

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	07.12.2020
Pronounced On	25.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

O.S.A.No.223 of 2020
and
C.M.P.No.11200 of 2020

(Through Video Conferencing)

M/s.14 Reels Entertainment Private Limited,
Represented by its Director,
Mr.Gopi Chand Achanta,
Plot No.76, H.No.8-2-293/82/W/76,
Road No.7A, Women's Co-operative
Housing Society,
Jubilee Hills, Hyderabad.

... Appellant

Vs.

M/s. Eros International Media Limited,
Rep. by its Director,
GEE GEE Universal, 5th Floor,
Door No.2, Old No.16, 18/1 & 2,
MC Nichols Road,
Chetpet, Chennai - 600 031.

... Respondent

Original Side Appeal filed under Order XXXVI Rule 9(1)(c) of the Original Side Rules and Section 37 of the Arbitration and Conciliation Act, 1996 read with Clause 15 of the Letters Patent, to set aside the Judgment and Decree dated 04.09.2020 passed by the learned Single Judge in O.P.No.298 of 2020.

For Appellant : Mr.S.Anirudh Krishnan

For Respondent : Mr.Akshay Patil, Senior Counsel
for M/s.Aiyar and Dolia

J U D G M E N T

C.SARAVANAN, J.

This Original Side Appeal has been filed under XXXVI Rule 9 (1)(c) of the Madras High Court Original Side Rules r/w Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) r/w Clause 15 of Letter Patent.

2. It is directed against the impugned order dated 04.09.2020 passed by the learned Single Judge in O.P.No.298 of 2020 (hereinafter referred to as the impugned order).

3. By the impugned order in O.P.No.298 of 2020, the learned Single has declined to set aside the aforesaid award dated 23.07.2019 passed by the learned Arbitrator in Arbitration Case No.2 of 2017.

4. O.P.No.298 of 2020 was filed by the appellant under Section 34(1) of the Arbitration and Conciliation Act, 1996 to set aside an award dated 23.07.2019 passed by the learned Arbitrator in Arbitration Case No.2 of 2017 (hereinafter referred to as the award).

5. By the said award, the learned Arbitrator had directed the appellant to pay to the respondent a sum of Rs.11,22,95,217/- (Rupees Eleven Crores twenty two lakhs ninety five thousands two hundred and seventeen only) along with interest at 14% per annum till 29.03.2017 together with further interest on the principle sum at 14% p.a from 29.03.2017 till 23.07.2019 (award date).

6. The learned Arbitrator has also directed the appellant to handover all the title documents with respect to the film - "Dookudu" and also directed the appellant to comply with the requirements contained in Clauses 6 and 8 of the Agreement cum Undertaking dated 17.10.2015.

7. The learned Arbitrator has also passed an order of injunction and restrained the appellant from transferring, alienating, licensing, exploiting or dealing with the film "Dookudu" as per the terms of the aforesaid Agreement cum Undertaking till the payment is made to the respondent. The respondent has accepted the award passed by the learned Arbitrator.

8. The award passed by the learned Arbitrator was challenged by the appellant in O.P.No.298 of 2020 on the ground that the learned Arbitrator failed to note that though there was an admission by CW.1, (the witness of the respondent) that the respondent had received subsidy amount from the Department of

Culture, Media and Sports of the Government of United Kingdom and Her Majesty's Revenue and Customs Government of United Kingdom, but it failed to adjust the aforesaid amounts against outstanding. It was submitted that the learned Arbitrator wrongly allowed the claim petition vide the said award.

9. The challenge to the award dated 23.7.2019 in O.P.No.298 of 2020 was laid on the following grounds that: -

i. The Award passed by the Arbitral Tribunal was in conflict with the public policy of Indian law viz, :-

a) that it was passed in contravention with the fundamental policy of Indian Law under Section 34(2)(b)(ii) read with Explanation 1 Clause (ii) to Section 34(2)(b) of the Act;

and

b) that it was conflict with the most basic notions of morality and Justice under Section 34(2)(b)(ii) read with Explanation 1 Clause (iii) to Section 34(2)(b) of the Act.

ii. It was liable to be set aside on the ground of patent illegality under Section 34(2A) of the Act.

10. The entire edifice of challenge to the said award passed by the learned Arbitrator was based on the following questions and answers elicited during cross examination of the respondent's witness (CW1) who tendered evidence on behalf of the respondent (claimant) before the learned Arbitrator.

11. It will be profitable to reproduce the relevant questions and answers of the said witness for a proper disposal of this appeal. Therefore, they are re-produced below:-

Q. Nos.	Question	Answer
61	Refer to Ex.C1, clause 5A. Can you say whether this stipulation was incorporated in Ex.C2?	Yes, it is incorporated in clause 5A in Ex.C.2.

Q. Nos.	Question	Answer
62	Did you take the required steps for recovering the subsidy announced by the Government of UK as stated in clause 5A of C3?	No. But it was for the procedures to follow it up and get the subsidy by compliance of the required stipulation to get the subsidy.
63	Does it mean that you have not received any payment from the government of UK towards subsidy?	We received subsidy to the extent of Rs.12.01 crores and we have shown the credit in our statement of account which was also admitted by the respondent
64	Since you had received Rs.12.01 crores towards subsidy from Government of UK, I put it to you that your stand that getting the subsidy is the responsibility of the respondent is not correct?	I stand by to my answer to question number 62.
65	Have you filed any statement of account containing the receipt of the subsidy amount of Rs.12.01 crores before this Tribunal? If so under which document?	Yes, we have filed by way of a statement mentioned in serial number 18 of the index to the claimant's documents (It is now marked as Ex.C.18 at page number 81)
66	Can you show the figure in Ex.C.18 which pertains to the receipt of Rs.12.01 crores from the Government of UK?	Payments received on 25.05.2015, 9.6.2015, 12.6.2015, 23.6.2015, 24.6.2015 (2 payments), 27.6.2015 (3 payments), 1.7.2015 (2 payments), 2.7.2015, 3.7.2015, 6.7.2015, 7.7.2015, 8.7.2015, 9.7.2015 (3 payments), 10.7.2015, 11.7.2015, 13.7.2015 and 16.7.2015. If the payments received are added together it will come to Rs.12.01 Crores.

Q. Nos.	Question	Answer
67	Was Ex.C.18 prepared in your office?	Yes, it was prepared by me.
68	Have you got the statement from the bank in support of the payments contained in Ex.C.18 and if so can you produce?	Yes, we have and produce it tomorrow.

12. Exhibit C-18 was the statement prepared by the respondent. It was therefore submitted that the impugned award passed by the learned Arbitrator was contrary to the substantive law of evidence inasmuch as the learned Arbitrator failed to note that there was an admission by the witness of the respondent (claimant) that the respondent had received amounts which were not accounted and set off against the amounts due from the appellant to the respondent.

13. It was therefore submitted that the learned Single Judge while passing the impugned order failed to note that an award was liable to be set aside not only under Section 34(2)(b) (ii) read with (ii) and (iii) to Explanation-1 read with Explanation-2 but also under Section 34(2-A) of the Arbitration and Conciliation Act, 1996.

14. It is the case of the appellant that the impugned order of the learned Single Judge fails to note that the award passed by the learned Arbitrator was not in accordance with the provisions of the Indian Evidence Act, 1872 and therefore not in accordance with the substantive law of India.

15. To test the correctness or otherwise of the impugned order passed by the learned Single Judge, it will be therefore useful to refer to the operative portion of the impugned order in O.P.No.298 of 2020. It reads as under:-

25” The two limbed proviso to Section 34(2A) as mentioned above Section 34 restricts the test of patent illegality, by circumscribing the test by saying that mere erroneous application of law cannot be a ground to hold that an award is vitiated by the vice of patent illegality and that while testing an award for patent illegality, there can be no re-appreciation of evidence. In the instant case, in the considered view of this Court in attempt to get over the rigour of this proviso, learned

counsel for 14 Reels ingeniously argued that settled principles of Law of Evidence have been given a go by and therefore, this ignoring of a binding precedent would fall under conflict with public policy facet. Though this argument is very attractive on a panoramic perception, a close clinical examination of the argument leaves me with the considered view that this argument cannot be sustained as that would tantamount to completely undoing the constriction of Section 34 post amendment. Re-appreciation of evidence is not permissible while testing an award for patent illegality and mere erroneous application of law cannot by itself does not constitute patent illegality as delineated elsewhere supra in this order. When re-appreciation of evidence cannot be done, if an award is dislodged in the garb of well settled principles of Evidence Law being ignored, in my considered view that would tantamount to re-appreciation of evidence albeit in another garb. To be noted, this view is owing to the peculiar facts and circumstances of this case as entire gamut of campaign of protagonist of instant OP turns on appreciation of evidence. In the case on hand, it is amply clear from the rival submissions (captured, encapsulated and set out supra) that it is a case of sifting oral /documentary evidence on both sides. Therefore, the caveat is this view shall not be construed as the slots being watertight compartments making overlaps completely impermissible. There is one more reason as to why I am unable to accept this argument in this case. To fall under conflict with public policy ground and clause (ii) of Explanation 1 thereto, an impugned award should be such that it shocks the conscience of this Court, but this impugned award certainly does not fall in that category. Therefore, what is not available for a protagonist of a OP to canvass qua patent illegality cannot be permitted to be brought in under the garb of conflict with public policy when the plea turns completely on appreciation of evidence."

26.This takes us to the question of what is appreciation and reappréciation of evidence. Learned counsel on both sides very fairly submitted that they were unable to find a direct case law with regard to what is appreciation and

re-appreciation of evidence at least in the context of Section 34 of A and C Act. Saying so, learned counsel submitted that it is desirable that this principle is discussed in the case on hand. This Court considers it appropriate to do so and for this purpose, this Court considers it appropriate to adopt an illustrative approach.

27. Solely for the sake of illustration, let us take a case where the issue to be tested is whether jural relationship between two parties is that of lessor and lessee or licensor and licensee. Let us assume that a document i.e., contract between parties which is inter alia an adumbration of covenants and clauses between the contracting parties is available before the Adjudicating Authority and that both sides have let in oral evidence. The witnesses are inter alia the contracting parties and that deposition of these parties to the document turn on jural relationship between the parties. Proceeding with this illustration, one has to bear in mind that a mere caption to a document on hand will not conclusively decide the jural relationship between the parties. Likewise, one should also bear in mind that the contents of the document by themselves do not prove a fact. In this backdrop, the Adjudicating Authority, which has the task of decoding and deciphering this document in the light of the document itself, which is an exhibit before it in conjunction with oral evidence, which is the deposition inter-alia of contracting parties to the document, examines at the question of whether there has been transfer of possession of demised portion from one party to the other, as this would be one of the extremely critical questions to decide whether the jural relationship is one of lease or licence. Let us assume that the deposition is to the effect that the demised portion is part of a larger property and that the question as to who controls the ingress and egress to the demised property also forms part of deposition. Let us also assume that there are some other exhibits in the form of sketches / photographs besides a topography sketch, which describe these aspects of the matter and that witnesses, who are inter alia contracting parties to the contentious document, speak about all this. If the Adjudicating Authority deploys

a clinical, forensic approach, sifts through, analyses / scrutinizes all these oral/documentary evidence and comes to the conclusion that the ingress and egress to the immovable property (of which the demised portion is a part) is controlled by one party and that there is no transfer of possession by this party to the other party qua demised portion, the Adjudicating Authority may come to the conclusion that the jural relationship between the contracting parties is a license and not a lease. If sifting and scrutiny of oral/documentary evidence leaves the Adjudicating Authority with a contrary conclusion, the Adjudicating Authority may hold that the jural relationship between the parties is that of a lease. In this illustration, when the matter is carried in appeal, it may well be possible for the protagonist of the appeal to point out certain inconsistencies in the oral evidence and contradictions qua evidence before the Adjudicating Authority. While sifting and scrutinizing of oral and documentary evidence by the original Adjudicating Authority to come to a conclusion about jural relationship between the contracting parties can be described as 'appreciation of evidence', the exercise of Appellate Authority going into the inconsistencies and contradictions in evidence pointed out by the appellant and having a clinical, forensic relook at the oral/documentary evidence before original Adjudicating Authority can be described as 'reappreciation of evidence'. This is a second bite at the cherry by the protagonist.

28. Continuing with the above mentioned illustration let us assume that the original Adjudicating Authority completely ignored all the exhibits i.e., documentary evidence before it and the oral evidence before it though the contracting parties themselves have deposed as witnesses, merely looks at the contentious document in isolation, goes by the caption, adumbration of covenants and terms used therein, it may well be possible for Appellate forum to hold that original Adjudicating Authority has committed patent illegality without any re-appreciation of evidence. This can be done by holding that the original Adjudicating Authority

has ignored vital evidence before it and for this re-appreciation of evidence is not required. In contradistinction, this is a case of campaign by a protagonist for whom a second bite at the cherry is legally forbidden. 29. Reverting to the case on hand, without stepping into the forbidden area of re-appreciation of evidence, even on first principles of Evidence Law, I am unable to sustain the submission of 14 Reels as though there can be no two opinions about the obtaining position of law that burden of proof does not shift, but the onus of proof shifts like a pendulum from one end of the list to another, the principles that any amount of oral evidence cannot undo the pleadings and a party cannot be called upon to prove the negative are two other principles which are incontestable and stand at 14 Reels in the case on hand. In this view of the matter also I find no patent illegality in the impugned award. However, if I start applying these principles of Evidence Law to the award, that would tantamount to making forays into the forbidden area of reappreciation of evidence. I have already opined and taken the view that this cannot be done by taking umbrage under the garb of ignoring binding precedent owing to the peculiar facts and circumstances of OP on hand.

30. In any event this Court is unable to convince itself that binding precedents have been ignored owing to two other aforementioned fundamental principles of Evidence Law neutralising this plea. In other words, owing to the principles of Evidence Law which I have delineated supra i.e., any amount of oral evidence cannot dislodge pleadings and that a party cannot be called upon to prove the negative, I am unable to sustain the submission that settled principles of Evidence Act have been given a go by. This entire issue has been very pithily and succinctly set out in Paragraph 74 of the award, which reads as follows: '(74) Therefore what transpires from the above documents Exs.C-2, R-25, C-3 and R-26, are that there was a clear understanding between the Claimant and the Respondent that whatever subsidy claimed by Hobo pictures on behalf of the Respondent, as and when sanctioned by the UK Government, would be passed on to the Claimant

for adjustment of the liability of Rs.32 Crores ascertained as a "debt due" under Ex.C-3 dated 20.12.2013.'

31. A careful perusal of the rest of the impugned award leaves this Court with the considered view that AT has taken into account, clinically sifted through the mass of evidence (documentary and oral evidence) before it, returned findings and merely because the protagonist of this OP on hand considers certain documents should have been taken into account and it should have been held that onus shifted, this Court examining the impugned award under Section 34 cannot have a re-look at evidence before AT. This will tantamount to having a second bite at a cherry, which is clearly forbidden, in the light of one of the limbs to proviso to Section 34(2A). The further reason is, on the facts and circumstances of the case on hand, this Court is convinced that no case has been made out to show that vital evidence has been ignored.

32. This takes us to the question of disregarding a binding precedent. Law can be codified or it can be declared by a competent Court of law. When there is a declaration of law and when there is a ratio that also becomes law notwithstanding not being codified. Therefore, this Court is unable to accept the plea that disregarding a binding precedent cannot vitiate an award. After all, law declared by a competent Court can on any given day be an expression of public policy of India and/or fundamental policy of Indian Law besides laying down basic notions of justice. However, in the case on hand, the argument predicated on Vathsalsamanickavasagam principle being disregarded which was buttressed by pressing into service Vijay Packaging case law does not find favour with this Court as shifting of onus is also in the domain of appreciation of evidence and there is nothing in the impugned award, which is so unreasonable that no reasonable person could have arrived at that conclusion on the basis of evidence before it.

33. In the light of the narrative thus far, discussion and dispositive reasoning, there is

no ground for judicial intervention qua the impugned award under Section 34 of A and C Act.

Therefore, instant OP is dismissed and there shall be no order as to costs.

16. We shall therefore refer to the brief facts of the case and the arguments advanced by the learned counsel for the appellant to answer whether the above conclusion of the learned Single Judge while passing the impugned order under Section 34 of Act suffers from any infirmity to warrant interference by us in this appeal.

17. The appellant herein had entered into a Film Co-Production Agreement dated 27.11.2013 with M/s Virgo Entertainment Private Limited (hereinafter referred to as M/s.Virgo Entertainment) for a Telugu film titled "Nenokkadine".

18. On the following day on 28.11.2013, M/s.Virgo Entertainment signed another agreement with the respondent herein for a co-production of the aforesaid Telugu film and transferred the rights assigned to it. Thus, the respondent became holder of the rights over the said Telugu film.

19. The appellant and the respondent signed a Film Distribution Agreement dated 20.12.2013 whereby certain rights were given to the appellant. Under the Agreement, the value of consideration was Rs.53,37,00,000/-.

20. In the said agreement, the respondent acknowledged receipt of Rs.21,37,00,000/- from the appellant against the aforesaid total consideration of Rs.53,37,00,000/-. As on the date of the said agreement on 20.12.2013, the appellant was required to pay a sum of Rs.32,00,00,000/- towards balance consideration to the respondent.

21. The said agreement further stipulated that a portion of the aforesaid balance amount could also be partly paid by the appellant out of the subsidy to be received by a company named Hobo Pictures Ltd., (whose name was later changed to SIGR Films Ltd.,) from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom. The said company was an associate company of the appellant.

22. The said company had originally co-produced the film in UK along with the appellant and was therefore entitled to receive certain incentives in the form of tax credit/subsidy from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's

Revenue and Customs of United Kingdom.

23. Thus, aforesaid balance amount of Rs.32,00,00,000/- was to be partly paid and adjusted out of the aforesaid subsidy within a period of 12 months from the date of theatrical release of the aforesaid Telugu film.

24. The said Telugu film was released on 10.01.2014. Therefore, the appellant was obliged to repay the aforesaid balance amount of Rs.32,00,00,000/- on or before 10.01.2015 together with pay interest at 14% as per Clauses 9 and 12 of the Film Distribution Agreement dated 20.12.2013.

25. Between 19.05.2014 and 13.10.2015, the respondent received an amount of Rs.14,82,51,450/- from the appellant which included a portion of the amount of Rs.12,01,00,000/- received by the said Hobo Pictures as subsidy from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom and passed on the respondent.

26. After adjustment, an amount of Rs.17,17,48,550/- (32,00,00,000 - 14,82,51,450) was still outstanding together with a sum of Rs.7,23,80,245/- towards the interest at 14% on the principal outstanding.

27. According to the respondent, as on 17.10.2015, the total outstanding due from the appellant to it was Rs.24,41,28,795/- (17,17,48,550 + 7,23,80,245).

28. The appellant undertook to pay the aforesaid outstanding amount and signed Assignment Agreement and Agreement cum Understanding dated 17.10.2015. As the appellant had not paid the balance amount, it also agreed to create a lien and charge over the Telugu Film "Dookudu" for a sum of Rs.9,00,00,000/- in favour of the respondent.

29. The appellant appears to have thereafter paid to the respondent a sum of Rs.2,18,33,578/- between 02.02.2016 and 29.03.2017. After adjustment of the aforesaid amount, there was still an outstanding amount of Rs.22,22,95,217/- (24,41,28,795 - 2,18,33,578). On the same amount, the respondent claimed a sum of Rs.2,64,25,353/- towards the interest between 15.10.2015 and 29.03.2017 at 14% p.a. Thereafter, another trench of Rs. 2,00,00,000/- was paid by the appellant to the respondent on various dates.

30. Since the appellant failed to pay the balance outstanding amount of Rs.24,87,20,570/- to the respondent, the

respondent initiated the arbitration proceeding. The said arbitration proceeding culminated in an award of the learned Arbitrator who awarded a sum of Rs.11,22,95,217/-.

31. Though the respondent filed a claim for a sum of Rs.24,87,20,570/- before the Arbitral Tribunal, the learned Arbitrator awarded an amount of Rs.11,22,95,217/- by considering the outstanding amount of Rs.24,41,28,795/- as on 17.10.2015 under the Agreements signed between the appellant and the respondent wherein the appellant not only agreed to create a lien/security in favour of the respondent in the Telugu film "Dookudu" but also agreed to pay the aforesaid outstanding amount to respondent.

32. The learned Arbitrator has further directed the appellant herein to hand over the rights in the Telugu film "Dookudu" and adjusted a sum Rs.9,00,00,000/- to arrive at the aforesaid award amount of Rs.11,22,95,217/-.

33. The award amount of Rs.11,22,95,217/- was arrived by the learned Arbitrator by taking note of the following payments made by the appellant to the respondent:-

Dates	Payments made by the appellant in Rs.	Outstanding amount in Rs.
7.10.2015		24,41,28,795.00
02.02.2016 to 29.3.2017	2,18,33,578.00	
08.05.2017 to 06.10.2017	2,00,00,000.00	
Sub-Total	4,18,33,578.00	20,22,95,217.00
Adjustment	*9,00,00,000.00	*9,00,00,000.00
Total	13,18,33,578.00	11,22,95,217.00

*Value of Dookudu film

34. The case of appellant before the Arbitral Tribunal was that the respondent had not correctly adjusted the amount of subsidy received from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom and therefore was not entitled to invoke the arbitration clause under the agreement.

35. It is the contention of the appellant before this Court as also before the learned Single Judge that there was not only patent illegality in the award passed by the learned Arbitrator

inasmuch as the learned Arbitrator failed to note the admission of the witness of the respondent (CW1) but also the award was contrary to public policy.

36. It was stated that during cross examination, the witness of the respondent (CW1) admitted that the respondent had received subsidy amounts from the from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom. However, the respondent did not disclose the same but demanded amounts from the appellant without proper disclosure.

37. It was submitted that the learned Arbitrator failed to note the same and proceeded to allow the claim of the respondent and passed the award which was impugned before the learned Single Judge under Section 34 of the Arbitration and Conciliation Act, 1996.

38. It is submitted that if the amount of subsidy was clearly disclosed by the respondent, the correct balance outstanding could have been arrived for the purpose of further payment.

39. During the course of the argument, it was also brought to our notice that another agreement dated 20.12.2013 titled as Agreement cum Personal Guarantee (hereinafter referred to as subsidy agreement) was signed between the appellant and the respondent along with the said Hobo Pictures Ltd., (whose name was later as SIGR Films Ltd.,).

40. As per the said agreement, the said Hobo Picture Ltd. was to open a bank account for receiving the subsidy from the Department of Culture, Media and Sports of United Kingdom and from the Department of Her Majesty's Revenue and Customs Government of United Kingdom.

41. It was further submitted that the said account was to be operated by the respondent and therefore it was the respondent who was responsible for declaring the amount received as subsidy for a proper reconciliation of the amount. It was further submitted that said Hobo Picture appointed an agent namely Eco Birde Ltd. to process the subsidy for the respective government department.

42. A reference was made to the above Email dated 06.07.2017 of Eco Birde Ltd., wherein, the author of the said Email in reply to a mail of the appellant had stated that all the correspondence regarding the receipt of subsidy from the Government department had been handed over to the respondent.

43. It was further submitted that the categorical case of the respondent before the Arbitrator was that the respondent had not received any subsidy amount from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom.

44. It was further contended that during the course of time, out of Rs.32,00,00,000/-, the appellant had already repaid an amount of Rs.14,82,51,450/- to the respondent after the due date and there was a balance amount of Rs.17,17,48,550/- only towards principal and that as on 17.10.2015, the balance amount of outstanding towards the principal and the interest was Rs.24,41,28,795/- and parties herein signed an agreement acknowledging the same vide Agreement dated 17.10.2015 titled as Assignment Agreement.

45. On the same date, another agreement was also signed by the appellant acknowledging outstanding payment of Rs.24,41,28,795/- along with interest. The appellant created the lien and charge on the Telugu film "Dookudu" and also agreed to pay a sum of Rs.9,00,00,000/- under the Assignment Agreement. The case of the appellant is that the appellant further paid an amount of Rs.2,18,33,578/-. However, the respondent continued to charge interest at 14% and calculated interest of Rs.2,64,25,353/- from the appellant.

46. The learned counsel for the appellant reiterated that the respondent filed bank statement only up to 23.07.2015 and that the balance amount of subsidy received from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom had not been adjusted against the outstanding due from the appellant.

47. It is therefore submitted that the award suffers from the vices of patent illegality as it ignores the substantive evidence of law and therefore the learned Single Judge ought to have set aside the award and allowed the appellant and respondent to establish the case afresh after proper adjustment of the subsidy amounts received by the respondent from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom.

48. It is submitted that the award was liable to be set aside since the respondent had failed correctly to adjust the amount of subsidy received from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of

Her Majesty's Revenue and Customs of United Kingdom against the balance outstanding of Rs.17,17,48,550/- and further demanded interest at 14% on the principal outstanding of Rs.32,00,00,000/- up to 15.10.2015.

49. In this connection, the learned counsel for the appellant relied on the following decisions of the court:-

- i. Ssangyong Engg. & Const. Comp Ltd. Vs. NHAI, (2019) 15 SCC 131.
- ii. Associate Builders Vs. DDA, (2015) 3 SCC 49;
- iii. Vijay Packing Vs. Spectra Packs Pvt. Ltd., (2002) 2 CTC 705.
- iv. Gopal Krishnaji Ketkar Vs. Mohhamad Haji Latif & Ors., (1968) 3 SCR 862.
- v. Vathsala manickavasagam & Ors. Vs. N. Ganesan & Anr., (2013) 9 SCC 152.
- vi. ISG Novasoft Technologies Limited & Ors. Vs. Gayatri Balasamy & Ors., (2009) 6 CTC 601.

50. Per contra, the learned counsel for the respondent (claimant) submitted that the impugned order passed by the learned Single Judge upholding the award impugned while dismissing the application filed under Section 34 of Arbitration and Conciliation Act, 1996 was well reasoned and requires no interference.

51. It is submitted that the scope of interference under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 was limited and therefore the present appeal was liable to be dismissed.

52. It is submitted that the respondent's witness namely Mr. Kamtam Anand Shankar (CW1) merely confirmed having received Rs.12.01 crores from the United Kingdom's Government from the two departments mentioned

53. It was submitted that the said agent EcoBird Ltd., UK (hereinafter referred to as the agent) was an agent appointed by the associate of the appellant namely M/s. Hobo Pictures Ltd. (whose name was changed to M/s, SIGR Films Ltd.) to process the subsidy from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom and that one Firuzi Khan of the said agent EcoBird Ltd., UK merely vide email dated 06.07.2016 stated that all the files relating to receipt of the subsidy had been handed over to the respondent herein.

54. It was therefore submitted that no amount was directly received by the respondent from the Department of Culture, Media

and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom.

55. It was submitted that the amounts were directly received by the said M/s. Hobo Pictures Ltd. (whose name was later changed to M/s, SIGR Films Ltd.) and all payments were made only by the appellant to the respondent. It is therefore submitted that there was no question of failure on the part of the respondent to adjust the amounts received correctly.

56. The learned counsel for the respondent further submitted that the respondent sent letters to the appellant on 31.10.2014 and 18.12.2014 to make payment against the outstanding amount of Rs.32,00,00,000/- as per Clause of 12 of the Agreement on or before 10.01.2015 with interest 14% p.a, failing which they would deposit the cheque given by the appellant. However, the appellant failed to make any payment.

57. It was further submitted that the appellant had earlier issued a post dated cheque bearing reference number 582127 dated 10.01.2015 drawn on IDBI Bank of Rs.32,00,00,000/- and had given an undertaking and representation to the respondent that:-

- i. it would be honour the cheque on its first presentation,
- ii. maintain sufficient credit amount in bank account, and
- iii. it will not issue any direction, order, instruction to stopping payment in respect of cheque.

58. It was further submitted that on 05.01.2015, the appellant sent a request letter to the respondent to not to present the cheque and since the appellant failed to pay the balance, the respondent was constrained to present the cheque for payment. It was however returned on 26.02.2015 with an endorsement "Funds insufficient".

59. It is submitted that the respondent thereafter issued a legal notice on 03.03.2015 under Section 138 r/w 141 of Negotiable Instrument Act. Thereafter, the appellant sent a letter to the respondent and sought two months time for repaying the amount by applying for subsidy and also requested the appellant to not to initiate any legal proceedings against the appellant.

60. The respondent thereafter filed Criminal Case No.741 of 2015 against the appellant before the Metropolitan Magistrate Court, Mumbai. It is still pending.

61. It is submitted that though the 2nd Agreement dated 20.12.2013 was signed to open an account and to authorise the

respondent to receive the amounts directly from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom by creating a separate account, it was not acted upon.

62. It is submitted that the subsidy was processed by the appellant and its associate namely Hobo Pictures and associate's agent namely EcoBride Limited. The Associate Company of the appellant was wholly managed by the appellant's own witness who tendered evidence before the learned Arbitrator and therefore, it is incorrect to shift the onus on the respondent.

63. It is submitted that subsidy received from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom was paid to the respondent by the appellant and adjusted and it was only after such adjustment, the balance amount was claimed from the appellant before the aforesaid Arbitrator in the arbitral proceeding.

64. It is further submitted that the respondent's witness confirmed having received Rs.12.01 crores from the Department of Culture, Media and Sports of the Government of United Kingdom and Department of Her Majesty's Revenue and Customs of United Kingdom was totally misconceived.

65. On merits, it was submitted that the answer to Question Nos.62 to 68 and 71 read with Exs.C-18 and 21 clearly indicates that C.W.1 (respondent's witness) was merely stating that the appellant and the producer had received the subsidy amount and out of the subsidy amount, a sum of Rs.12.01 crores was paid to the appellant.

66. It is further submitted that during cross examination of RW1 (appellant's witness - Mr.Gopi Chand), in his answer to Question No.127, he confirmed the correctness of Ex.C-18 and stated that the payments were made to the appellant as mentioned in C-18 and therefore the arguments raised on merits has to fail.

67. That apart, it was submitted that scope for interference under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 were limited and that none of the grounds raised by the appellant warranted interference. It is submitted that neither the award can be challenged on the ground of conflict with public policy of India particularly contravention with the fundamental policy of Indian law or on account of patent illegality as was argued by the learned counsel for the appellant.

68. The learned counsel for the respondent claimant relied upon the following decisions of the court:-

- i. MMTC Ltd. Vs. Vedanta Ltd., (2019) 4 SCC 163.
- ii. Sutlej Construction Ltd., Vs. State (UT of Chandigarh) (2018) 1 SCC 718.

69. We have heard the arguments of the learned Counsel for the appellant and the respondent and perused the impugned order. We have also perused the award impugned before the learned Single Judge under Section 34 of the Act. We have given our consideration to the rival contentions of the learned counsel for the appellant and the respondent.

70. During the course of the argument, both the counsels confirmed that the 2nd mentioned agreement namely, the Subsidy Agreement dated 20.12.2013 was not acted upon. Thus, the onus of receiving the subsidy amount and transferring the same fell upon the appellant and the said Hobo Pictures to the respondent. Therefore, the argument that the respondent did not properly account for the same cannot be countenanced.

71. Coming to statutory provisions and the interpretations, it should be noted that the Act was amended in 2015. As per the decision of the Hon'ble Supreme Court in Board of Control For Cricket in India Vs. Kochi Cricket (P) Ltd., (2018) 6 SCC 287, all awards passed after the amendment in 2015 came into force will be governed by the amended provisions.

72. Amendments in 2015 were meant to reduce the delay in disposal of the arbitration proceedings and to further curb interference by the Courts as such interference tended to defeat the object of the Act.

73. 2015 amendment specially amended Sections 9, 11, 17, 28, 34 and few other provisions of the Act. In this appeal, we are concerned with the amendment to Sections 28 and 34 of the Act alone.

74. Scope of interference against an award by a Court under Section 34 as also under Section 37 of the Act has been further circumscribed though some of judicial principles recognised for setting aside an award have now found their way in the Act in the amended provisions.

75. Certain other amendments were incorporated by Act 33 of 2019 to Sub-Clause (a) to Section 34(2) of the Act. They are not relevant for our discussion and therefore, we are not concerned with them in this appeal.

76. It will suffice to state that the scope of interference by the Courts against an arbitral award still continues to be restricted. It is confined to the instances specified under the amended Section 34(1) read with Section 34(2) and Section 34(3) of the Act.

77. As per Section 28 of the Arbitration and Conciliation Act, 1996, the Arbitral Tribunals in a domestic arbitration have to decide the disputes submitted to it in accordance with the substantive law for the time being in force in India. As per sub-section (3) of the Act, the Arbitral Tribunals shall take into account the terms of the contract and trade usage applicable to the transaction.

78. Relevant portions of amended and pre-amended Section 34 of the Act are reproduced below:-

Relevant portion of Section 34 before Amendment in 2015	Relevant portion of Section 34 after Amendment in 2015
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 furnishes proof that-	

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Relevant portion of Section 34 before Amendment in 2015	Relevant portion of Section 34 after Amendment in 2015
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 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	As in the first column except few changes in 2019 vide Act 33 of 2019 .

Relevant portion of Section 34 before Amendment in 2015	Relevant portion of Section 34 after Amendment in 2015
(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.— Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81."	Explanation1.— 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; 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.

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Relevant portion of Section 34 before Amendment in 2015	Relevant portion of Section 34 after Amendment in 2015
	Explanation 2.- For 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 merits of the dispute. (2-A) 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 reappreciating evidence.

79. Under Section 34(2) (b) (ii) of the un-amended Act, an award could be set aside if the making of the award was in conflict with the public policy of India and :-

- i. induced or affected by fraud; or
- ii. corruption; or
- iii. was in violation of Section 75 or Section 81."

80. As mentioned above, though Sub-Section (2-A) to Section 34 of the Act has been inserted with retrospective effect from 23.10.2015, recourse to a Court against an award under Sub-Section (1) of the Act is still confined to the situations contemplated in Sub-Section (2) and Sub-Section (3) to Section 34 of the Act.

81. However, a Court can set aside an award under Sub-Section (2A) to Section 34 of the Act on the ground that it is vitiated on account of patent illegality on the face of the award .

82. The Hon'ble Supreme Court in Ssangyong Engg. & Construction Co. Ltd. Vs. NHAI, (2019) 15 SCC 131 has explained the scope of amendment to Section 34 of the Arbitration and Conciliation Act, 1996 in 2015. This ground of "patent illegality" has its origin from the decision of the Hon'ble Supreme Court in ONGC Vs Saw Pipes (2003) 5SCC 705. There, the Court expanded the meaning of expression "conflict with the public policy of India" by including "patent illegality" to it.

83. In fact, the expression "conflict with public policy of India" was first explained by the Hon'ble Supreme Court in Renusagar Power Co. Ltd. Vs. General Electric Co., 1994 Supp (1) SCC 644, in the context of Section 7(1) of Foreign Awards (Recognition and Enforcement) Act, 1961. Summing up the position of the law prior to amendment in 2015, the Hon'ble Supreme Court in ONGC Vs. Saw Pipes (2003) 5SCC 705 held as under:-

The result would be – award could be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

84. In paragraph 34, the Hon'ble Supreme Court in ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705 observed as under:-

"The phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in Renusagar case [1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be – award could be set

aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

85. In *ONGC Ltd. Vs. Western Geco International Ltd.*, (2014) 9 SCC 263, the Hon'ble Supreme Court further explained the meaning of the expression "fundamental policy of Indian law". The Hon'ble Supreme Court observed that the decision in *ONGC Ltd. Vs. Saw Pipes Ltd.*, (2003) 5 SCC 705 however did not elaborate as to what would constitute fundamental policy of Indian law.

86. In *Ltd. Vs. Western Geco International Ltd.*, (2014) 9 SCC 263, the Hon'ble Supreme Court recognized three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the "fundamental policy of Indian law". They are as follows:-

- i. **Judicial Approach:** The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a "judicial approach" in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and

objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge. (See Para 35)

ii. Principle of Natural Justice: Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law. (See Para 38).

iii. Wednesbury Principle: No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury principle [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available. (See Para 39).

87. Ultimately, in para 40, it observed that "It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."

88. In paragraph No. 31 of the decision in Associate Builders Vs. DDA, (2015) 3 SCC 49, the Hon'ble Supreme Court further explained and stated that it is settled law that where:

- i. a finding is based on no evidence, or
- ii. an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
- iii. ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

89. In para 32, the Hon'ble Supreme Court further held as follows:-

32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312] , it was held: (SCC p. 317, para 7)

"7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held: (SCC p. 14, para 10)

"10. A broad distinction has, therefore, to be maintained between the decisions which are

perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

90. Paragraph Nos.31 and 32 of the Associate Builders case referred to supra are however no longer a ground for challenge under "public policy of India" after amendment. As per the decision of the Hon'ble Supreme Court in Ssangyong Engg. & Construction Co. Ltd. case referred to supra, it could be challenged on the ground of patent illegality under Section 34 (2A) of the Act.

91. The Court in paragraph No.33 of Associate Builders case referred to supra also observed that it must clearly be understood that when a Court is applying the "public policy" test to an arbitration award, it does not act as a Court of Appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has to necessarily pass the muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. It further held that it is very important to bear this in mind when awards of lay arbitrators are challenged. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. The Court referred to its decision in Shah, Shares & Stock Brokers (P) Ltd. Vs. B.H.H. Securities (P) Ltd., (2012) 1 SCC 594, where, it held as follows:-

"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange

under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

92. The Hon'ble Supreme Court in *Ssangyong Engg. & Construction Co. Ltd.* case referred to supra, held that

- i. a finding based on no evidence at all; or
- ii. an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality;
- iii. additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.;
- iv. if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would amount to a patent illegality on the face of the award;
- v. however, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award.

93. As far as the challenge to the award on the ground of "conflict with the Public Policy of India" is concerned, the position that existed of pre- *ONGC Vs Saw Pipes Ltd* has been restored post 2015 amendment. Explanation - 2 to Section 34(2) (b) (ii) restrict the scope of interference. Thus, there is no scope for review on merits. The following chart explains the position:-

SECTION	SCOPE
Section 34(2) (b) (ii)	Public Policy of India: If the award was in conflict with the Public Policy of India.

SECTION	SCOPE
Explanation1- (SCOPE.)	For 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; 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.
Explanation2- (EXCEPTION)	For 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 merits of the dispute
Section 34(2-A)	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
Proviso (EXCEPTION)	Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciating evidence.

94. In paragraph Nos.34, 36, 37 & 38, the Court further held as follows:-

34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean

that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2) (a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] .

36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as understood in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , and paras 28 and 29 in particular, is now done away with.

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the

fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that reappraisal of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

95. As mentioned above, after 2015 amendment, "patent illegality" is not a recognised ground for challenge under Section 34(1) of the Act. Nevertheless, under Section 34(2-A) of the Act, an award can be set aside by the Court on the ground that the award was vitiated by "patent illegality" on the face of it. While exercising its power, the Court's power is however circumscribed by the proviso to the aforesaid provision.

96. The Hon'ble Supreme Court ultimately observed as under:-

76. However, when it comes to the public policy of India, argument based upon "most basic notions of justice", it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice.However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment.

97. Thus, an award can be set aside under Section 34(2)(b) (ii) of the Act only in a very exceptional circumstances on the ground that it has been passed in contravention with fundamental policy of Indian Law as explained above or that it was passed in conflict with the most basic notions of morality or justice only when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. In this case, the learned Arbitrator has examined evidence on record and come to a fair conclusion while passing the award.

98. In our view, the award passed by the learned Arbitrator cannot be said to be in conflict with the public policy of India

in terms of paragraph No.76 in Ssangyong Engg. & Construction Co. Ltd. case referred to supra.

99. Similarly, in our view, the award passed by the learned Arbitrator cannot be set aside on the ground of patent illegality under Section 34(2-A) of the Act. There is neither any illegality nor patent illegality on the face of record of the award. Further, under Section 34 (2A) of the Act, re-appreciation of evidence is not a ground for setting aside an award. The arguments advanced to assail the said award by nudging the Court to re-appreciate the evidence were clearly unwarranted. In our view, the learned arbitrator has examined the evidence on record and come to a fair conclusion to award the amounts and rights over the Telugu Film "Dookudu".

100. The attempt of the appellant before the learned Single Judge as also before this Court in this appeal was to persuade the Court to re-appreciate the evidence. It was improper. The challenge to the said award was thus clearly misconceived and contrary to the provisions of the Act. The appellant has also not demonstrated any patent illegality in the award which goes to the root of the matter.

101. Even otherwise, it also cannot be said that there was an erroneous application of the law. It cannot be said that the learned Arbitrator has not correctly adhered to Section 17 of the Indian Evidence Act, 1872 while considering the deposition of the respondent (C.W.1) and the alleged admission of the said witness therein during cross examination. Even otherwise, under proviso to Section 34(2-A), there is no scope for re-appreciation of evidence.

102. Further as per the decision of the Hon'ble Supreme Court in MMTC Vs. Vedanta Ltd., (2019) 4 SCC 163, we cannot interfere with an award if the view taken by an Arbitrator is a possible view based on facts. Under Section 34 of the Act, Courts are not sitting in an appeal. The scope of interference under Section 37 of the Act is thus circumscribed.

103. In our view that the appellant has not made out any legal grounds for us to interfere with the impugned order passed by the learned Single Judge. We also do not find any error in the impugned order passed by the learned Single Judge while dismissing O.P.No.298 of 2020 and in upholding the award dated 23.07.2019 passed by the learned Arbitrator impugned in the said proceedings under Section 34 of the Arbitration and Conciliation Act, 1996.

104. In our view, the appellant has indulged in a vexatious

and frivolous litigation by filing O.P.No.298 of 2020 under Section 34 of the Act before the learned Single Judge and before us in this intra court Appeal under Section 37 of the Act. In our view, the learned Single Judge has come to a fair conclusion while rejecting the prayer of the appellant in O.P.No.298 of 2020 under Section 34 of the Act. The appellant was ill advised to file O.P.No.298 of 2020 under Section 34 of the Act and this intra court appeal under Section 37 of the Act. It was clearly intended to buy time and thereby waste the time of the Court in vexatious and frivolous litigation. Though we have made the above observations, we are refraining ourselves from ordering any cost on the appellant.

105. In the light of the above discussion, we are dismissing this Original Side Appeal. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

jen

To
Section Officer,
V.R. Section,
High Court, Madras.

The Sub Assistant Registrar
Original Side
High Court Madras-104

+1 cc to Mr.Anirudh krishnan Advocate sr4194

O.S.A.No.223 of 2020 and
C.M.P.No.11200 of 2020

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