

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

% **Reserved on : 12th January, 2023**
Pronounced on: 8th May, 2023

+ **O.M.P. (COMM) 119/2022 & I.A. 3800/2022 & I.A. 16126/2022**
NATIONAL HIGHWAYS AUTHORITY OF INDIA..... Petitioner

Through: Mr. Narender Hooda, Sr. Advocate
with Mr. C.S. Chauhan, Mr.
Shaurya Lamba and Ms. Jasleen
Singh Sandha, Advocates along with
Mr. Shashidhar Singh, Joint
Advisor, NHAI

versus

CONSULTING ENGINEERING GROUP LTD JAIPUR (CEG)
..... Respondent

Through: Mr. Arun K. Varma, Sr. Advocate
with Mr. S.K. Chandwani and Mr.
Sameer Chandwani, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act, 1996") has been filed on behalf of the petitioner seeking the following reliefs:

*"a) Set aside the Impugned Award dated 04.12.2021
passed by the Ld. Arbitral Tribunal presided by the
Sole Arbitrator Sh. B. P. Bagish.*

b) Allow cost of the proceedings in favour of the Petitioner and;

c) Pass any or other order(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the present case in the interest of justice.”

FACTUAL MATRIX

2. The Petitioner, the National Highways Authority of India (hereinafter referred to as “NHAI”) is a statutory body responsible for constructing National Highways throughout the territory of India.

3. The Respondent is a Joint Venture between the M/s. Consulting Engineering Group Ltd., in association with Transport Research Laboratories Ltd., UK. and is engaged in providing consultancy services in the field of development, design, and maintenance.

4. The petitioner on 27th June 2013 issued a Letter of Acceptance (hereinafter referred to as “LOA”) to the petitioner for Consultancy Service. The Contract was executed on 4th July 2013 and the Service was commenced on 18th July 2013 and was to be completed in 20 months.

5. In December 2016, the main stakeholder, the World Bank provided a loan through its subsidiary International Bank for Reconstruction and Development (hereinafter referred to as “IBRD”) with regard to the said Consultancy Services and had also recommended in the *Aide-memoire* held in December 2016 for closure of part II of the Contract Agreement undertaken by the Organization and Transformation study, which was intimated by the respondent vide letter dated 27th July 2017.

6. The respondent completed the work on 3rd August 2017 exceeding the duration of completion to 48.5 months instead of 20 months.

7. A 3GM's Committee was constituted and the respondent also participated on 26th April 2018 and a meeting held on 17th May 2018 gave its view as under;

- i. *The payment for remuneration part was to be releases as per Milestone for payment mentioned in Contract Agreement whereas the Reimbursable was to be done as per actual on production of proof of consumption subject to ceiling amount of the item quoted in financial bid of the reimbursable part. All stages of reimbursable part have been paid some payment of reimbursable part has to be done.*
- ii. *After detailed deliberations committee recommends that payment shall be made for reimbursable part which is under ceiling limit of contract agreement and are to be supported with original document and proof of payment either in form of check payment or Bank statement.*
- iii. *Committee recommends release of payment to the consultant as per annexures subject to submission of undertaking by the consultant.*

8. Another 3 CGM Committee was constituted and meetings were held in the presence of the respondent and decision was made on 17th May 2020 was communicated which read as under;

- i. *Contractually the raised claims by the Respondent/Claimant are not payable.*
- ii. *The Consultant never raised any such Claims during the Contract period nor even convey their disagreement to closure of agreement.*

- iii. *Never presented the Claims before the 3 GM Committee specifically formed to look into the Claims by the Respondent/Consultant.*
- iv. *Time and again, Respondent/Consultant have confirmed no further financial implication on NHAI. After deliberations the committee express that “Concerned Division may consider payment of reimbursable claims as per the contract subject to production of supporting documents and accordingly had also asked the Claimant to submit the supporting documents so that the same may be examined”.*

9. The respondent invoked the Arbitration Clause of the Contract Agreement on 28th July 2020 and the learned Sole Arbitrator was appointed.

10. The Statement of Claim (hereinafter referred to as “SOC”) by the respondent herein was filed on 30th October 2020 before the learned Arbitral Tribunal followed by the Statement of Defense (hereinafter referred to as “SOD”) on 16th December 2020 by the petitioner and rejoinder to the SOD and subsequent rejoinder to Defence to Counter Claim by the respondent on 18th January 2021 and 2nd February 2021.

11. Statement towards admission and denial of documents were filed by both parties on 8th February 2021 before the learned Arbitral Tribunal.

12. Additional documents by the respondents were filed on 20th February 2021 and detailed synopsis were filed by both the respondent and petitioner on 30th June 2021 and 1st July 2021 respectively.

13. On 4th December 2021, the Impugned Award was passed by the Learned Arbitral Tribunal which has led to the present petition filed by the petitioner being aggrieved of the Impugned Award.

RELEVANT CLAUSES OF THE GENERAL CONDITIONS OF CONTRACT

14. Expiration of Contract

14.1 Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

19. Termination

e. Payment upon Termination

19.1.6 Upon termination of this Contract, the Client shall make the following payments to the Consultant.

(a) xxx xxx

(b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1. reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

45(1)(b) :The Itemized Invoices

As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, or after the end of each time interval otherwise indicated in the SCC, the Consultant shall submit to the Client, in duplicate, itemized invoices, accompanied by the receipts or other

appropriate supporting documents, of the amounts payable pursuant to Clauses GCC 44 and GCC 45 for such interval, or any other period indicated in the SCC. Separate invoices shall be submitted for expenses incurred in foreign currency and in local currency. Each invoice shall show remuneration and reimbursable expenses.

45(1)(c)

The Client shall pay the Consultant's invoices within sixty (60) days after the receipt by the Client of such itemized invoices with supporting documents. Only such portion of an invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Client may add or subtract the difference from any subsequent payments.

SUBMISSIONS (on behalf of the petitioner)

14. Mr. Narender Hooda, learned senior counsel for the petitioner submits that the impugned Award passed by the learned Sole Arbitrator is patently illegal and not in accordance with the law as well as the Contract Agreement.

15. Learned senior counsel for the petitioner submits that the negotiations before entering into the contract were a part of the Contract Agreement and cannot be ignored.

16. He submits that it was agreed between the parties that the payment would be made stage-wise. Accordingly, the payments were duly made towards the bills raised but the learned Arbitral Tribunal under Claim 1,

without application of mind, had taken into consideration the full ceiling amount for Part I of the assignment being Rs. 3,93,85,170/- and had not taken into consideration Amendment no. 1.

17. He further submits that the learned Arbitral Tribunal had failed to appreciate that the respondent had to submit supporting documents along with each bill as per Clause 45 (1) of General Conditions of Contract (Hereinafter referred to as “GCC”) which the respondent failed to do.

18. Learned senior counsel for the petitioner submits that the learned Arbitral Tribunal failed to appreciate that the petitioner under Clause 45(1) of GCC may withhold payment for such portion which were found to be unsatisfactory.

19. He further submits that the learned Arbitral Tribunal had wrongly opined that NHAI gave the Part II work to another Consultant doing the work of WBTA 24 on 17th October 2015 whereas there was no evidence on record.

20. Learned senior counsel for the petitioner submits that the learned Arbitral Tribunal failed to appreciate that the Extension of Time (hereinafter referred to as “EOT”) was unconditionally asked for by the respondent on several occasions which clearly shows delay on the part of the respondent.

21. He submits that there is a provision for the contract to expire under Clause 14.1 that clearly states that the agreement was to be expired after the initial stipulated period of 20 months and the EOT submissions were offered unconditionally without any additional financial implications.

22. He further submits that in order to claim for loss of damages, the aggrieved party has to submit the proof of loss and damages suffered by it along with documentary evidence, which was not submitted by the respondent.

23. Learned senior counsel for the petitioner submits that amount of award of Rs. 2,69,50,616/- and nearly about Rs. 93,50,567/- as interest had been allowed in the impugned Award on the basis of self-created document for the claim amounts of various claims which were much more than the initial demand.

24. He further submits that the learned Arbitral Tribunal had wrongly made an observation that the closure of the Contract was done unilaterally by NHAI. It is submitted that closure was a mere suggestion given by the World Bank as the project was funded by them in the *Aide-memoire* of the meeting held in December 2016.

25. Therefore, the learned senior counsel of the petitioner submits that the impugned award is liable to be set aside under Section 34 of the Act, 1996.

(On behalf of the respondent)

26. Mr. Arun K. Varma, learned senior counsel for the respondent submits that the whole contract was divided into two parts. The total Contract value was Rs. 5,48,77,030/- i.e., Rs. 3,93,85,170/- for Part I and Rs. 1,54,91,860/- for Part II.

27. He submits that Clause 45.1 (b) of the Special Conditions Contract describes the break up of Contract value. The Clause provides the stages

when the amounts mentioned were to be released.

28. Learned senior counsel for the respondent submits that the impugned Award is in accordance with the law and cannot be set aside on the ground of re-appreciation of evidence.

29. He further submits that it is within the jurisdiction of the learned Arbitral Tribunal to interpret the Contract or its any particular Clause.

30. Learned senior counsel for the respondent submits that where two views prevail, the view taken by the learned Arbitral Tribunal would be considered as a plausible view.

31. Learned senior counsel for the respondent submits that Court does not sit as a Court of Appeal over the decision of an Arbitral Tribunal and to adjudicate the correctness of an Award passed unless there is a patent illegality or perversity on the face of the Award.

32. Therefore, it is submitted that the instant petition is liable to be dismissed for being devoid of any merit.

33. Heard the learned senior counsel for the parties at length and perused the record.

FINDINGS AND ANALYSIS

34. The petitioner has approached this Court assailing the award dated 4th December 2021 under Section 34 of the Act, 1996. The law regarding a challenge to an arbitral award under the Act, 1996 is no more a *res integra*. The challenge of an award under Section 34 arising out of Arbitration proceedings must satisfy the tests laid down by virtue of the

provisions of the Act, 1996, and the law settled by way of pronouncements by the Hon'ble Supreme Court.

35. It is pertinent to reiterate that the intention of the legislature while enacting the Act, 1996 was the expeditious and effective disposal of matters. The Act has been set forth with the intention to limit the interference of the courts in Arbitral Proceedings.

36. Arbitration has evolved over the years as the ideal tool for the resolution of disputes that saves the court's time and is largely instrumental in assisting the parties to resort to quick remedial measures. Every Arbitration is based on insightful application of law and its evolution is proof of its significance in the actual proceedings. Thus, arbitration has emerged as the most preferred platform for quick resolution of disputes, especially in the industrial and corporate realms.

37. In order to facilitate this process and to maintain a check on it, a provision to raise objection against the Award was included. But even then, the Award may only be set aside if it fulfills certain criteria to qualify as being bad in law.

38. The Arbitrator empowered to resolve such a dispute, may do so only after careful consideration of the facts and evidence on record. The statement of claims and statement of defense is taken onto the record and the Arbitral proceedings are conducted according to the provisions set by the Act, 1996.

39. Adjudication of the disputes should be in perfect harmony with the contract, which is the “birth-giver”, and the existing provisions of law.

40. An unfettered scope of intervention into the functioning of Arbitral Tribunal functioning would defeat the spirit and purpose of the Arbitration Act. Therefore, the Hon'ble Supreme Court has repeatedly reiterated that the Court's scope of intervention is limited in the cases of a challenge under Section 34.

41. In ***UHL Power Co. Ltd. v. State of H.P.*, (2022) 4 SCC 116**, the Hon'ble Supreme Court reiterated the narrow scope under Section 34 of the Act, 1996 and held as under:

“16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified

through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

17. A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corpn. Ltd. [K. Sugumar v. Hindustan Petroleum Corpn. Ltd., (2020) 12 SCC 539], wherein it has been observed as follows : (SCC p. 540, para 2)

“2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of

misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator.””

42. Further in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131***, the Hon’ble Supreme Court went on to say that reappreciation of evidence cannot be permitted under the ground of patent illegality in a Section 34 petition under Act, 1996. The relevant portion has been reiterated below:-

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

43. A reference to the above stated pronouncements makes it clear that this Court while exercising its jurisdiction under Section 34 of the Act, 1996 shall not sit in appeal and/or re-examine the facts and evidence of the case.

44. The key grounds to examine whether the impugned Award is liable to be set aside as per Section 34 of the Act, 1996 are:

1. *Whether the impugned Award is patently illegal?*
2. *Whether the impugned Award is contrary to the provisions of the Contract and violative of Section 28(3) of the Act, 1996?*
3. *Whether the learned Arbitrator went beyond his powers to grant the claim of loss and damages?*

Ground no. 1 – Whether the impugned Award is patently illegal?

45. The Hon'ble Supreme Court in *Delhi Airport Metro Express (P) Ltd. v. DMRC*, (2022) 1 SCC 131, delved into the length and width of patent illegality, held as under:

“27. For a better understanding of the role ascribed to Courts in reviewing arbitral awards while considering applications filed under Section 34 of the 1996 Act, it would be relevant to refer to a judgment of this Court in Ssangyong Engg. & Construction Co. Ltd. v. NHAI [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] wherein R.F. Nariman, J. has in clear terms delineated the limited area for judicial interference, taking into account the amendments brought about by the 2015 Amendment Act. The relevant passages of the judgment in Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] are noted as under : (SCC pp. 169-71, paras 34-41)

“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] .

35. It is important to notice that the ground for interference insofar as it concerns “interest of India” has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. This again would be in line with paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

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 reappreciation 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.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, a

mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be

perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”

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

29. *Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression “patent illegality”. Likewise,*

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

46. In the case of ***Associate Builders v. DDA***, (2015) 3 SCC 49, the Hon’ble Supreme Court clarified the meaning and scope of ‘*Fundamental Policy of Indian Law*’ in the context of Section 34 of the Arbitration Act in the following manner:

*“28. In a recent judgment, **ONGC Ltd. v. Western Geco International Ltd.**, 2014 (9) SCC 263, this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held-*

35. What then would constitute the “fundamental policy of Indian law” is the question. The decision in *ONGC [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]* does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression “fundamental policy of Indian law”, we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. 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 for a 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.

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38. 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.

39. 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 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. 40. 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.”

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31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- 1. a finding is based on no evidence, or*
- 2. an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or*
- 3. ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.*

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33. 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 necessarily to pass 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 . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.....”

47. It is therefore clear that the decisive test for adjudicating upon an Award is that *first*, the learned arbitrator had to adopt a judicial approach; *second*, the principles of natural justice had to be upheld; *third*, the decision must not have been egregious, or rather, perverse.

48. A relevant portion of the impugned Arbitral Award has been reproduced below, to apply the test as to whether the Learned Arbitrator had erred while adjudication the Arbitral dispute:

Claim No. I

Claimed Amount Rs.1,99,57,914/

Total amount as per agreement is Rs. 5,48,77,030/-. It is lump sum price subdivided in Part I and Part II. Part I amounting to Rs. 3,93,85,170/- and Part II 1,54,91,860/-

The Respondent accepted to their satisfaction completion of

Consultancy Service Part I.

No deficiency was reported on the report by the Claimant. When no deficiency why it was kept pending specially when the Respondent has already given the work of Part II to another party on 17.10.2015.

IT HAS NOT BEEN MADE CLEAR WHY THEN THE RESPONDENT SUPRESSED THIS FACT FROM THE CONSULTANT.

The Respondent insisted for "No Due Certificate" even during release of payment even on the basis of stage payment and requested for its consideration.

There is an old maxim 'necessitas non habet legem' which means necessity knows no law. A party succumbs to the pressure of the other party to the bargain who is in a stronger position.

The plea of the Respondent is not being accepted.

The Respondent has paid "reduced amount basing it on stage payment."

Stage payment shown at Page 463 of CD-II is inclusive of both Part I and Part II. In this particular case when Part II has been dropped so should not be applicable.

All the more there is another bifurcation of Total amount of contract Rs. 5,48,77,030/- as

Amount for Part I of assignment Rs.3,93,85,170/- and

Amount for Part II of assignment Rs.1,54,91,860/-

Respondent's reliance on final payment on the basis of stage payment is contrary to the Contract Clause 19.1.6(b) read with 45.1(d) of GCC and therefore untenable.

The Claimant has claimed Rs.1,99,57,914/- which is balance amount of Rs.3,93,85,170/- Rs. 1,94,27,256/ [The amount paid by the Respondent].

After going through all facts in SOC, SOD and submissions made later the Consultant deserves entitlement.

I award the balance amount of Rs.1,99.57.914/- to the Claimant.

49. The Award has clearly been in consideration of the facts and submissions on record. The aforementioned contract clause 19.1.6(b), and clause 45.1(d) of the GCC were taken into consideration when the learned Arbitrator adjudicated the claim and awarded the balance amount to the Claimant, as the learned Arbitrator observed that the petitioner's reliance on the final payment on the basis of stage payment is contractually invalid.

50. Following the triple test of perversity, it is evident that the Arbitrator, being a creature of the contract, has rightfully stayed within the lines of the Contract to adjudicate the dispute. The facts of the matter have been harmoniously applied with the parallel reading of the Contractual clauses.

51. The learned Arbitral Tribunal has clearly adopted a judicial approach and adjudicated the dispute whilst keeping the principles of jurisprudence and natural justice alive.

52. The learned Arbitrator applied the principle of "*Necessitas non habet legem*", which means necessity knows no law. A person may sometimes have to succumb to the pressure of the other party to the

bargain who is in a stronger position. This kind of bargain can be referred to as a bargain under undue influence.

53. Thus, the learned Sole Arbitrator has considered the positions of the parties and adjudicated the dispute in the most appropriate manner. Therefore, the Award cannot be said to be patently illegal.

Ground No. 2 - Whether the impugned Award is contrary to the provisions of the Contract and violative of Section 28(3) of the Act, 1996?

54. Before delving into the judicial decisions, the relevant portion of Section 28(3) of the Act, 1996 is reproduced below:

28. Rules applicable to substance of dispute.—

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

55. It is an established principle that the Arbitral Tribunal is a creature of the Contract. The Arbitral Tribunal may not deviate from the Contract while adjudication of the disputes.

56. In ***Rajasthan State Mines and Minerals Limited v. Eastern Engineering Enterprises and Another***, (1999) 9 SCC 283, the Hon'ble Supreme Court held that,

"44. From the resume of the aforesaid decisions, it can be stated that:

(a) It is not open to the Court to speculate, where no reasons are given by the Arbitrator, as to what impelled Arbitrator to arrive at his conclusion.

(b) *It is not open to the Court to admit to probe the mental process by which the Arbitrator has reached his conclusion where it is not disclosed by the terms of the Award.*

(c) *If the Arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the Court cannot interfere.*

(d) *If no specific question of law is referred, the decision of the Arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where specific question of law touching upon the jurisdiction of the Arbitrator was referred for the decision of the Arbitrator by the parties, then the finding of the Arbitrator on the said question between the parties may be binding.*

(e) *In a case of non-speaking Award, the jurisdiction of the Court is limited. The Award can be set aside if the Arbitrator acts beyond his jurisdiction.*

(f) *To find out whether the Arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the Agreement between the parties containing the Arbitration clause. Arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the Award.*

(g) *In order to determine whether Arbitrator has acted in excess of his jurisdiction what has to be seen is whether the Claimant could raise a particular Claim before the Arbitrator. If there is a specific term in the Contract or the law which does not permit or give the Arbitrator the power to decide the dispute raised by the Claimant or there is a specific bar in the Contract to the raising of the particular Claim then*

the Award passed by the Arbitrator in respect thereof would be in excess of jurisdiction.

(h) The Award made by the Arbitrator disregarding the terms of the reference or the Arbitration Agreement or the terms of the Contract would be a jurisdictional error which requires ultimately to be decided by the Court. He cannot Award an amount which is ruled out or prohibited by the terms of the Agreement. Because of specific bar stipulated by the parties in the Agreement, that Claim could not be raised. Even if it is raised and referred to Arbitration because of wider Arbitration clause such Claim amount cannot be Awarded as Agreement is binding between the parties and the Arbitrator has to adjudicate as per the Agreement. This aspect is absolutely made clear in Continental Construction Co. Ltd.(supra) by relying upon the following passage from M/s. Alopri Parshad Vs. Union of India [1960] 2 SCR 703 which is to the following effect: - There it was observed that a Contract is not frustrated merely because the circumstances in which the Contract was made, altered. The Contract Act does not enable a party to a Contract to ignore the express covenants thereof, and to Claim payment of consideration for performance of the Contract at rates different from the stipulated rates, on some vague plea of equity. The parties to an executory Contract are often faced, in the course of carrying it out, with a turn of event which they did not at all anticipate, a wholly abnormal rise or fall in prices, a sudden depreciation of currency, an unexpected obstacle to execution, or the like. There is no general liberty reserved to the courts to absolve a party from liability to perform his part of the Contract merely because on account of an un contemplated turn of events, the performance of the Contract may become onerous.

(i) *The Arbitrator could not act arbitrarily, irrationally, capriciously or independently of the Contract. A deliberate departure or conscious disregard of the Contract not only manifests the disregard of his authority or misconduct on his part but it may tantamount to mala fide action.*

(j) *The Arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks just and reasonable; the Arbitrator is a tribunal selected by the parties to decide the disputes according to law."*

57. Further in ***Union of India vs. D. Khosla and Company, 2022 SCC OnLine J&K 356***, the High Court of Jammu and Kashmir held that,

"28. By ignoring Clause 12 and 21 of the Contract and acting in derogation thereof, the Arbitrator has admittedly travelled beyond his jurisdiction and has acted contrary to the terms and conditions of the Contract of which he was a creature. I am aware that interpretation of a particular clause by the Arbitrator may not be open to scrutiny by this Court, however, instant case is not of interpretation to any clause but is a apparent case of ignoring clause-12 and 21 of the Contract Agreement. As per Clause-12 and 21, no Claim could have been raised by the Contractor on account of extra expenditure incurred due to change in the site of foundation and adjudicated upon by the Arbitrator in his favour.

XXXXXX

30. The Arbitrator appears to have ignored the terms and conditions of the Contract Agreement and Awarded the Claim in favour of the Contractor. Claim was, thus, not sustainable and therefore, wrongly upheld by the Court below.

XXXXXX

47. Be that as it may, in view of the discussion made above, I am of the considered view that the Arbitrator has clearly exceeded his jurisdiction and has Awarded most of the items of Claims by either ignoring the terms and conditions of the Contract or acting in derogation thereof."

58. The Hon'ble Supreme Court had earlier held in ***Associate Engineering Company v. Govt. of Andhra Pradesh and others, (1991) 4 SCC 93***, that the Arbitrator cannot simply overlook the provisions in the Contract. The relevant paragraphs are reiterated below:

"24. The Arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the Contract. His sole function is to arbitrate in terms of the Contract. He has no power apart from what the parties have given him under the Contract. If he has travelled outside the bounds of the Contract, he has acted without jurisdiction. But if he has remained inside the parameters of the Contract and has construed the provisions of the Contract; his Award cannot be interfered with unless he has given reasons for the Award disclosing an error apparent on the face of it.

25. An Arbitrator who acts in manifest disregard of the Contract acts without jurisdiction. His authority is derived from the Contract and is governed by the Arbitration Act which embodies principles derived from a specialised branch of the law of agency (see Mustill & Boyd's Commercial Arbitration, Second Edition, p. 641). He commits misconduct if by his Award he decides matters excluded by the Agreement (see Halsbury's Laws of England, Volume II, Fourth Edition, Para 622). A deliberate departure from Contract amounts to not only manifest disregard of his authority or a misconduct on

his part, but it may tantamount to a mala fide action. A conscious disregard of the law or the provisions of the Contract from which he has derived his authority vitiates the Award."

59. In ***Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum, (2022) 4 SCC 463***, the Hon'ble Supreme Court has reiterated that the Arbitrator is a creature of the contract. The relevant paragraphs are reproduced below:

"43. An Arbitral Tribunal being a creature of Contract, is bound to act in terms of the Contract under which it is constituted. An Award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the Contract or has ignored the specific terms of a Contract.

44. However, a distinction has to be drawn between failure to act in terms of a Contract and an erroneous interpretation of the terms of a Contract. An Arbitral Tribunal is entitled to interpret the terms and conditions of a Contract, while adjudicating a dispute. An error in interpretation of a Contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction.

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

46. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court

held that an Award ignoring the terms of a Contract would not be in public interest. In the instant case, the Award in respect of the lease rent and the lease term is in patent disregard of the terms and conditions of the lease Agreement and thus against public policy. Furthermore, in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] the jurisdiction of the Arbitral Tribunal to adjudicate a dispute itself was not in issue. The Court was dealing with the circumstances in which a court could look into the merits of an Award.

47. In this case, as observed above, the Impugned Award insofar as it pertains to lease rent and lease period is patently beyond the scope of the competence of the Arbitrator appointed in terms of the dealership Agreement by the Director (Marketing) of the appellant.

48. The lease Agreement which was in force for a period of 29 years with effect from 15-4-2005 specifically provided for monthly lease rent of Rs 1750 per month for the said plot of land on which the retail outlet had been set up. It is well settled that an Arbitral Tribunal, or for that matter, the Court cannot alter the terms and conditions of a valid Contract executed between the parties with their eyes open.

49. In Ssangyong Engg. & Construction Co. Ltd. v. NHAI [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , this Court held : (SCC pp. 199-200, para 76)

“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. It can be

seen that the formula that was applied by the Agreement continued to be applied till February 2013 — in short, it is not correct to say that the formula under the Agreement could not be applied in view of the Ministry's change in the base indices from 1993-1994 to 2004-2005. Further, in order to apply a linking factor, a circular, unilaterally issued by one party, cannot possibly bind the other party to the Agreement without that other party's consent. Indeed, the circular itself expressly stipulates that it cannot apply unless the Contractors furnish an undertaking/affidavit that the price adjustment under the circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not and cannot apply. This being the case, it is clear that the majority Award has created a new Contract for the parties by applying the said unilateral circular and by substituting a workable formula under the Agreement by another formula dehors the Agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a Contract can never be foisted upon an unwilling party, nor can a party to the Agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this country, and shocks the conscience of this Court. 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.”

50. In *PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2021) 18 SCC 716 : 2021 SCC OnLine SC 508]* this Court referred to and relied upon *Ssangyong Engg. & Construction [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213]* and held : *(PSA Sical Terminals case [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2021) 18 SCC 716 : 2021 SCC OnLine SC 508] , SCC para 85)*

“85. As such, as held by this Court in *Ssangyong Engg. & Construction [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213]* , the fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a Contract has been foisted upon an unwilling party. This Court has further held that a party to the Agreement cannot be made liable to perform something for which it has not entered into a Contract. In our view, re-writing a Contract for the parties would be breach of fundamental principles of justice entitling a court to interfere since such case would be one which shocks the conscience of the Court and as such, would fall in the exceptional category.”

51. In *PSA Sical Terminals [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2021) 18 SCC 716 : 2021 SCC OnLine SC 508]* this Court clearly held that the role of the Arbitrator was to arbitrate within the terms of the Contract. He had no power apart from what the parties had given him under the Contract. If he has travelled beyond the Contract, he would be acting without jurisdiction.

52. In *PSA Sical Terminals [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2021) 18 SCC 716 : 2021 SCC OnLine SC 508]* this Court referred to and relied upon the earlier judgment of this Court in

Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. [Army Welfare Housing Organisation v. Sumangal Services (P) Ltd., (2004) 9 SCC 619] and held that an Arbitral Tribunal is not a court of law. It cannot exercise its power ex debito justitiae.

53. In Satyanarayana Construction Co. v. Union of India [Satyanarayana Construction Co. v. Union of India, (2011) 15 SCC 101 : (2014) 2 SCC (Civ) 252], a Bench of this Court of coordinate strength held that once a rate had been fixed in a Contract, it was not open to the Arbitrator to rewrite the terms of the Contract and Award a higher rate. Where an Arbitrator had in effect rewritten the Contract and Awarded a rate, higher than that agreed in the Contract, the High Court was held not to commit any error in setting aside the Award.

60. In the instant case, the learned Arbitrator clearly took the provisions of the Contract and the GCC into consideration during the adjudication of the claims. The aforementioned portion of the Arbitral Award makes it evident that the learned Arbitrator has recorded his observations in consonance with the provisions of the Contract, and thus marked his observations accordingly.

Ground no. 3 - Whether the learned Arbitrator went beyond his powers to grant the claim of loss and damages?

61. It was submitted by the counsel for the petitioner that the learned Arbitral Tribunal had passed the impugned award in an arbitrary, capricious, and whimsical manner and thus, the impugned award is liable to be set aside on the basis of *mala fide* and non-objective approach of the learned Arbitral Tribunal.

62. They further submitted that the respondent did not submit the proof of loss and damages but the learned Arbitrator granted the claim for loss and damages regardless of the lack of documentary evidence.

63. The relevant portion of the impugned Award is reproduced hereinbelow for clarity:

“Claim No. 5 & Claim No. 6

Claimed Amounts Are Rs. 30,98,372- and Rs.15,49,186/- Respectively

Claim No. 5 is about LOSS OF PROFIT DUE TO TERMINATION where as Claim No. 6 is about COMPENSATION ON BREACH/COMPENSATION ON ACCOUNT OF BREACH OF CONTRACT

The Claimant submitted that he could have reasonably earned a profit of 20% of Total amount of Part II of job as in the Contract Agreement. which is Rs. 1,54,91,860/- So the amount of claim submitted is Rs. 30,98,372/-.

In case of Claim No.6 The Claimant has submitted that on account of termination he is entitled to recover the damages suffered to him on account of inordinate delay as envisaged in Section 54 and 73 of I C Act. He further submitted that loss of profits suffered for nearly 40 months which reasonably be 10% of Part II amount for which Rs.15,49, 186/- is requested.

A. The Respondent unilaterally closed the contract ignoring conditions and terms of Contract

B. The Respondent prior to this has already given the work to another consultant (nearly 2 years back) and kept the Claimant in dark.

Because of A above the Claimant suffered loss/damages in the form of loss of Profit from the work so he deserves to be compensated.

Because of B above has suffered reduced profitability.

In Arbitrator's view both the Claims 5 & 6 relate to loss of profit and compensation relating to the Termination of Part II and they are either complementary or supplementary to after effect of same issue.

I clubbing Claim No. 5 and Claim No. 6 Award amount of Rs.20 lakhs/- for both claims combined to the Claimant.”

64. The relevant portion of the impugned award clearly showcases the presence of a reasoning stated to validate the decision of the learned Arbitrator.

65. A three-judge Constitution bench of the Hon'ble Supreme Court in ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1***, analyzed the validity of an unreasoned Award. The relevant paragraphs and reproduced hereinbelow:

“29. There is no gainsaying that arbitration proceedings are not per se comparable to judicial proceedings before the Court. A party under Indian Arbitration Law can opt for an arbitration before any person, even those who do not have prior legal experience as well. In this regard, we need to understand that the intention of the legislature to provide for a default rule, should be given rational meaning in light of commercial wisdom inherent in the choice of arbitration.

30. A five-Judge Constitution Bench of this Court in *Raipur Development Authority v. Chokhamal Contractors* [*Raipur Development Authority v. Chokhamal Contractors*, (1989) 2 SCC 721 : AIR 1990 SC 1426] , considered the scope of Section 30 of the Arbitration Act, 1940 and held as under: (SCC p. 736, para 19)

“19. It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made under Section 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.”

31. A three-Judge Bench of this Court in another case of *S. Harcharan Singh v. Union of India* [*S. Harcharan Singh v. Union of India*, (1990) 4 SCC 647] , reiterated its earlier view that the arbitrator's adjudication is generally considered binding between the parties for he is a Tribunal selected by the parties and the power of the Court to set aside the award is

restricted to cases set out in Section 30 of the Arbitration Act, 1940.

32. However, the ratio of Chokhamal case [Raipur Development Authority v. Chokhamal Contractors, (1989) 2 SCC 721 : AIR 1990 SC 1426] has not found favour of the legislature, and accordingly Section 31(3) has been enacted in the Arbitration Act. This Court in Som Datt Builders Ltd. v. State of Kerala [Som Datt Builders Ltd. v. State of Kerala, (2009) 10 SCC 259 : (2009) 4 SCC (Civ) 153 : (2009) 4 Arb LR 13] , a Division Bench of this Court has indicated that passing of a reasoned award is not an empty formulation under the Arbitration Act.

33. It may be relevant to note Russell on Arbitration, 23rd Edn. (2007), wherein he notes that:

“If the Court can deduce from the award and the materials before it, which may include extracts from evidence and the transcript of hearing, the thrust of the tribunal's reasoning then no irregularity will be found....Equally, the court should bear in mind that when considering awards produced by non-lawyer arbitrators, the court should look at the substance of such findings, rather than their form, and that one should approach a reading of the award in a fair, and not in an unduly literal way.”

34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy

resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.”

66. The aforementioned judicial decision elucidates that the amount of reasoning in an Award is not a criterion to set aside an Award. The length or detail of the reasoning would depend on the Arbitrator and it is his

prerogative, based on his skill set. The Court shall only tell that the findings are supported by reasoning and the length does not matter.

67. The court may not simply set aside an Award because the Arbitral Tribunal covered his reasoning in brief and to the point, especially when the statements of the parties, facts, claim, and evidence have been recorded in the first part of the Award.

68. The court does not sit in appeal to reappraise evidence and value the detail of the reasoning given in the Award.

69. The lack of reasoning should be that apparent that it becomes evidently perverse for the Court to set aside such an Award.

70. In *Union of India vs. J.P. Sharma and Sons AIR 1968 Raj 99*, the powers of the Arbitral Tribunal were discussed. It was held that:

“29. In (1911) 14 Ind Cas 371 (Lah), it was observed that where the whole case has been submitted to the arbitration of a person, his duty is to decide the whole dispute substantially though he is not bound to write a judgment and give his finding on each issue.

30. Assadullah Makhdoomi's case, AIR 1966 J & K 1 only follows the Supreme Court cases which we have already referred.

31. In AIR 1958 Mad 296, the learned Judges pointed out that the fact that the Umpire did not give any reasons in the award cannot by itself vitiate the award. They also observed that the validity of the award cannot be challenged on the ground that each item of claim or counter-claim was not specifically dealt with and Umpire's decision thereon recorded.

32. Then we may refer to the passage from Halsbury's Laws of England referred to in 1951-2 All ER 904. It is about the evidence of the umpire or arbitrator Lord Cairns observed that "the award is a document which must speak for itself, and the evidence of the umpire is not admissible to explain or to aid, much less to attempt to contradict what is to be found upon the face of that written instrument." It was also pointed out that it was not open to the Court to investigate as to by what mental processes the arbitrator had arrived at his decision.

33. In AIR 1960 Cal 693, Bachawat J., as he then was, pointed out that it was no misconduct if the arbitrator did not make separate findings on each issue. The learned Judge pointed out that the arbitrator may award on the whole case. All that is necessary is that the arbitrator has given an award on the whole case whereby he has fully and finally determined the rights of the parties in respect of the subject-matter referred.

34. Lastly, we may refer to AIR 1963 SC 1677. Their Lordships reviewed a number of authorities in this case and pointed out how far and under what circumstances an award could be challenged on the ground of its incompleteness and what principles the Court has to bear in mind. Their Lordships observed as follows:-- "Where an award given by the arbitrator is filed in Court and it is challenged on the ground of its incompleteness, the Court has to bear in mind certain basic positions. These are: (1) a Court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal; (2) unless the reference to arbitration specifically so requires the arbitrator is not bound to deal with each claim or matter separately, but can deliver a consolidated award. The legal position is clear that unless so specifically required an award need not formally express the

decision of the arbitrator on each matter of difference; (3) unless the contrary appears the Court will presume that the award disposes finally of all the matters in difference: and (4) where an award is made de premises (that is, of and concerning all the matters in dispute referred to the arbitrator'), the presumption is, that the arbitrator intended to dispose finally of all the matters in difference: and his award will be held final, if by any intendment it can be made so."

"Where, therefore, after taking into consideration the arbitration agreement, the statements filed by the parties and the document produced, the arbitrator proceeds to give his "award in writing as to all disputes" referred to him, the Court will assume that the arbitrator has considered and disposed of every claim made or defence raised. Since the award states that it is made of and concerning all the matters in dispute referred to the arbitrator, there is a presumption that the award is complete. In such a circumstance, the silence of the award as regards a particular claim must be taken to be intended as a decision rejecting the claim to that relief."

35. In our view, the last mentioned case points out exhaustively as to what should be the basic approach of a Court in dealing with the question of invalidity of an award on the ground of incompleteness. As far as possible the Court should make a reasonable effort to sustain the award. Their Lordships pointed out that it is not necessary for the arbitrator to deal with each claim or matter separately and it is open to him to award an consolidated amount for a number of claims. This is, however, subject to one important condition and it is this that if the reference to arbitration specifically requires the arbitrator to deal with certain disputes specifically the position is otherwise and in that event the award may be taken to be incomplete and thus defective or invalid. However,

in this regard the rule is that the Court will presume that the award disposes finally all the matters in difference, unless the contrary appears to the Court and where an award is made concerning all the matters in dispute the presumption is that the arbitrator intended to dispose finally of all the matters in dispute referred to him. This conclusion can be reached if by necessary intendment the award can be held to dispose of all the matters.”

71. In ***Kali Charan Sharma vs. Municipal Corporation of Delhi and Others*** AIR 1981 Del 301, the High Court of Delhi has expounded on the same principle. The relevant paragraph is reproduced hereinbelow:

“4. In this context he has adverted to Union of India v. Firm J.P. Sharma and Sons AIR 1968 Raj, 99 which is a Bench decision and State of Madhya Pradesh v. Satyapal Wasson AIR 1979 Madhya Pradesh, 119, also a Bench decision of that Court. In the Rajasthan case the principal dispute between the parties was about the applicability of agreed rate for the job done by the contractor. Certain issues were framed and eventually, the arbitrator awarded a lump sum to the contractor without dealing with each and every issue separately. Learned Judges while adverting to various authorities including Champsey Bhara and Co. v. Jivraj Balloo Spinning and Weaving Co. Ltd. AIR 1923 PC 66, Jivarajbhai v. Chintamanrao Balaji AIR 1965 SC 214. Bungo Steel Furniture (P) Ltd. v. Union at India AIR 1967 SC 378, Firm Madan Lal Roshan Lal Mahajan v. Hukamchand Mills Ltd. Indore AIR 1967 SC 1030. and Smt. Santa Sila Devi v. Dharendra Nath Sen AIR 1963 SC 1677 etc. reproduced the following observations of their Lordships of the Supreme Court in AIR 1963 SC 1677, (See headnote).

“Where an award given by the arbitrator is filed in Court and it is challenged on the ground of its incompleteness, the Court has to bear in mind certain basic positions. These are: (1) a Court should approach an award with a desire to support it, if that is reasonably possible rather than to destroy it by calling it illegal; (2) unless the reference to arbitration specifically so requires the arbitrator is not bound to deal with each claim or matter separately, but can deliver a consolidated award. The legal position is clear that unless so specifically required an award need not formally express the decision of the arbitrator on each matter of difference; (3) unless the contrary appears the Court will presume that the award disposes finally of all the matters in difference; and (4) where an award is made de praemissis (that is, of and concerning all the matters in dispute referred to the arbitrator), the presumption is, that the arbitrator intended to dispose finally of all the matters in difference; and his award will be held final, if by any intendment it can be made so.””

72. It can be thus inferred from the aforementioned portion of the impugned Award and a bare reading of the aforementioned judicial decisions, that the Arbitrator has the power to grant loss and damages in a manner he deems fit.

73. In the instant case, the Arbitrator took the facts into consideration after carefully recording the submissions as well to grant Claim no. 5 and 6 in favour of the respondent.

74. The principle of *Quantum Meruit* enables the claimant to recover money for services supplied to a defendant in circumstances where the claimant is not recompensed by performing their obligations.

75. Therefore, following the principles of natural justice and equity, it is apparent that the learned Arbitrator has acted well within his power to adjudicate the dispute effectively, and thus, it does not warrant the interference of the Court.

CONCLUSION

76. In light of the facts, submissions, and contentions in the pleadings, this Court finds no cogent reasons to entertain the instant petition. The Court finds that the Petitioner has failed to corroborate with evidence how the Learned Arbitrator had erred in adjudicating the dispute.

77. The law which has been settled by the Hon'ble Supreme Court is that the scope of interference with an Arbitral Award under Section 34 of the Act, 1996 is fairly limited and narrow. The Courts shall not sit in an appeal while adjudicating a challenge to an Award which is passed by an Arbitrator, the master of evidence, after due consideration of facts, circumstances, evidence, and material before him.

78. In the instant petition, it was argued that the impugned Award was patently illegal and thus liable to be set aside. As stipulated by the aforementioned precedents, it is essential that there be illegalities or deficiencies at the face of the Award and/or shock the conscience of the Court in order for it to qualify to be set aside by an act of this Court.

79. The petitioner has failed to make out such a case and was unable to show that the Award is patently illegal on the face of it.

80. A perusal of the impugned award makes it evident that there is no patent illegality or error apparent on the face of the record. The learned arbitrator has passed the impugned award after considering all the relevant material placed before it during the arbitral proceedings. The award is well-reasoned and is not in contravention of the fundamental policy of Indian law, and thus there is no reason for interfering in the impugned Award.

81. The petitioner has failed to show that any grounds that are stipulated under Section 34 of the Arbitration Act are being met.

82. In view of the above discussion of facts and law, this Court finds no reason to set aside the Impugned Arbitral Award.

83. The petition is, accordingly, dismissed.

84. Pending applications, if any, also stand disposed of.

85. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 8 , 2023
dy/as