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

Date of decision: 30.01.2024

+ **O.M.P. (COMM) 589/2020 & I.A. 12154/2020, I.A. 12156/2020**
I.A. 24079/2023

DEPARTMENT OF LAND RESOURCES

..... Petitioner

Through: Mr. Rajesh Gogna, CGSC with Ms.
Jayashree, Adv.

versus

MFS MUKESH AND ASSOCIATES

..... Respondent

Through: Mr. Ritin Rai, Sr. Adv. with Mr. S
Santanam, Mr. Darsh Bansal, Mr. Kartik Malhotra,
Ms. Abhilasha Shrawat, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act") seeking to set aside the arbitral award dated 10.01.2020 as amended on 13.02.2020 passed by the learned Sole Arbitrator in ARB.P. 171/2018.
2. It is stated by Mr. Gogna, learned CGSC for the petitioner, that the award is liable to be set aside on the grounds stated under Section 34(2)(a)(ii) and (iv) of the Act, as well as Section 34(2)(b)(ii) of the Act.



3. He states that the award suffers from both factual and legal errors.
4. As regards factual errors, he submits that the contract entered into between the parties was *void ab initio* and hence, has no legal validity as the respondent got the same in a contrived manner and did not comply with the legal and statutory requirements.
5. He submits that the respondent never submitted Expression of Interest (hereinafter “EoI”) within the prescribed date.
6. It is stated that on 11.01.2014, the petitioner, i.e. Department of Land Resources under the Ministry of Rural Development, Government of India issued advertisement for Expression of Interest (hereinafter “EoI”) from interested/eligible consultants for assignment of ‘Monitoring and Evaluation task to external agencies’ to ensure objectivity, transparency and credibility of Integrated Watershed Management Portal (“IWMP”) implemented by it, separately for 5 regions, i.e. East, West, North, South and North-East regions.
7. As per condition 7 of the EoI, the EoI with accompanying information was to be delivered in a written form in a sealed envelope to the mailing address as mentioned therein within three weeks from the publication of EoI. The EoI categorically mentioned that proposals received after due date will not be entertained under any circumstances.
8. The advertisement was published in the newspaper on 11.01.2014 and the three weeks expired on 01.02.1014, but since 01.02.2014 was a Saturday and a non-working day of the Department, the last date for submission was to be treated as 03.02.2014.
9. It is stated that the respondent did not submit its proposal till the last date, i.e. 03.02.2014 in the written form and in a sealed envelope as



mandated under the EoI advertisement.

10. On 06.02.2014, when the proposals received were arranged, it was found that the proposal of the respondent was not there.
11. On 10.02.2014, it was decided by Under Secretary level Officer (after discussion with Economic Advisor) that the proposals received by any means would be considered.
12. On 26.05.2014, the petitioner issued corrigendum to EoI making further changes to the evaluation criteria without the approval of the Competent Authority. It is stated that the same was neither published nor uploaded on the website.
13. On 27.05.2014, the EoI proposals were evaluated and shortlisting of agencies was done. It was indicated that 24 proposals had been received against EoI (including proposals not received in sealed envelope and in a written form).
14. On 18.09.2014, the Department issued Request For Proposal (RFP) from the shortlisted agencies for submission of technical and financial proposals. It is alleged that the RFP again was not approved by the Competent Authority.
15. On 01.10.2014, pre-proposal meeting was held with the bidders.
16. On 02.10.2014, corrigendum to the RFP was issued in accordance with the discussions held in pre-proposal meeting without the approval of the Competent Authority. It is also stated that the criteria of technical evaluation was changed in the corrigendum without the approval of the Competent Authority.
17. The respondent / claimant submitted its proposal / bid for 3 regions (South, West and North-East).



18. On 27.11.2014, the Consultation Evaluation Committee (CEC) was re-constituted to evaluate the technical proposals. The CEC held its last meeting on 07.04.2015 and recommended successful bidders for different regions.
19. On 03.06.2015, the Letter of Intent (“LoI”) was issued without the approval of the Competent Authority, i.e. the Hon’ble Minister for Rural Development. It is stated that even the approval of the Secretary of the Department was not obtained.
20. On 31.07.2015, the respondent/claimant submitted a Performance Security (Bank Guarantee).
21. On 17.09.2015, contract was signed between the petitioner and the respondent without the approval of the Competent Authority and thereafter, on 26.10.2015, the respondent submitted its Bank Guarantee towards advance payment for North-East Region.
22. It is stated that the Department received the inception report after a delay of 20 days and as per the Terms of Reference, the inception report was to be submitted within one month from the date of signing the contract i.e. on 17.10.2015.
23. It is further submitted that on 09.11.2015, the petitioner made advance payment of Rs. 1,24,11,043/- being 10% of the total value of the contract to the respondent, without taking the concurrence of the Integrated Finance Division (“IFD”).
24. On 25.03.2016, the respondent made request for extension of time to submit its baseline report.
25. It is stated that the baseline report was submitted after a delay of 7 months which was contrary to the Terms of Reference.



26. It is stated that the META evaluation report which was submitted by the respondent was also found lacking and certain changes had to be made in the same as well.
27. On 27.03.2017, the IFD raised queries regarding baseline reports and other reports due to non-acceptance by Watershed Management Division (WMD) and for receiving the same after the due date.
28. On 11.04.2017, the Consultancy Monitoring Committee (CMC) was constituted to scrutinise and accept the reports.
29. On 21.07.2017, while drafting the agenda for the CMC, it transpired that the award of contract made to the respondent suffered from various lacunae including lack of competent approval.
30. As per the petitioner, on examination, it has now been confirmed that various irregularities have been committed in the preliminary submission and various other procedural requests as highlighted above.
31. Since there were disputes between the parties, the respondent filed an application in March, 2018 invoking arbitration and on 06.03.2018, Justice (Retd.) V.K. Shali was appointed as the Sole Arbitrator.
32. The Arbitrator *vide* arbitral award dated 10.01.2020 has been pleased to allow the claims of the respondent to the tune of Rs. 11,23,95,709/- alongwith future interest as per MSMED Act, 2006 from the date of the award till the date of actual payment.
33. Mr. Gogna, learned CGSC for the petitioner has stated that the respondent defaulted in the timelines given by the petitioner and the case of the respondent is one of backdoor entries. He states that the contract is *void ab initio* for the following reasons:-
 - i. The whole procedure of shortlisting suffers from grave



administrative lapses.

- ii. The EoI and RFP were amended in favour of the respondent without holding a CEC meeting and getting approval from the Competent Authority.
 - iii. The respondent got the contract using unlawful means.
34. It is stated that the departmental inquiry is going on as to how the respondent got the contract without requisite minimum competence. The respondent never submitted its EoI in a sealed envelope or in a written form. The respondent agency never revealed that it had MSME registration during the process of shortlisting.
35. As regards the legal errors are concerned, it is stated that the imposition of the interest can only be made under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter “MSMED Act”) by the Facilitation Council, and the Sole Arbitrator does not have the power to grant relief under Section 16 of the MSMED Act.
36. He further states that the award is violative of Section 34(2)(a)(iv) as the learned Arbitrator has imposed interest at three times the bank rate notified by the Reserve Bank of India (RBI) with monthly compound interest, which, he states, is exorbitant and wrongful.
37. Mr. Gogna, learned CGSC relies upon the judgment of ***AVR Enterprises v. Union of India***, 2020 SCC OnLine Del 624 to state that the interest as mandated in Section 16 of the MSMED Act would be applicable only if the respondent had invoked the mechanism of the MSMED Act, 2006. In support, he relies upon paragraphs 15 - 24, 33 - 35 and 44 of the judgment, which read as under:-



“15. The question that arises for consideration is as to whether Sections 18 and 19 of the MSMED Act are applicable to the facts of the present case.

16. Petitioner, in the present case, had invoked arbitration under the Arbitration Act and requested respondent to appoint an arbitrator. Respondent appointed an arbitrator.

17. Admittedly there was no reference made to the Micro and Small Enterprises Facilitation Council for any amount due to the Petitioner under Section 17 of the MSMED Act.

18. Since there was no reference made to Micro and small Enterprises Facilitation Council by the petitioner, no proceedings were conducted by the Council under Section 18 of the MSMED act. There was also no reference made by the Council to any Institution or Centre for conducting conciliation. There was no conciliation either by the Council or by any Institution or Centre providing alternate dispute resolution services. The Council also did not take up any dispute for arbitration nor did it referring any dispute to any Institution or Centre providing alternate dispute resolution services for such arbitration.

19. Arbitration in the present case was not an Institutional Arbitration as contemplated under section 18 of the MSMED Act but was conducted under the Arbitration Act by an Arbitrator privately appointed by the Respondent.



20. Reading of Section 19 of the MSMED Act shows that same is applicable to a decree, award or other order made either by the Council or by any Institution or Centre providing alternate dispute resolution services to which a reference is made by the Council.

21. Since there was no arbitration conducted under the MSMED Act so there is no question of any decree, award or other order being made either by the Council or by any Institution or Centre providing alternate dispute resolution services to which a reference is made by the Council thus Section 19 of the MSMED Act is not applicable to the present case.

22. Even though the petitioner may be covered under the MSMED Act, as Petitioner did not invoke its claim under section 18 of the MSMED Act or seek reference thereunder, there is no question of section 19 of the MSMED Act being applicable to the present case.

23. Similar interpretation has been rendered by the coordinate Bench of this Court in *Bharat Heavy Electrical Limited (supra)*. It has been held that “the scheme (of the Act) is to provide a statutory framework for Micro and Small Enterprises to expeditiously recover the amounts due for supplies made by them.....It is understood that the Small and Medium Enterprises do not command a significant



bargaining power and as indicated in the statement of object and reasons of the Act - the object of the Act is, inter alia, to extend the policy support and provide appropriate legal framework for the sector to facilitate its growth and development. It is, apparently, for this reason that Section 18(3) does not contemplate an arbitration to be conducted by an arbitrator which is to be appointed by either party, but expressly provides that the same would be conducted by MSEFC or by any institution or a centre providing alternate dispute resolution services. Section 19 of the Act also ensures a more expedient recovery by making pre-deposit of 75% of the awarded amount a pre-condition for assailing the award. The benefit of this provision is not available in case of arbitrations in terms of agreements between the parties (and not by a statutory reference under Section 18(3) of the Act). Further, in terms of Section 19 of the Act, the award rendered pursuant to an arbitration under Section 18(3) of the Act cannot be assailed by the party (other than the supplier), without depositing seventy-five percent of the amount awarded. Concededly, Section 19 would be inapplicable to an award, which is rendered pursuant to an arbitration that is not conducted in terms of Section 18(3) of the Act.

24. I am in complete agreement with the view expressed by the coordinate bench in Bharat Heavy Electrical Limited (supra).



.....

33. Section 6 and 7 of the Interest Act read as under:

“6. Recovery of amount due.- (1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.

(2) Notwithstanding anything contained in sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

7. Appeal.-No appeal against any decree, award or other order shall be entertained by any Court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as



the case may be, other order in the manner directed by such Court or, as the case may be, such authority.”

34. Section 6 of the Interest Act contemplates two kind of proceedings; (i) a Suit or other proceeding under any law for the time being in force and (ii) reference to the Industry Facilitation Council for acting as an arbitrator or conciliator. In the context of Section 6 of the said Act, Section 7 provides that no appeal against any decree, award or other order shall be entertained unless the appellant (not being a supplier) deposits 75% of the amount in terms of the decree, award or other order.

35. In contrast to Section 6 of the Interest Act, Section 18 of the MSMED Act does not contemplate filing of a Suit. It only contemplates a reference to the Micro and small Enterprises facilitation Council. Since Section 18 of the MSMED Act only contemplates a reference to the Council, Section 19 also refers to a decree, award or other order made either by the Council itself or by any Institution or Centre providing alternate dispute resolution services to which a reference is made by the Council.

....

44. In my view, Section 19 of the MSMED Act would apply only to proceedings initiated under section 18 of the MSMED Act and would not apply to an award published by an Arbitrator appointed by the parties otherwise than in accordance with section 18 of the



MSMED Act. ”

Analysis

38. I have heard the learned counsel for the petitioner and am unable to agree with the contentions put forth by him.

39. Section 34(2)(a)(ii), (iv) and Section 34(b)(ii) of the Arbitration and Conciliation Act, 1996 read as under:

“Section 34. Application for setting aside arbitral award.-

....

(2) An arbitral award may be set aside by the Court only if--

(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that]--

....

(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

....

(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

....

(b) the Court finds that--



....

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.--For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

....”

Regarding Factual Errors

40. The findings of the Arbitrator on irregularity are contained in paragraphs 194 to 199 of the impugned award dated 10.01.2020, and read as under:-

“15. Finding on Irregularity

194. The burden of proof is on the Respondent to establish the above-mentioned alleged irregularities that their impact on the contract I do not find any document on record that discharges



that burden. In any case, internal irregularities by the Respondent cannot be a ground to invalidate the contract. Further, while alleging that it was discovered on 21.07.2017 that the process of award suffered from irregularities, the Respondent has not shown or stated as to how and by whom it was discovered or what has taken place since.

195. Now coming to the Respondent's allegation of fraud in the selection process, I find that other than conjectures and surmises, there is nothing on record to establish the same. In fact, the Respondent's own Noting Sheets reveal that the EOI proposal of the Claimant was in fact submitted on or before the 03.02.2014. The RTI replies show that the Respondent has not maintained any record to establish how many participating agencies submitted EOIs in a sealed cover. The Respondent has even admitted that it does not have a record to show how the Claimant submitted its EOI proposal. Such being the case, the Respondent cannot be allowed to take the plea that the Claimant did not submit the EOI proposal in the prescribed manner.

16. Finding on Lack of Approval of Competent Authority

196. So far as the allegations of the Respondent with respect to lack of approval from the competent authority is concerned, I find that the conduct of the Respondent negates the contention of the Respondent in this behalf. Firstly, when all the pre contract documents were being uploaded on the Respondent's website, it cannot be said that the Competent Officer did not



have knowledge of the same. Even though it has been argued by the Ld. Counsel for the Respondent that the concerned official has since sought voluntary retirement and an investigation is pending it was admitted that no disciplinary action has been taken against any official and that there is no document on record with respect to the outcome of this investigation.

197. I find that that when the Respondents communications of 09.11.2015 and 16.03.2016 release payments to the Claimant, they both state that the administrative and financial approval of the President of India was granted for release. These letters also clearly show that the said sanction was issued under the powers delegated to the Department of Land Resources with the concurrence of Integrated Finance Division (IFD). In such circumstances, it cannot be said that the Contract does not have the approval of the Competent Authority.

198. I find that the Respondent has taken mutually destructive pleas: on the one hand it has pleaded that the Contract is ab initio void and on the other, it has pleaded that it terminated the Contract relying upon its very clauses. Even during the Arbitral proceedings, the Respondent has insisted that the Bank Guarantees for Advance Payment and Performance Security be kept alive thereby relying on the terms of the Contract. In any event I do not find that the Respondent has ever treated the contract as ab initio void. Even if the contract was to be treated as voidable, I find that the Respondent consciously elected to insist on its performance.



17. Finding Contract Valid & Binding

199. In view of the above discussion, I find that the Respondent has failed to establish any material irregularity including lack of competent approval in the process of awarding of the Contract, let alone establish any fraudulent or collusive act on the part of the Claimant. I find that the Contract dated 17.09.2015 was validly and lawfully entered into and its terms are binding on the parties.”

41. I find no infirmity in the reasoning of the learned Sole Arbitrator that there is no material irregularity including lack of competent approval in the process of awarding the contract.
42. The petitioner seeks to urge issues which are purely based on factual averments and this Court under Section 34 cannot go into those findings. The reasoning of the Sole Arbitrator that the respondent cannot be burdened of internal irregularities, if at all, of the petitioner, is sound in law.
43. In addition, there is also no document filed on record to show as to what is the nature of inquiry and what is action taken against the erring officers for lack of their due diligence in following the procedure.
44. The petitioner is a department and functions through its officers. Its officers have entered into contractual obligations with the respondent for and on behalf of the petitioner department. The respondent cannot be held responsible for non-adherence to processes/procedures not complied with by the petitioner.

Regarding Legal Errors

45. As regards the rate of interest, the argument of the petitioner has been



dealt with by the Sole Arbitrator in paragraphs 233 to 235 of the award and reads as under:-

“233. I do not find any clause in the Contract dated 17.09.2015 that bars the award of interest. I put it to the Ld. Counsel for the Claimant that Section 15-17 of the MSME Act would apply to only those disputes referred to the “Micro and Small Enterprises Facilitation Council” under Section 18 of the Act. The Ld. Counsel for the claimant has argued that Section 18 when read with Section 24 is an independent and additional benefit for such enterprises that gives them the option to override any burdensome mechanism provided under contract or any other statute. It was submitted that the benefits under Chapter V cannot be said to be conferred on only those disputes resolved under Section 18. It was argued that if that was to be the statutory intention, then Parliament would have either inserted Section 15-17 as sub-sections under Section 18 or would have at the framed the scheme of the act such that Sections 15-17 came after Section 18. When Sections 15-17 are placed before Section 18, and when Section 18(4) and (5) itself provide additional benefits, then the benefits of Section 15-17 should be seen and interpreted to be independent of Section 18.

234. I have seen the MSME Certificate of the Claimant which has been filed along with the Statement of Claim. There is no dispute in the Statement of Defence that the Claimant is a registered as a “Small Enterprise” unit under the MSME Act, nor is there any specific denial or plea that the Claimant is not



entitled to interest or to the rate of interest provided under the MSME Act. The Ld. Counsel for the Respondent did not address any arguments on the applicability of the MSME Act as it has denied that any claim is due to the Claimant for the reasons stated above.

235. I find force in the argument of the Ld. Counsel for the Claimant, that the Claimant would be entitled to the benefit of Sections 15-17 of the MSME Act in respect of delayed payments. As I have already held that the Claimant is entitled to its claims towards invoices under the Contract the Claimant would also be entitled to its claims towards pre-reference interest. I also find that when Section 24 of the MSME Act override the provisions of the A&C Act, and as such that the Tribunal does not have discretion to vary the rate of interest provided under section 16 of the MSME Act.”

46. Since the claimant has not challenged the MSME certificate of the respondent, nor is there a specific denial that the claimant is not entitled to interest at the rate provided under the MSMED Act, there is no irregularity in the finding of the learned Sole Arbitrator to award interest in accordance with Section 16 of the MSMED Act.
47. The judgment of **AVR Enterprises** (supra) as relied upon by the learned counsel for the petitioner was dealing with the question of pre-deposit of 75% under Section 19 of the MSMED Act. The provisions of Section 16 are independent of the invocation of mechanism under the MSMED Act. The same is evident from the preamble of the MSMED Act which states that it is an Act to provide for facilitating the



promotion and development and enhancing competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

48. The learned Sole Arbitrator has elaborately dealt with this issue and found that the benefits of Section 15 to 17 are independent of Section 18 of the MSMED Act.
49. It is settled law that the Court exercising jurisdiction under Section 34 of the Act is not to sit as a Court of Appeal against the findings of the learned Arbitral Tribunal. The Hon'ble Supreme Court in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***, (2019) 15 SCC 131 has outlined the scope of the grounds contained under Section 34:

“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).”

50. Hence, Section 34 provides a limited window of challenge to an arbitral award, and even a violation of a statute, not tied to public policy or public interest, cannot serve as a basis for nullifying an Arbitral Award under Section 34 of the Act.
51. I do not find any reason to interfere in said finding of the learned Arbitrator, or that it is hit by any of the provisions of Section 34 of the Arbitration and Conciliation Act, 1996.



Conclusion

52. For the said reasons, I do not find any merit in the present petition and the same is dismissed.
53. The amounts lying deposited in this Court alongwith accrued interest is directed to be released in favour of the respondent/decreed holder.
54. The petition, along with pending applications, is disposed of in the aforesaid terms.

JASMEET SINGH, J

JANUARY 30, 2024 / (MS)

Click here to check corrigendum, if any