

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
(COMMERCIAL DIVISION)

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

AP-COM No. 187 of 2024
(Old Case No. AP 340 of 2020)

HOOGLY RIVER BRIDGES COMMISSIONERS
Vs.
MBL INFRASTRUCTURE LTD.

For the petitioner : Mr. Anirban Ray, Senior Advocate
Mr. Sarvapriya Mukherjee, Advocate
Mr. Chayan Gupta, Advocate
Mr. Aviroop Mitra, Advocate

For the respondent : Mr. Ratnanko Banerji, Senior Advocate
Mr. Shaunak Mitra, Advocate
Ms. Shristy Burman Roy, Advocate
Ms. Pritha Basu, Advocate
Ms. Nairanjana Ghosh, Advocate
Ms. Jaita Ghosh, Advocate

Reserved on : 28.08.2025

Judgment on : 03.11.2025

Ravi Krishan Kapur, J.:

1. This is an application under section 34 of the Arbitration and Conciliation Act, 1996 challenging an award dated 29 June 2020. By the award, the respondent (claimant) has been awarded a sum of Rs.14,68,39,152/- plus interest until actual payment alongwith costs of Rs.1,37,55,371/- and the entirety of the counterclaim of the petitioner has been rejected.
2. Briefly, the respondent is engaged in construction and setting up of infrastructure projects. Pursuant to a notice issued by the petitioner, inviting bids for construction of a permanent bus terminus alongwith a multistoried

commercial complex of B+G+5 floors situated at G.T. Road, Serampore Municipality, Hooghly, West Bengal, the respondent had submitted its bid for Rs.54.66 crores which was accepted. Subsequently, the parties entered into a formal works contract in writing dated 4 December, 2013.

3. On the alleged ground that there was delay in the completion of the project, the petitioner by a notice dated 17 May, 2017 terminated the contract. In response, the respondent by a letter dated 26 June 2017 requested for extension of time to complete the contract. Significantly, the justification raised by the respondent pertained to delay due to poor ground conditions, delay in approach road construction, delay in release of drawings, delay due to non-finalizing of finishing items, adverse weather conditions, delay due to encroachment and obstruction, delay in approval of extra supplementary works, delay due to effect of demonetization and banning of currency note of Rs.500/- and Rs.1000/- by the Government of India, delay caused due to cash flow problems and other factors beyond the control of the respondent contractor. In such circumstances, the respondent invoked the arbitration clause and referred the disputes to the Arbitral Tribunal.
4. Before the Arbitral Tribunal, pleadings were filed by both the parties including a counterclaim by the petitioner. In addition to the documentary evidence, the parties also adduced oral evidence. The petitioner examined two witnesses and the respondent examined one witness. The parties made extensive submissions before the Arbitral Tribunal and a unanimous award was passed in favour of the respondent.

5. The respondent had claimed the following reliefs in the Statement of Claim: (i) Pass an award for the claimed amount of Rs. 36,66,48,270/-in favour of the claimant; (ii) Award for interest; (iii) An award for the sum of sum of Rs.25 crores. In the alternative, an enquiry into the loss and damages suffered by the claimant and an award for the sum found due upon such enquiry; (iv) Award for costs; (v) Interim award; (vi) Receiver; (vii) Injunction; and (viii) Such further or other reliefs which may be granted by the Tribunal.

6. The primary challenge to the award is that the same is in violation of sections 28(3) and 34(2)(b)(i) read with Explanation 1(ii) of the Act. It is contended that the finding of the Arbitral Tribunal that time was not of essence of the contract is contrary to the clauses in the agreement and ignores vital evidence on record. Notwithstanding, the extensions granted by the petitioner there was no question of the remedy of liquidated damages being relinquished by the petitioner. On the contrary, all requests for extension were granted expressly reserving the right of the petitioner to impose liquidated damages and were 'without prejudice' to the rights of the petitioner under the contract. In such circumstances, the findings of the Arbitral Tribunal are patently illegal.

7. Secondly, the finding of the Arbitral Tribunal that "*the contract did not commence in the absence of a sanction plan under extant municipal laws*" is patently illegal and contrary to section 28(3), 34(2)(a)(iv) and 34(2)(b)(ii) read with Explanation 1 (ii) and (iii) of the Act. This finding vitiates the entirety of

the award and is premised on a case solely made out by the Arbitral Tribunal, *dehors* the pleadings and ignores the submissions of both sides. The finding of non-commencement by the Arbitral Tribunal did not fall within the terms of the submission to arbitration and is beyond the scope of the reference. As a consequence, the finding of the Arbitral Tribunal that the termination of the contract was wrongful, is also contrary to section 28(3) and section 34(2)(b)(ii) of the Act.

8. The further finding of the Arbitral Tribunal that *“it did not find any necessity to consider the other various questions raised by the parties as to who was really negligent or in default in course of the performance on various items of work when the prior reciprocal obligation of getting the sanctioned plan, the issue of notice to commence, the obligation of making payment in terms of the contract have been found against the respondent. Without proving compliance of those obligations and having regards to the terms of the contract, the termination of the contract was grossly illegal”* is equally perverse and untenable. In view of the issues raised by the parties, regardless of whether the termination was lawful or not, the Arbitral Tribunal could not have abjured its jurisdiction in not deciding all issues raised by both parties relating to the remaining breaches and performance of the contractual obligations by either of the parties. As such, the award is beyond the scope of the reference and falls within the grounds specified under section 34(2)(a)(iv) of the Act. It is further contended that the Arbitral Tribunal has also erred in allowing the claims of the respondent and rejecting the counterclaim of the

petitioner. Accordingly, the entire award is liable to be set aside. In support of such contentions, the petitioner relies on *McDermott International Inc Vs. Burn Standard Co. Ltd* (2006) 11 SCC 181, *MMTC Limited Vs. Vedanta* (2019) 4 SCC 163, *Bharat Sanchar Nigam Limited Vs. Reliance Communication Limited* (2011) 1 SCC 394, *Delhi Airport Metro Express Pvt Limited Vs. DMRC Limited* (2022) 1 SCC 131, *Batliboi Environmental Engineers Limited Vs. Hindustan Petroleum Corporation* (2024) 2 SCC 375 and *OPG Power Generation Pvt Limited Vs. Enexio Power Cooling Solutions India Pvt Ltd.* (2025) 2 SCC 417.

9. On behalf of the respondent it is contended that, the grounds of judicial interference under the Act are limited and do not entail re-appreciation of evidence or review on the merits of the case. There are reasons given by the Arbitral Tribunal for allowing and disallowing the claims made by the parties. All the contentions of both parties have been taken into consideration. The contract had been extended on four prior occasions without imposition of liquidated damages. Any delay or default was solely attributable to the petitioner in fulfilling their contractual obligations. There was delay from October 2016 upto May 2017 by the petitioner in making payment. The respondent has completed 80% of the project work till May 2017 and there was no justification in termination of the contract. Time was never the essence of the contract. The records would reveal that the respondent had undertaken the work right upto the date of termination. In such circumstances, there is no reason to interfere with the views of the Arbitral Tribunal. The finding of the Arbitral Tribunal that payment against the

running bills was grossly delayed is unimpeachable. Similarly, the finding that in the absence of any sanction plan there was no commencement date is not liable to be interfered with. In view of section 57(1) of the Evidence Act, 1872, the Arbitral Tribunal has justifiably arrived at the finding that the contract had not commenced. As such, there are no grounds to interfere with the award and the application is liable to be dismissed. In support of such contentions the respondent relies on *Somdatt Builders-NCC-NEC(JV) vs. National Highways Authority of India & Others* 2025 SCC OnLine SC 170, *J.G. Engineers Private Limited vs. Union of India & Another* (2011) 5 SCC 758, *Consolidated Construction Consortium Limited vs. Software Technology Parks of India* 2025 SCC OnLine SC 956, *Punjab State Civil Supplies Corporation Limited & Another vs. Sanman Rice Mills & Others* 2024 SCC OnLine SC 2632, *UHL Power Co. Ltd. v. State of H.P.*, (2022) 4 SCC 116.

10. It is now well settled that the scope of interference in an application under section 34 of the Act is limited and circumscribed. The grounds of interference do not entail reappreciation of evidence. There cannot be a reappreciation of the merits of the award. Nor can there be a review of the Arbitral Tribunal's interpretation of the contractual terms. To this extent, the jurisdiction of the Court is restricted. In addition, if there are two possible interpretation of the terms of the contract, then no fault can be found if the Arbitral Tribunal accepts one interpretation as against the other. [*Punjab State Civil Supplies Corporation Ltd. and Anr. Vs. Sanman Rice Mills and Ors.*

2024 SCC OnLine SC 2673 at para 20 and UHL Power Company Ltd. vs. State of Himachal Pradesh (2022) 4 SCC 116 at paras 15 to 22].

11. In *Consolidated Consortium Construction Ltd. vs. Software Technology Parks of India* (2025) 7 SCC 757, it has been held as follows:

46. Scope of Section 34 of the 1996 Act is now well crystallised by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The Court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or section 34 of the 1996 Act or the terms of the agreement.

47. Therefore, the role of the Court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act.

12. The petitioner has assailed the finding of the Arbitral Tribunal that ‘*further extension of time granted by the petitioner amounted to a fresh contract*’. The Tribunal has taken a view on the facts and concluded that the contract had been extended on four prior occasions without any imposition of liquidated damages. The Tribunal has held that time was not of essence of the contract. The Tribunal has also dealt with the contention of “without prejudice” raised

by the petitioner. Admittedly, the petitioner had consciously extended the time for performance without imposing any damages for the delay. The last of such extensions was granted till 30 June 2017. This is a question which squarely fell for consideration within the jurisdiction of the Arbitral Tribunal. The Tribunal has considered the rival submissions of the parties. The Tribunal has also furnished elaborate reasons in rejecting the contentions of the petitioner. The Tribunal has also considered clauses 27.1 and clause 28 of the General Condition of Contract. The Tribunal has interpreted all the relevant clauses and considered all the facts and circumstances. In this background, there is no scope to interfere with the finding of the Arbitral Tribunal. The petitioner in seeking to agitate these issues is trying to re-appreciate the evidence and inviting this Court to undertake a fact finding exercise or a merits review which is impermissible in this limited jurisdiction. In this context, it is well settled that the Arbitral Tribunal is the ultimate master of the quality and quantity of the evidence and this Court does not act as an Appellate Court while exercising jurisdiction under the Act. [*McDermott International Inc. Vs. Burn Standard Co. Ltd (2006) 11 SCC 181, MMTC Limited Vs. Vedanta (2019) 4 SCC 163, Bharat Sanchar Nigam Limited Vs. Reliance Communication Limited (2011) 1 SCC 394*].

13. The next point raised by the petitioner is directed against the finding of the Arbitral Tribunal that the contract did not commence in the absence of a sanction plan under extant Municipal Laws. On this basis, the Arbitral Tribunal has rejected the contention raised on behalf of the petitioner that

the parties had mutually waived the requirement of notice as contemplated under clause 5 (2) of the General Condition of Contract. Clause 5 (2) provides: *“that the implementation of this agreement shall start upon issuance of notice to commence of the Engineer to the Contractor”*. Significantly, the commencement date as defined in the contract was not dependent on the sanction plan. It is true that no notice to commence was ever issued by the Engineer of the contractor or any of the parties. In the Statement of Claim, the respondent had pleaded that in the interests of the project and for timely completion of the same, they had proceeded to commence work on or before 12 February 2014 i.e. the date the project was inaugurated and the initial date for completion of the project was 11 August 2015 (paragraph 11). In the Statement of Defence, the petitioner had also admitted that the commencement date for the project was 12 February 2014. The conduct of the parties clearly suggests that both parties were *ad idem* as to commencement and hence the requests for repeated extension. Regardless of the pleadings, the correspondence and the conduct of the parties, the Arbitral Tribunal has *suo moto* painstakingly and elaborately examined the provisions of the West Bengal Municipal Act, 1993 and concluded that there could have been no commencement in the absence of a sanction plan and the acts of the petitioner were punishable under law. In this context, the Arbitral Tribunal *inter alia* held as follows:

38. *“However, this most important “Notice to Commence” was never issued by the Engineer or by the Respondent. If the implementation of the agreement depends on issue of a notice to commence by the Engineer or the Respondent,*

so long the Respondent does not prove the service of such notice of commencement upon the Claimant, the period of 18 months for completion of project also cannot lawfully be enforced.”

39. *“Thus, in this case, the provisions in the contract for giving notice to commence could not be waived by the mutual consent of the parties in view of the admission of the Respondent in evidence that the building plan was sanctioned on 19th January, 2016 and consequently, even though the chairman of the respondent inaugurated the site on February 12, 2014 by treating the said date as the date of commencement of work, and even the respondent started supplying drawings from the year 2014, those acts on the part of the respondent was punishable under the law.”*

14. It is true that construction of the terms of the contract is for the Arbitral Tribunal. The professed object of a Court or the Arbitral Tribunal in interpreting the contract is to objectively discover the *mutual* intention of the parties and not to re-write the same. Construction contracts must be interpreted objectively and it is not a question of what one party actually intended by the language used or, indeed what the other part actually understood to have intended. Earlier decisions would suggest that the Courts had followed a policy of strict construction when it came to commercial documents. Then again, as Cardozo. J., had explained “The aim of the Court should be to understand the genesis and aim of the transaction” [*Utica City National Bank vs. Gunn (1918) 118 N.E. 607*]. However, modern tendency has been towards avoiding a detailed semantic and syntactical analysis of words if it leads to a conclusion which flouts business common sense. (Lord Diplock in *Antaios Compania Naviera S.A. v. Salen Rederierna A.B. [1985] A.C. 191*). In, *The Starsin (2004) 1 A.C. 715* Lord Bingham considered the commercial context of a contract and approved the well-established approach ‘that a

business sense will be given to business documents'. [Hudson's Building and Engineering Contracts, 14 Edition at Chapter 1, section 1.5 at page 30 onwards and Interpretation of Contracts, Lewison, 6th Edition Chapter 16 (Condition and Conditional Obligations)].

15. The commencement date in a contract is the catalyst which sets the contract in motion. It is the starting point of the day and time in which the parties become legally bound to the terms and conditions of the contract. It acts as a trigger for different obligations under the contract for example, payment schedule, deadlines, expiry and termination, etc. It is the date when the contract comes to life and starts affecting the legal rights and obligations of both the parties, the terms of the contract and how the parties have worked out their agreement [*Hudson's Building and Engineering Contracts (Supra) @ 3-020*]. Now, admittedly the contract did not stipulate the sanction plan to be a *sine qua non* for commencement of work. This was not the agreement between the parties. Nevertheless, the Arbitral Tribunal found that there had been no compliance with the provisions of the West Bengal Municipal Act, 1993 which prohibited commencement of construction of any building before grant or sanction of a plan which is punishable by fine and imprisonment and in doing so re-written the contract between the parties by *incorporating* a term which did not form part of the contract.

16. It is well settled that the Arbitral Tribunal is the ultimate master of the quality and evidence to be relied upon and a possible or plausible view on the facts is sufficient to pass muster. Nevertheless, an Arbitral Tribunal is not

permitted to wander outside the contract or make out a case not made by either of the parties or take a view which ignores vital evidence and arrive at a decision which is inconsistent, irreconcilable and improbable with the ultimate award for damages. The Arbitral Tribunal was duty bound to interpret the contract having regard to the terms and conditions, conduct of the parties, the correspondence, circumstances of the case and pleadings of the parties and could not have unilaterally added or altered the contract. In doing so, the Arbitral Tribunal has strayed outside the contract, envisaged of a term which it found was fundamental and implied the same into contract and this forms the bedrock of the entire award. Such an approach is neither reasonable nor possible nor probable in the given facts and circumstances. In this context, recourse to section 57(i) of the Evidence Act, 1872 i.e. judicial notice of certain facts is of no assistance to the respondent.

17. Next, the contention of waiver has been rejected by the Arbitral Tribunal on the ground that there could be no waiver or estoppel in view of the extant municipal laws. The Arbitral Tribunal held that in view of the provisions of the West Bengal Municipal Act, 1993, the contract had not commenced since any construction without a valid sanction plan is punishable both with imprisonment and fine. The Tribunal also held that neither mutual consent nor waiver could give any sanctity to such illegal act. In arriving at such finding the Arbitral Tribunal has disregarded the fact that the building plan was ultimately sanctioned on 19 January 2016. The Arbitral Tribunal was of the view that:

42. "In the opinion of this Tribunal, the Respondent should have stopped the Claimant from commencing construction so long it did not get the sanctioned plan and should have, after the plan was sanctioned, first, conveyed to the municipality its intention to commence. Thereafter waiting for seven days, as provided in section 209 of the Act, it should have given notice to commence to the Claimant in terms of the contract.

18. According to the respondent, 80% of the project work had been completed by May, 2017. On the contrary, it was contended by the petitioner that the respondent had only performed 60 % of the contract, (62 % of the contract if based on quantity). Both parties acted on the premise that the contract had not only commenced but substantial compliance had been made towards completion of the project and different obligations under the contract had been triggered. Nevertheless, in a contract which according to the Arbitral Tribunal had not commenced, the Arbitral Tribunal has proceeded to award damages on the basis of the following claims.

1- Claim on account of **dues related pending bills** and release of retention amount and excess deduction against mobilization advance- Rs.6,71,01,596/-

3- Claim for **amounts wrongfully withheld/deducted** by the petitioner/award debtor as **"Part Rate" against item of Ready Mix Concrete (RMC)**: Rs.61,03,451/-

4- Claim for amounts wrongfully deducted/withheld due to purported reduction in rate on account of alleged **colour difference in Vitrified Tiles**: Rs.17,15,613/-

5- Claim on account of **Extra/Additional Work** done by the Claimant for disposal of excavated Earth from site to the designated area approved by Chairman, Serampore Municipality: Rs. 29,78,432/-

12- Claim on account of **interest on Delayed Payments:**
Rs.42,53,138/-

15- Claim on account of **loss of profit** on the balance amount of work
not allowed to execute due to illegal termination: Rs.2,92,50,000/-.

19. The contention raised on behalf of the respondent at this stage, for the first time, of legal commencement, is unintelligible and meaningless. Either there was commencement or no commencement of the contract. In any event, the award does not make any such differentiation and proceeds on the basis as if there was no commencement legal or otherwise. To this extent, the view of the Arbitral Tribunal is impossible and patently illegal. In *Associate Builders vs. Delhi Development Authority* (2015) 3 SCC 49 it has been held as follows:

42.1. (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:

“28.Rules applicable to substance of dispute.—(1) Where the place of arbitration is situated in India—

(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;”

In *Ssangyong Engineering and Construction Company Limited vs. National Highway Authority of India* (2019) 15 SCC 131 it has been held as follows:

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.*

In Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation Limited (2022 1 SC 131 it has been held as follows:

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

In *Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd.*, (2024) 2 SCC 375 it has been held as follows:

43. Subsequently, in *ONGC Ltd. v. Western Geco International Ltd.* [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] (for short *Western Geco*), a three-Judge Bench of this Court observed that the Court, in *Saw Pipes* [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705], did not examine what would constitute “fundamental policy of Indian law”. The expression “fundamental policy of Indian law” in the opinion of this Court includes all fundamental principles providing as basis for administration of justice and enforcement of law in this country. There were three distinct and fundamental juristic principles which form a part and parcel of “fundamental policy of Indian law”. The first and the foremost principle is that in every determination by a court or an authority that affects rights of a citizen or leads to civil consequences, the court or authority must adopt a judicial approach. Fidelity to judicial approach entails that the court or authority should not act in an arbitrary, capricious or whimsical manner. The court or authority should act in a bona fide manner and deal with the subject in a fair, reasonable and objective manner. Decision should not be actuated by extraneous considerations. Secondly, the principles of natural justice should be followed. This would include the requirement that the Arbitral Tribunal must apply its

*mind to the attending facts and circumstances while taking the view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best done by recording reasons in support of the decision. As noticed above, Section 31(3)(a) of the A&C Act [“**31. Form and contents of arbitral award.**—(1)-(2) * * *(3) The arbitral award shall state the reasons upon which it is based, unless—(a) the parties have agreed that no reasons are to be given, or(b) the award is an arbitral award on agreed terms under Section 30”] states that the arbitral award shall state the reasons on which it is based, unless the parties have agreed that no reasons are to be given. Sub-clauses (i) and (iii) to Section 34(2) also refer to different facets of natural justice. In a given case sub-clause to Section 34(2) and sub-clause (ii) to clause (b) to Section 34(2) may equally apply. Lastly, is the need to ensure that the decision is not perverse or irrational that no reasonable person would have arrived at the same or be sustained in a court of law. **Perversity or irrationality of a decision is tested on the touchstone of Wednesbury principle of reasonableness [As expounded in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA).] . At the same time, it was cautioned that this Court was not attempting an exhaustive enumeration of what would constitute “fundamental policy of Indian law”, as a straightjacket definition is not possible. 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 on the face of it, is untenable resulting in injustice, the adjudication made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards, may be challenged and set aside.***

20. As a consequence, the finding of illegal termination of the contract insofar as it proceeds on the basis that there has been no commencement is equally vitiated. Notwithstanding, the Tribunal having taken into account all the relevant clauses of the contract i.e. Clause 27 (extension of time), Clauses 28 and 29 (liquidated damages), Clause 49 (termination clause), Clause 56 (monthly payment), Clause 59 (time of payment) and Clause 60 (correction of certificate), the Tribunal has concluded that the termination was illegal on the basis of non-commencement of the contract and there was no default of the respondent contractor.

21. Next, the finding of the Arbitral Tribunal: *“Thus, this Tribunal does not find any necessity to consider the other various questions raised by the parties as to who was really negligent or in default in course of performance of various items of work than the ones already discussed by it above when the prior reciprocal obligation of getting the sanctioned plan, the issue of notice to commence, the obligation of making payment in terms of the contract have been found against the respondent. Without proving compliance of those obligations and having regards to the terms of the contract, the termination of the contract was grossly illegal”* is irreconcilable and contrary to the basic tenets of contract law and goes to the root when adjudicating a claim for damages arising from a breach of contract. Even assuming that the contract had been wrongfully or illegally terminated by the petitioner, the Arbitral Tribunal could not absolve itself from determining the remaining contentions of performance of obligations and in effect breach of the contract. There has been no discussion of this fact in the award and the Arbitral Tribunal has committed a patent illegality by not adjudicating upon the outstanding questions of neglect, delay and default of either of the parties which it was required to determine as a pre-condition to awarding damages. (*Gajjala Nagiseti and Anr. vs. Maddi Venkatasubbayya* 1934 SCC OnLine Mad 440 @ 441). All questions of breach required to be proved before any final determination of damages could have been undertaken. This also ignores vital evidence in arriving at any final assessment of damages. Such issues go to the root of the breach of the contract and may have prejudiced either party and tilted the ultimate

award for damages. Thus, it was a necessary pre-condition to adjudicate the same before undertaking any assessment of damages. In such circumstances, the finding of the Arbitral Tribunal that it was not necessary to consider other various questions as to who was negligent or in default in the course of performance is with the utmost deference, an inherent flaw and patent error on the face of the award which vitiates the entirety of the award. [*J.G. Engineers Pvt. Ltd. vs. Union of India* (2011) 5 SCC 758, *P. Radhakrishna Murthy vs. NBCC Ltd.* (2013) 3 SCC 747 and *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1 Paras 27-43].

22. The contract contemplated reciprocal and specified obligations on both parties. This was necessary and essential for performance of the work under the agreement. The respondent alleged failure and neglect to fulfil the obligations by the petitioner and had consequentially claimed damages. The material breaches and defaults alleged on the part of the petitioner and by the respondent have been exhaustively enumerated in the award without there being any final decision of the same. Any claim for damages presupposes a valid contract, breach of the contract and damages. A breach of a contract is committed when a party without lawful excuse fails or refuses to perform what is due under the contract or performs defectively or incapacitates himself from performing obligations under the contract. Not all promises in a contract have the same importance. They all have to be performed and if any of them is not, the party in breach is liable to pay damages. Accordingly, it is fundamental in all such cases when assessing damages to analyse carefully

and precisely what breach, and sometimes what precise class of damage arising from the breach. This requires both *adjudication* and *proof*. (Section 73 of the Indian Contract 187 Pollock & Mulla, *The Indian Contract Act 1872*, Lexis Nexis @ Chapter VI @ page 1144, 14th Edition).

23. Regardless of the question of wrongful termination which involved the question of commencement or delay in making payment, there were other breaches and counter breaches alleged by both parties and it was incumbent on the Arbitral Tribunal to decide on the same. The Arbitral Tribunal has on its own admission *ex facie* chosen not to decide matters which had been submitted to it and leaves gaps which renders the reasoning in support of the award obfuscated, unreasonable, irreconcilable and therein lies the patent illegality. In *OPG Power Generation Pvt. Limited Vs. Enxio Power Cooling Solutions India Pvt. Ltd.* (2025) 2 SCC 417 it has been held as follows:

74. *The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.*

78. *As to the form of a reasoned award, in Russell on Arbitration (24th Edn., p. 304) it is stated thus:*

“6.032. No particular form is required for a reasoned award although ‘the giving of clearly expressed reasons responsive to the issues as they were debated before the arbitrators reduces the scope for the making of unmeritorious challenges’. When giving a reasoned award the Tribunal need only set out what, on its view of the evidence, did or did not happen

*and explain succinctly why, in the light of what happened, the Tribunal has reached its decision, and state what that decision is. **In order to avoid being vulnerable to challenge, the Tribunal's reasons must deal with all the issues that were put to it. It should set out its findings of fact and its reasoning so as to enable the parties to understand them and state why particular points were decisive. It should also indicate the Tribunal's findings and reasoning on issues argued before it but not considered decisive, so as to enable the parties and the court to consider the position with respect to appeal on all the issues before the Tribunal. When dealing with controversial matters, it is helpful for the Tribunal to set out not only its view of what occurred, but also to make it clear that it has considered any alternative version and has rejected it. Even if several reasons lead to the same result, the Tribunal should still set them out.** That said, so long as the relevant issues are addressed there is no need to deal with every possible argument or to explain why the Tribunal attached more weight to some evidence than to other evidence. The Tribunal is not expected to recite at great length communications exchanged or submissions made by the parties. Nor is it required to set out each step by which it reached its conclusion or to deal with each and every point made by the parties. It is sufficient that the Tribunal should explain what its findings are and the evidential route by which it reached its conclusions.” (Emphasis added)*

24. For the above reasons, the award is unsustainable. This is not a case where the Arbitral Tribunal had proceeded on the basis of *quantum meruit* or *quasi contract*. There is a valid contract which according to the Arbitral Tribunal had not commenced. Notwithstanding this finding, the Arbitral Tribunal proceeds to award damages under the contract without deciding or adjudicating upon all the breaches and counter breaches alleged by the parties. Notwithstanding the principles of pro-party autonomy and of minimal judicial intervention enshrined in the Act, the patent illegality on the face of the award makes the same vulnerable and open to attack *inter alia* within the ambit of section 28 (1)(a), 28(3) read with 34 (2)(a)(iv), 34 (2)(b) Explanation (1) (ii) and (iii) and section 34 (2A) of the Act.

25. For the above reasons, the award dated 29 June, 2020 is set aside. There shall be an order in terms of prayer (a) of the Notice of Motion. To the above extent, AP-Com 187 of 2024 (Old Case No. AP 340 of 2020) stands allowed. Interim orders, if any, stand vacated. Liberty is granted to the parties to take necessary steps in accordance with law.

(Ravi Krishan Kapur, J.)