



2025:DHC:7432



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment pronounced on: 28.08.2025+ **O.M.P. (COMM) 57/2022 and IA No.841/2022**

KARAN CABS SERVICES PVT. LTD.

..... Petitioner

Through: Mr. Roopansh Purohit, Mr. Aritra Das
and Mr. Ankit Choubey, Advocates.

versus

HCL TECHNOLOGIES LTD.

..... Respondent

Through: Mr. Sameer Jain, Ms. Jayashree
Parihar and Ms. Aastha Sharma,
Advocates.+ **OMP (ENF.) (COMM.) 130/2022, EX.APPL.(OS) 3108/2022,
EX.APPL.(OS) 3715/2022**

HCL TECHNOLOGIES LIMITED

..... Decree Holder

Through: Mr. Sameer Jain, Ms. Jayashree
Parihar and Ms. Aastha Sharma,
Advocates.

versus

KARAN CAB SERVICE PVT LIMITED

..... Judgment Debtor

Through: Mr. Roopansh Purohit, Mr. Aritra Das
and Mr. Ankit Choubey, Advocates.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT****O.M.P. (COMM) 57/2022 and IA No.841/2022**

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') assails an arbitral award dated 08.10.2021, whereby the learned sole Arbitrator has rejected the



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claims raised by the petitioner / claimant and has awarded costs of arbitration amounting to Rs. 20,73,957/- in favour of the respondent.

2. The petitioner / claimant, a taxi service provider, entered into an Agreement for Transport Services dated 29.12.2014 (hereinafter '*the ATS*') with the respondent. In terms of the ATS, the petitioner was to provide transportation services to the employees of the respondent company on 'to and fro' basis from the office of the respondent company to different locations across Delhi NCR, as stipulated in Schedule B of the ATS.

3. Initially, the ATS was agreed upon to remain in effect for a period of three years, from 01.01.2015 till 30.12.2017. *Vide* addendum dated 07.04.2015 (hereinafter '*the addendum-I*'), certain terms and conditions of the ATS came to be amended. Subsequently, upon mutual agreement between the parties, the parties decided to extend the period of the ATS from 01.01.2018 to 30.06.2018 and again amend certain terms and conditions of the ATS by way of a second addendum dated 19.01.2018 (hereinafter '*the addendum-II*'). Subsequently, by way of email communication/s exchanged between the parties, the period of the ATS was again extended till 31.12.2018.

4. Disputes arose between the parties on account of the alleged non-payment of the petitioner's monetary entitlements under the ATS dated 29.12.2014. Consequently, a demand notice dated 24.07.2018 was issued by the petitioner raising a demand of Rs.12,63,76,783/- along with interest at 18% p.a. towards certain outstanding invoices.

5. Disputes having arisen between the parties, a notice invoking arbitration dated 01.03.2019 was issued by the petitioner. In response, a reply dated 09.04.2019 was issued by the respondent refuting the claim for



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“minimum guarantee” raised by the petitioner. Subsequently, an arbitral tribunal came to be constituted by this Court for adjudication of the disputes between the parties, in a petition under Section 11 of the A&C Act and the disputes between the parties were referred to arbitration on 19.09.2019.

6. The following claims were raised by the petitioner/claimant before the arbitral tribunal –

S NO	CLAIM	AMOUNT
1	Claim of minimum guarantee	-
	A. Losses caused on Account of the Respondent's failure to provide for 7000 Km/month under the Primary Agreement dated 29 th December 2014 for the period of 1 st February 2015- 31 st December 2017	Rs 12,63,76,783/-
	B. Losses caused on Account of the Respondent's failure to provide for 7000 Km/month under the 2 nd Addendum dated 19 th January 2018, for the period of 1 st January 2018 till 30 th June 2018.	
2	Claims on actual bills from the period of 16 th June till 31 st July 2018.	Rs. 13,04,344.60/-
3	Compensatory damages due to early termination.	Rs 1,00,000,00/-
4	Interest as per law	
5	Total (without interest) (1+2+3)	13,76,81,127.60/-

7. A Statement of Defence (SoD) was filed by the respondent on



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24.02.2020 and a rejoinder thereto was filed by the petitioner on 11.03.2020. Thereafter, issues were determined by the arbitral tribunal for its reference and the same read as under –

- i) Whether the Claimant is entitled to the claimed amount of INR 12,63,76,783/- under the minimum guarantee clause and, if so, for what period of time?
- ii) Whether the Claimant is entitled to the claimed amount of INR 13,04,344.60 towards invoices allegedly raised by the Claimant for the period from 16-06-2018 till 31-07-2018?
- iii) Whether the Agreement dated 29-12-2014 as extended from time to time was illegally terminated by the Respondent and, if so, to what damages, if any, is the Claimant entitled to?
- iv) What interest, if any, is the Claimant entitled to?
- v) Whether the Claimant or Respondent is entitled to cost of the legal proceedings?

8. *Vide* award dated 08.10.2021, the learned sole arbitrator proceeded to reject all the claims raised by the petitioner / claimant and awarded cost/s of arbitration to the tune of Rs. 20,73,957/- (Rupees twenty lakhs seventy-three thousand nine hundred and fifty-seven only) in favour of the respondent.

THE IMPUGNED AWARD

9. The learned sole Arbitrator, while rejecting the first issue regarding the petitioner's claim for minimum guarantee, returned with the following findings –

- (i) In paragraph 63 of the arbitral award, it has been held that the GPS



data was not available with the respondent. On the basis of the evidence on record, it was found that the respondent relied on 'trip sheets' instead of GPS data for billing purposes. The respondent would send proforma invoices on the basis of 'trip sheets' signed by the employees of the respondents, after deducting the applicable penalties and additional toll charges. The same would then in turn be approved by the claimant and then invoices would be raised for the services rendered.

- (ii) In paragraphs 66 and 67 of the arbitral award, it has been categorically found that no invoices had been raised for claiming minimum guarantee in terms of Clause 29 of the ATS inasmuch the same has been admitted by the CW-1 during his cross examination and no such invoices were appended by the petitioner/claimant along with the Statement of Claim (SoC).
- (iii) In paragraph 69, it has been held that the petitioner failed to satisfy the requirements/ terms and conditions for claiming minimum guarantee and the same has been attributed to the 'back cab penalties' imposed on account of non-availability of cabs. Reliance in this regard has been placed on the response of CW-1 to question no.32 in his cross examination which reads as under –

“Q.32 Is it correct to state that “back-up penalty / back-cab” amount is levied due to non-availability of cabs?

Ans. It is correct. ”

In paragraph, 70, it has also been found that the affidavit filed by RW-1 Mr. Ajay Sharma as regards the back cab penalties levied on the petitioner over the years remained unrebutted by the petitioner.



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In paragraph 71, it has been categorically observed that the petitioner failed to adduce any evidence to show that the conditions for claiming minimum guarantee had been fulfilled.

- (iv) In paragraphs 72 and 73 of the arbitral award, it has been additionally held that the petitioner's claim for minimum guarantee which relates to the period between 01.02.2015 and March, 2016 is barred by limitation to the extent that the same was raised *vide* the notice of invocation of arbitration dated 01.03.2019 *i.e.*, after the expiry of more than 3 years. It has been categorically held that the period of limitation for raising claims does not arise from the date of invocation of arbitration but from the date when the cause of action for the particular claim first arose. Reliance in this regard has been placed on the judgment in ***State of Goa v. Praveen Enterprises*** (2012) 2 SCC 581.
- (v) In paragraph 74, it has been held that otherwise also the petitioner's claim for minimum guarantee for a period between 2015 and 2018 is contractually barred inasmuch as no invoice was raised by the petitioner in terms of Clause 29 of the ATS. It has been pointed out that the CW-1 during his cross examination has admitted to the respondent not being liable to make payments with respect to invoices which have not been raised within a period of 60 days of the service being provided, in terms of Clause 29 of the ATS.

In paragraph 75, it has been pointed out that no data whatsoever has been provided by the petitioners to substantiate their claim for minimum guarantee for the year of 2018 and the clause for minimum guarantee is not even present in Addendum-II which is applicable for



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the said period. In this regard, it has been held that minimum guarantee cannot be construed as an implied term in the ATS when the same has been omitted in Addendum-II.

- (vi) In paragraph 76 of the award, it has been observed that the 'No Dues Certificate' dated 04.09.2017 and 16.10.2017 have been admittedly issued by the petitioner and that it has not been averred by the petitioner before the tribunal that the same had been given 'under protest'. On the basis of the issuance of the said certificate being established, it was held that the respondent did not owe any amount to the petitioner at least till 16.10.2017.

The only contention raised by the petitioner before the learned sole Arbitrator to dispute the 'No dues certificate' is that the same was issued under 'economic duress i.e., being forced to purchase cabs on bank loans'. The said contention came to be rejected in paragraph 77 of the arbitral award by placing reliance on the cross examination of CW-1 wherein it was found that the petitioner had entered into the ATS with a fleet of 70 cars even though he was well aware that the requirement under the ATS was to maintain a fleet of 300 cars.

- (vii) In paragraph 78, it has been noted that the claim for minimum guarantee cannot be equated with damages.
- (viii) In paragraph 79, it has been noted that the claim for minimum guarantee is not in consonance with the terms of the ATS and has been calculated in an arbitrary manner inasmuch as the conditions for claiming minimum guarantee came to be modified by Addendum-I to only be applicable to some vehicles i.e. 4+1 seater cabs and then subsequently, by way of addendum-II, the clause for minimum



guarantee came to be altogether omitted from the ATS.

- (ix) In paragraphs 80 and 81 of the award, it has been noted that the GPS data cannot be relied upon by the arbitral tribunal inasmuch as no certificate under Section 65B of the Indian Evidence Act, 1872 has been attached along with it and the veracity of the data cannot be verified in the light of the cross examination of CW-2 i.e. the GPS service provider who has admitted to the fact that the GPS data was in the form of an excel sheet and therefore could be edited at any point.
- (x) In paragraph 82, it has been noted that the quantum of the claim for minimum guarantee cannot be computed by the method of 'law of averages' inasmuch as the ATS provides for a method for computing minimum guarantee and the arbitral tribunal cannot go beyond the remit of the ATS and the method provided therein.
10. As regards the second issue regarding the claim for unpaid invoices, the learned arbitral tribunal while rejecting the same in paragraph 86 of the award has returned with the finding that the three invoices for a period between 16.06.2018 and 31.07.2018, which form the basis for the claim of Rs. 13,04,344.06/- are unsubstantiated inasmuch as the same do not bear the stamp of receipt by the respondent. The same is also admitted by CW-1 in his cross examination. It has also been noted that the fact that the respondent received the said invoices has neither been admitted to by the respondent nor established by the petitioner/claimant.
11. As regards the third issue i.e. the claim for damages to the tune of Rs. 1,00,00,000/-, the learned arbitral tribunal in paragraph 88 of the award has returned with the finding that the petitioner/claimant is not entitled to the same for the following reasons –



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- (i) It has been noted that the petitioner failed to establish that the respondent had terminated the ATS and that no letter or email of termination has been provided in this regard. It is also observed that no such date has been mentioned in the pleadings made by the claimant or the affidavits of evidence.
 - (ii) The learned sole Arbitrator has noted that damages cannot be awarded until actual breach of contract by the respondent is established or actual proof of having sustained damage or loss by the claimant is on record.
 - (iii) The learned sole arbitrator notes that the petitioner has failed to establish that it had suffered any “quantifiable or unquantifiable monetary loss or injury” which is a requisite under Section 73 and 74 of the Indian Contract Act, 1872.
 - (iv) The petitioner has failed to substantiate its claim for a sum of Rs. 1 crore as damages inasmuch as Clause 36 of the ATS explicitly limits the liability of the respondent company to pay “direct, quantifiable damages” to an amount not exceeding the sum paid by the respondent to the petitioner for the services provided in the month preceding the dispute.
12. Lastly, the sole Arbitrator, considering the claim in SoD held that respondent is entitled to actual cost/s incurred by it during the course of proceedings (arbitral fee, counsel fee and other related expenses) and directed the petitioner to pay a sum of Rs. 20,73,957/- towards the same.
13. In the above conspectus, the present petition under Section 34 of the A & C Act has been filed by the petitioner.
14. Learned counsel for the petitioner submitted that the findings of the



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learned arbitral tribunal as regards the 'trip sheets' being the basis for billing for cab services provided by the petitioner under the ATS as opposed to GPS data [paragraphs 58-65 of arbitral award] are contrary to the pleadings and documentary evidence placed on record and is tantamount to re-writing the terms of the contract. It is submitted that the learned arbitral tribunal has overlooked the fact that (i) the GPS data serves as the primary basis for calculating the charges for 'back-to-back' pickup in terms of Clause 4 of the ATS (ii) Article 12 of the Service Level Agreement specifies that all billing transactions will be based on data received from GPS device and (iii) Schedule A to the ATS mandates that all the cabs be fitted with a GPS device to facilitate 'kilometre calculation and enable electronic trip sheet generation'. It is submitted that the trip sheets were only a fallback option in case of the GPS data being unavailable.

15. It is also submitted that the aforesaid findings in paragraph 63 of the arbitral award are contrary to the findings in paragraph 75 of the arbitral award inasmuch as the learned arbitral tribunal in paragraph 75 has proceeded to dismiss the claim of the petitioner for minimum guarantee (for the year 2018) under the ATS on the basis that there was no GPS data whereas in paragraph 63 it has observed that GPS data was not relevant for billing and that billing was based on trip sheets.

16. Learned counsel for the petitioner submitted that the learned arbitral tribunal's findings, as regards the 'trip sheets' being the basis for sending proforma invoices to the petitioner, have been rendered in the absence of any such averment being advanced by the respondent in the SoD. Furthermore, such a finding is contrary to evidence on record inasmuch as the 'trip sheets' placed on the record by the respondent does not reflect any



kilometres reading for the purpose of billing.

17. Learned counsel for the petitioner submitted that such a finding also lacks any factual basis inasmuch as no such averment was even made by the petitioner. Furthermore, it is submitted that the basis for billing mechanism under the ATS was never disputed and therefore, the findings of the arbitral tribunal that *“there is also nothing on the record to suggest that the claimant ever raised any objection to the billing procedure through trip sheets at any point of time”* is beyond the case set up by the petitioner.

18. Learned counsel for the petitioner submitted that obtaining GPS data from GPS data provider by the petitioner/claimant subsequent to the constitution of the arbitral tribunal has no bearing on the present dispute inasmuch as the GPS data was filed by the petitioner / claimant on the record for establishing its claim for minimum guarantee and “registered fleet”.

19. Learned counsel for the petitioner submitted that the learned arbitral tribunal has erred in rendering its findings as regards only the petitioner / claimant having access to the GPS data and not the respondent inasmuch as letter dated 10.08.2018 issued by ‘Fast Trackerz’ (GPS data provider) does not refuse the request of the respondent for GPS data, rather, the language of the said letter suggests that the GPS data provider only sought for proper authorization provided by the petitioner to the respondent for obtaining GPS data.

20. It is further submitted that the non-filing of any response by the respondents to the discovery application filed by the petitioner seeking GPS data before the arbitral tribunal should have led to an adverse finding against the respondent.



21. Learned counsel for the petitioner submitted that the arbitral tribunal's findings in paragraphs 66, 67 and 74 of the arbitral award as regards the petitioner's claim for minimum guarantee being contractually barred on account of no invoice being filed by the petitioner to substantiate the said claims being raised within the contractually stipulated period of 60 days is erroneous. It is submitted that the reliance placed upon Clause 29 of the ATS along with the cross examination of CW-1 at question nos. 18 and 19 is tantamount to re-writing the terms of the contract. In this regard, the following is sought to be highlighted -

- i. It is submitted that Clause 29 of the ATS is only applicable to "*hire charges*" and not to "*minimum guarantee*" inasmuch as there is no specific mention of the same in Clause 29 of the ATS. Furthermore, hire charges in context of the ATS refers to mean variable payments based on actual services rendered in a month whereas minimum guarantee is the petitioner's substantive right, represented by a fixed baseline payment which is independent of actual usage and intended towards the covering the petitioner's operational costs.
- ii. It is submitted that by conflating the two concepts i.e. 'hire charges' and 'minimum guarantee', the learned Arbitrator has imposed an obligation upon the petitioner/claimant which is not contemplated in Clause 29 of the ATS and thereby effectively rewritten the said clause.
- iii. It is submitted that the learned arbitral tribunal by basing the aforesaid finding on oral evidence i.e. the responses of CW-1 to question nos.18 and 19 of the cross examination, contravenes the 'best evidence rule' envisaged under Section 91 of the Indian Evidence Act, 1872 which



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stipulates that, the interpretation of the terms of a contract which are in writing cannot be varied or changed on the basis of oral testimony.

22. Learned counsel for the petitioner submitted that the findings of the learned arbitral tribunal in paragraphs 68-71 of the arbitral award were rendered without considering the contentions raised by the petitioner and tantamount to rewriting the terms of the contract. In this regard, it is submitted that the learned arbitral tribunal has not determined as to what constitutes a 'registered fleet' which the petitioner was required to maintain in terms of the ATS and has proceeded on the basis that the requirement of maintaining a "90% registered fleet" in terms of the ATS for claiming minimum guarantee had not been satisfied inasmuch as penalties had been imposed on the petitioner by the respondent which is erroneous and is a rewriting of the terms of the ATS. Furthermore, it is submitted that the learned arbitral tribunal had selectively placed reliance on the cross examination of CW-1.

23. Learned counsel for the petitioner also submitted that the learned arbitral tribunal has erred in holding that the petitioner was unable to establish the "maintaining 90% requirement of cabs" for claiming minimum guarantee inasmuch as the petitioner has substantiated its claim by providing the relevant GPS data to this effect.

24. It is also submitted that the learned sole Arbitrator failed to take into consideration the petitioner's contention that the minimum guarantee clause, as provided in Schedule A of the ATS contemplates a scenario involving a shortfall in the availability of cabs.

25. It is submitted that the findings as regards the addendum II are unreasoned and non-speaking and have failed to take into consideration the



contentions raised by the petitioner.

26. Learned counsel for the petitioner submitted that the findings of the arbitral tribunal in paragraph 74 of the arbitral award as regards the petitioner's claims for minimum guarantee for the period between 01.02.2015 and March, 2016 being barred by limitation is erroneous inasmuch as the learned sole Arbitrator failed to take into consideration certain contentions of the petitioner.

27. It is submitted that the findings as regards the 'No Dues Certificate' rendered in paragraphs 76 and 77 of the arbitral award is a perverse finding for the following reasons –

- (i) While the finding of the tribunal is based on the response of CW-1 to question nos. 6 and 7 of his cross examination, the same are illogical and irrelevant to the findings of the tribunal.
- (ii) While the claim for minimum guarantee was contractual in nature, the pleadings on economic duress were only addressed towards the 'No Dues Certificate'.
- (iii) The tribunal has virtually held the petitioner to have been in breach of its contractual obligations even though the same was not raised as an issue before the arbitral tribunal nor as a counter claim by the respondent.

28. It is further submitted that the findings of the arbitral tribunal as regards the second issue i.e. the claim amounting to Rs. 13,04,344.06/- towards the purportedly unpaid invoices for the period between 16.06.2018 and 31.07.2018 [in paragraphs 84-86 of the arbitral award] are erroneous and contrary to the facts on record. In this regard, it is submitted that the three invoices, on the basis of which, the said claim was raised, includes an



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invoice bearing No. KCS/18-19-29-8-2018 which is admittedly in possession of the respondent and, upon which, a penalty has also been imposed by the petitioner as per the affidavit of RW-1 (Mr. Ajay Sharma) filed before the arbitral tribunal. It is further submitted that “on a preponderance of possibilities”, the respondent was in possession of all the invoices on the basis of which the second claim was raised by the petitioner before the arbitral tribunal.

29. Learned counsel for the petitioner submitted that the findings of the learned arbitral tribunal as regards the third issue i.e. the claim for damages is beyond the pleadings made by the claimant / petitioner inasmuch as it was never the case of the petitioner that the ATS had been terminated by the respondent. Instead, it is submitted, that the petitioner always claimed that the respondent has stopped availing cab services from the petitioner from August, 2018 onwards and even though the ATS was to remain effective till 31.12.2018. It is further submitted that since the claim of the petitioner for damages is on account of the respondent ceasing to avail the services provided by the petitioner, the damages cannot be quantified arithmetically and that the basis on which the petitioner claimed damages was the projected earnings for the said period by considering the previous billing as a benchmark.

ANALYSIS & CONCLUSION

30. Respective counsel for the parties have been heard.

31. A perusal of the impugned arbitral award reveals that findings on each and every aspect of the matter have been rendered by the learned sole Arbitrator after meticulously examining the evidence on record, and taking



note of the respective contentions of the parties, and the provisions of the ATS executed between the parties.

32. The arbitral award clearly discloses the rationale for its findings. As regards the first issue pertaining to the claim for minimum guarantee, the learned sole Arbitrator has perused the contractual requirements / pre-requisites for claiming minimum guarantee under the ATS and has rendered a clear finding in paragraph 71 of the award that the said conditions have not been satisfied by the petitioner, for which certain penalties were also levied on the petitioner [i.e., *inter-alia* non-availability of cabs (back cab penalties)]. It has also been clearly recorded that the petitioner has been deficient in placing on record any evidence to establish that the conditions / prerequisites for claiming minimum guarantee had indeed been satisfied by it.

33. In the subsequent paragraphs of the award, the learned sole Arbitrator proceeds to deal with the other contentions made by the respondent, which preclude the petitioner from claiming minimum guarantee.

34. The second claim in regards to 3 invoices raised by the petitioner for the period between 16.06.2018 to 31.07.2018, has also been decided against the petitioner by clearly holding in paragraph 86 that the invoices forming the basis of the said claim were unsubstantiated inasmuch as (i) the receipt of said invoices could not be established (ii) no other evidence in the form of GPS data, trip sheets or proforma invoices was filed by the petitioner to corroborate the said invoices.

35. In paragraph 88 of the arbitral award as well, it has held that the petitioner cannot be awarded damages inasmuch as the breach of contract by the respondent in light of no evidence having been adduced by the petitioner



to this effect, and also in the absence of loss or injury being established.

36. Nothing untoward or perverse can be found in the manner in which the learned Arbitrator has proceeded in the matter.

37. The petitioner has virtually sought to re-argue the matter in these proceedings as if this Court is exercising appellate proceedings.

38. It is trite law that the scope of interference with an arbitral award by this Court under Section 34 A&C Act is extremely narrow and circumscribed to the extent delineated thereunder. This Court cannot interfere with a plausible view taken by an arbitrator nor can it embark upon re-appreciation of facts /evidence. The principles in this regard are well settled and oft-repeated in a catena of decisions¹. Recently in **OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited and Another** 2024 SCC OnLine SC 2600, the Supreme Court has observed as under:-

“60. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to subsection (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence. In Saw Pipes (supra), while dealing with the phrase “public policy of India” as used in Section 34, this court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

61. In Associate Builders (supra), this Court held that an award would be patently illegal, if it is contrary to: (a) substantive provisions of law of

¹ *Dyna Technologies Private Limited v. Crompton Greaves Limited* (2019) 20 SCC 1; *South East Asia Marine Engg. & Constructions Ltd. v. Oil India Ltd.* (2020) 5 SCC 164; *Steel Authority of India Ltd. v. Gupta Brothers Steel Tubes Ltd.* (2009) 10 SCC 63.



India; (b) provisions of the 1996 Act; and (c) terms of the contract. The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a) of the 1996 Act.

Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

62. In **Ssangyong** (supra) this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that “patent illegality appearing on the face of the award” refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that 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. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award.

63. Perversity as a ground for setting aside an arbitral award was recognized in **Western Geco** (supra). Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

64. In **Associate Builders** (supra) certain tests were laid down to determine whether a decision of an arbitral tribunal could be considered perverse. In this context, it was observed that where: (i) a finding is based on no evidence; or (ii) an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse. However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, 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. It was also observed that 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 that score.

65. In **Ssangyong** (supra), which dealt with the legal position post 2015 amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, 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. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that 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 in as much as such



decision is not based on evidence led by the parties, and therefore, would also have to be characterized as perverse.

66. The tests laid down in **Associate Builders** (supra) to determine perversity were followed in **Ssyanyong** (supra) and later approved by a three-Judge Bench of this Court in **Patel Engineering Limited v. North Eastern Electric Power Corporation Limited**.

67. In a recent three-Judge Bench decision of this Court in **Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.** 2024 INSC 292, the ground of patent illegality/perversity was delineated in the following terms:

“40. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; Or, that the view of the arbitrator is not even a possible view. 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 under the head of patent illegality. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice.”

68. 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.

69. In **Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 27-43]**, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.”



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(emphasis supplied)

39. In the present case, the contentions raised by the petitioner warrants a merit-based re-appraisal of the impugned arbitral award and re-appreciation of intricate factual and evidentiary aspects. As noticed, the same would transgress the limits of Section 34 of the A&C Act, and tantamount to exercise of appellate jurisdiction, which is clearly impermissible. There can be no cavil with the proposition that the arbitrator is the “ultimate master of the quality and quantity” of evidence.

40. The petitioner has been unable to make out a case for interference with the impugned arbitral award under Section 34 of the A&C Act.

41. In the circumstances, this Court finds no merit in the present petition ; the same is consequently dismissed. Pending application also stands disposed of.

OMP (ENF.) (COMM.) 130/2022, EX.APPL.(OS) 3108/2022, EX.APPL.(OS) 3715/2022

42. The present petition has been filed under Section 36 of the A&C Act r/w Order XXI of the CPC, 1908 for enforcement of an arbitral award dated 08.10.2021, in terms of which the Judgment Debtor/Karan Cab Services Pvt. Ltd was directed to pay to the Decree Holder/ HCL Technologies Ltd., a sum of Rs. 20,73,957/-, towards the cost incurred in the arbitral proceedings.

43. However, before filing of the present petition, Judgment Debtor had already preferred OMP (COMM) 57/2022 before this Court, assailing the arbitral award which is subject-matter of the present petition.

44. *Vide* order dated 17.01.2022, passed in the OMP (COMM) 57/2022 the arbitral award dated 08.10.2021 was stayed subject to the Judgment Debtor/Karan Cab Services Pvt. Ltd depositing the entire awarded amount



with the Registry of this Court.

45. However, in view of the financial constraints put forth by the petitioner in an application preferred before this Court, with consent of the learned counsel on behalf of the Decree Holder/HCL Technologies Ltd., this Court *vide* order dated 25.11.2022 in OMP (COMM) 57/2022 modified the condition of the stay to the extent that the Judgment Debtor was granted liberty to submit the entire awarded amount in 4 installments. The order dated 25.11.2022 reads as under:

“1. This is an application for modification of the order dated 17.01.2022, by which the execution of the impugned award was stayed, subject to the petitioner depositing the entire awarded amount with the Registry within two weeks.

2. The awarded amount is approximately ₹20.73 lakhs. The Award was on account of costs of the arbitration in which the petitioner was the claimant, whose claims were all rejected.

3. In view of the financial circumstances stated in the application and with consent of learned counsel for the respondent, the order is modified to the extent that the stay of execution of the award shall be subject to the petitioner depositing the entire awarded amount in four instalments. Three instalments of ₹5 lakhs each will be deposited by 15.12.2022, 15.01.2023 and 15.02.2023 respectively and the balance amount will be deposited in the Court by 15.03.2023.

4. The amounts deposited be kept in fixed deposit.

5. It is made clear that the stay granted will automatically stand vacated in the event of any default in deposit by the judgment debtor.

6. The application stands disposed of with these directions.”

46. During the course of proceedings before this Court on 25.04.2023, it was *inter-alia* recorded as under: -

“2. Ms. Gutash Guron, learned counsel for Karan Cabs Services Pvt. Ltd., states that the awarded amount has been deposited in terms of the order dated 25.11.2022.”

As a consequence thereof, the proceedings in the present petition also came to be stayed, till the final outcome of OMP (COMM) 57/2022.

47. In the aforesaid conspectus, considering the judgment rendered by this



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Court in OMP (COMM) 57/2022, (i) stay imposed *vide* orders dated 17.01.2022 and 25.11.2022 is vacated; (ii) the registry is directed to release the Fixed Deposit amount [deposited as a pre-condition of staying the impugned arbitral award in terms of orders dated 17.01.2022 and 25.11.2022 in OMP (COMM) 57/2022] in favor of Karan Cab Services Pvt. Ltd.

48. List for further directions before the roster bench, on 08.10.2025.

SACHIN DATTA, J

AUGUST 28, 2025/dn, sl