondent, was conditional on payment being made, to the appellant, by the CONCOR. Reliance was placed, for the said purposes, on Clause 3 of the MOU, dated 4th December, 2003 (*supra*) as well as Clauses 22 and 29 of the Agreement dated 1st September, 2004 (wrongly referred to in para 12 of the impugned order, as “8th April, 2004”). It was emphasized, by the appellant, that as per the Agreement between the appellant and the respondent, payments received from CONCOR were to be paid, by the appellant to the respondent, on back-to-back basis after deduction of its commission/profits. The corollary, it was submitted, was that payments not having been received from CONCOR, no payments were required to be paid by the appellant to the respondent. As such, it was contended that the learned Sole Arbitrator had erred in awarding *any* claim to the respondent.

19. The learned Single Judge, examining the said contention, first reproduced clauses 22, 29 and 35 of the agreement dated 1st

September, 2004, between the appellant and the respondent. Having done so, the learned Single Judge proceeded to record, in the impugned judgment, thus:

“15. The learned Arbitrator while interpreting the above clauses has noted that there is no privity of contract between the Contractor and CONCOR. The privity of contract is between the parties to the present proceedings. Work has been got executed at the instance of NPCC. In case there is any liability to pay it would be that of NPCC and not of CONCOR. The Award also holds that in case no amount is released by CONCOR and no action is taken by NPCC for realization of the amount, the Contractor cannot be without any remedy as he cannot approach CONCOR directly by filing appropriate judicial proceedings. It cannot be said that in such a situation the Contractor would be deprived of his amount which is admittedly due as per the contract and he would be remediless. The Award notes that interpretation of various clauses of the contract has to be a reasonable one. The Award further concludes that it would be the obligation of NPCC to pay the amount to the contractor and later, seek remedy against CONCOR.

16. Even otherwise a perusal of the terms shows that there is no provision which specifically states that in case of failure of CONCOR to release payments to NPCC which are legitimately due and payable, the liability of NPCC to release payments to the contractor gets extinguished. The above noted provisions, namely, clauses 22,29 and 35 merely stress that the terms and conditions of the contract between NPC and CONCOR will apply back to back to the contractor. Specifically clause 29 which was stressed upon by the learned senior counsel for the NPCC merely states that payment when received by NPCC shall be released to the contractor within five working days. It is not implicit in this clause that in case the payment is not released by CONCOR for the work done, the contractor is not entitled to any payment.

17. The above interpretation of the clauses of the agreement between the parties by the learned Arbitrator is a reasonable and plausible interpretation. Further, on a finding

of fact the learned Arbitrator has concluded that there was inaction and delay which took place on account of the acts and negligence of NPCC. The only claim that has been allowed to the Contractor is unpaid dues and refund of his security deposit and nothing more. The Contractor cannot be left remediless. These payments were legitimately due and the only entity from whom the contractor could recover is NPCC. There are no reasons to hold that the interpretation of contract is illegal or perverse.

18. *In any case, interpretation of the contracts within the domain of the arbitrator. it is settled legal position that the court shall not ordinarily substitute its interpretation of the terms and contract with the interpretation of the arbitrator. ”*

20. Placing reliance on the judgment of the Supreme Court in ***Swan Gold Mining Ltd. Vs. Hindustan Copper Ltd., (2015) 5 SCC 739*** and ***National Highways Authority of India Vs. ITD. Cementation India Limited, (2015) 14 SCC 21***, the learned Single Judge held that there was no merit in the contention of the appellant that its liability, to make payment to the respondent, stood extinguished with the termination of the contract between CONCOR and the appellant.

21. The appellant is before us, in the present appeal, challenging the aforementioned judgment dated 19th July, 2017 of the learned Single Judge.

22. Mr. Bhambhani, on behalf of the appellant, emphatically contends that the learned Sole Arbitrator, as well as the learned Single Judge, signally erred in failing to appreciate the fact that the MOU dated 4th December, 2003, and the agreement dated 1st September,

2004, between the appellant and the respondent, read holistically and in conjunction with each other, made it clear that, with the termination of the contract between CONCOR and the appellant, all liability, of the appellant, towards the respondent, ceased to exist. Mr. Anup Bhambhani would submit that the agreements between the appellant and the respondent, and between CONCOR and appellant, were on back-to-back basis, and contemplated payment, by the appellant, to the respondent, only on receipt of payment by the appellant, from CONCOR, and after deduction, therefrom, of the profit and commission available to the appellant. As such, he would submit that requiring the appellant to make payment to the respondent even without receipt of payment from CONCOR would amount to doing credence to the agreements between the appellant and the respondent.

23. We are unable to agree with Mr. Bhambhani, and find no reason to interfere with the impugned judgment of the learned Single Judge, or for that matter, the decision of the learned Sole Arbitrator on this aspect of the matter.

24. We are in entire agreement with learned Sole Arbitrator, as well as with the learned Single Judge, that there was no privity of contract between the respondent and CONCOR. The various clauses, on which Mr. Bhambhani relies, merely stipulate that, out of the payment received by the appellant from CONCOR, the appellant was entitled to deduct its profit and commission, before making payment to the respondent. These clauses cannot be interpreted in such a way, as to

disentitle the respondent to payment for work rendered by it, as instructed of the appellant and in accordance with the agreement between the appellant and the respondent, merely because the appellant did not receive payment from CONCOR. Any such interpretation would be grossly unjust, inequitable and against public policy, as it would amount to holding that the services rendered, and work done, by the respondent for the appellant, in terms of a bilateral contract duly drawn up between them, would have to be treated as rendered gratis, without any payment therefor. Such an interpretation, needless to say, cannot be adopted or accepted, by any court of law. The appellant may conceivably have its rights against CONCOR, which it would have to prosecute separately; the grievances of the appellant against CONCOR cannot, however, be allowed to spill over and engulf the respondent, leaving the respondent effectively in the lurch.

25. It is an axiomatic principle of law that work duly done, as per contract, is required to be recompensed. There is no gainsaying this legal position.

26. The scope of interference, with arbitral awards, by this court, under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) is circumscribed, and the scope of further interference, under Section 37 of the Act, is even more limited. This court had an occasion to comment, thereon, in its judgment in *Mahanagar Telephone Nigam Ltd. vs. Finolex Cables*

Limited, 2017 SCC Online Del 10497, paras 45 and 46 of which merit reproduction as under:

“45. The extent of jurisdiction of the court while dealing with the challenge to an arbitral award, by now, stands authoritatively examined by a plethora of pronouncements of the Supreme Court, which travel from the judgment reported at 1994 Supp (1) SCC 644, Renuagar Power Co. Ltd. v. General Electric Co. to (2015) 3 SCC 49, Associated Builders v. DDA. On an analysis of all the said decisions, this court has, in a recent judgment reported at NHAI v. Hindustan Construction Co. Ltd., delineated the following propositions:

“36. Associated Builders v. DDA, (2015) 3 SCC 49, may justifiably be christened as the high watermark in the law relating to Section 34 of the Act, and any attempt to paraphrase the decision is fraught with the risk of mutilation. The decision is, almost entirely, definitively authoritative, and brooks no ambiguity or anomaly. Nonetheless, in view of the proliferation of litigation, challenging arbitral awards, in recent times, we have, in a recent decision, dated 10th August 2017, in Shiam Cooperative Group v. Kamal Construction Co. Ltd., extracted, in extenso, the relevant paragraphs from the said decision, and respectfully culled, therefrom, the following clear principles:

(i) The four reasons motivating the legislation of the Act, in 1996, were

(a) to provide for a fair and efficient arbitral procedure,

(b) to provide for the passing of reasoned awards,

(c) to ensure that the arbitrator does not transgress his jurisdiction, and

(d) to minimize supervision, by courts, in the arbitral process.

(ii) The merits of the award are required to be examined only in certain specified circumstances, for

examining whether the award is in conflict with the public policy of India.

(iii) An award would be regarded as conflicting with the public policy of India if

(a) it is contrary to the fundamental policy of Indian law, or

(b) it is contrary to the interests of India,

(c) it is contrary to justice or morality,

(d) it is patently illegal, or

(e) it is so perverse, irrational, unfair or unreasonable that it shocks the conscience of the court.

(iv) An award would be liable to be regarded as contrary to the fundamental policy of Indian law, for example, if

(a) it disregards orders passed by superior courts, or the binding effect thereof, or

(b) it is patently violative of statutory provisions, or

(c) it is not in public interest, or

(d) the arbitrator has not adopted a “judicial approach”, i.e. has not acted a fair, reasonable and objective approach, or has acted arbitrarily, capriciously or whimsically, or

(e) the arbitrator has failed to draw an inference which, on the face of the facts, ought to have been drawn, or

(f) the arbitrator has drawn an inference, from the facts, which, on the face of it, is unreasonable, or

(g) the principles of natural justice have been violated.

(v) The “patent illegality” had to go to the root of the matter. Trivial illegalities were inconsequential.

(vi) Additionally, an award could be set aside if

(a) either party was under some incapacity, or

(b) the arbitration agreement is invalid under the law, or

(c) the applicant was not given proper notice of appointment of the arbitrator, or of the arbitral proceedings, or was otherwise unable to present his case, or

(d) the award deals with a dispute not submitted to arbitration, or decides issues outside the scope of the dispute submitted to arbitration, or

(e) the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(f) the arbitral procedure was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(g) the award contravenes the Act, or

(h) the award is contrary to the contract between the parties.

(vii) “Perversity”, as a ground for setting aside an arbitral award, has to be examined on the touchstone of the Wednesbury principle of reasonableness. It would include a case in which

(a) the findings, in the award, are based on no evidence, or

(b) the Arbitral Tribunal takes into account something irrelevant to the decision arrived at, or

(c) the Arbitral Tribunal ignores vital evidence in arriving at its decision.

(viii) At the same time,

(a) a decision which is founded on some evidence, which could be relied upon, howsoever compendious, cannot be treated as “perverse”,

(b) if the view adopted by the arbitrator is a possible view, it has to pass muster,

(c) neither quantity, nor quality, of evidence is open to re-assessment in judicial review over the award.

(ix) "Morality" would imply enforceability, of the agreement, given the prevailing mores of the day. "Immorality", however, can constitute a ground for interfering with an arbitral award only if it shocks the judicial conscience.

(x) For examining the above aspects, the pleadings of the parties and materials brought on record would be relevant.

(x) The court cannot sit in appeal over an arbitration award. Errors of fact cannot be corrected under Section 34. The arbitrator is the last word on facts."

46. *It is apparent, therefore, that, while interference by court, with arbitral awards, is limited and circumscribed, an award which is patently illegal, on account of it being injudicious, contrary to the law settled by the Supreme Court, or vitiated by an apparently untenable interpretation of the terms of the contract, requires to be eviscerated. In view thereof, the decision of the Id. Single Judge that reasoning of the arbitral award in this regard was based on no material and was contrary to the contract, cannot be said to be deserving of any interference at our hands under Section 37 of the Act. In a pronouncement reported at MTNL v. Fujitshu India Pvt. Ltd. (FAO(OS) No. 63/2015), the Division Bench of this court has held that "an appeal under Section 37 is like a second appeal, the first appeal being to the court by way of objections under Section 34". Being in the nature of a second appeal, this court would be hesitant to interfere, with the decision of the learned Single Judge, unless it is shown to be palpably erroneous on facts or in law, or manifestly perverse. "*

27. We do not, therefore, perceive any error in the impugned judgment of the learned Single Judge, in its decision not to interfere with the Award, dated 10th November, 2008, of the learned Sole Arbitrator. Even less is there any reason for us to interfere in the matter, in exercise of our jurisdiction under Section 37 of the Act.

28. As a result, the present appeal and application are dismissed with costs, quantified at ₹50,000/-

C.HARI SHANKAR, J

ACTING CHIEF JUSTICE

APRIL 23, 2018

gb/rk

