



2025:DHC:7895-DB



\$~66

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

%

Date of Decision : 09.09.2025+ **FAO (COMM) 255/2025****LAVA INTERNATIONAL LTD.**

.....Appellant

Through: **Mr. Pradeep Bhardwaj, Adv.**

versus

**ANURAG GUPTA, PROPRIETOR OF NEW FAIR BUSINESS
CENTRE**

.....Respondent

Through: **Counsel (Appearance not given)****CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO, J. (ORAL)****CM APPL. 56781/2025**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 56782/2025 and CM APPL. 56783/2025

3. For the reasons stated in the applications, the delay of 22 days in filing and 05 days in re-filing the appeal is condoned.
4. The applications are disposed of.

FAO (COMM) 255/2025

5. This is an appeal under Section 37(1)(C) of the Arbitration and Conciliation Act, 1996 (the Act), challenging the order of the learned District Judge (Commercial)-02 South-East, Saket Courts, Delhi, whereby the learned District Judge has dismissed the petition filed under Section 34 of the Act filed by the petitioner herein.



6. Some of the facts need to be noted are that the appellant herein was a claimant in a dispute with the respondent with regard to a transaction alleged to have taken place between the appellant and the respondent in respect of alleged purchase of mobile handsets by the respondent worth Rs.24,18,482/-

.

7. It was the case of the appellant that the respondent had placed multiple purchase orders vide e-mails dated 25.02.2020, 26.02.2020, 14.03.2020, 16.03.2020, 17.03.2020 and 18.03.2020 and accordingly invoices bearing No. 1200574302 dated 17.03.2020, 1200574913 & 1200574981 both dated 18.03.2020 were raised.

8. It was also the case of the appellant that it supplied the mobile handsets against the above said invoices and till date the aforesaid amount has not been paid by the respondent.

9. It was also the case of the appellant that there was no grievance in respect of the quality of the product as supplied by the appellant to the respondent.

10. The legal notices were sent on 06.01.2021 and 12.02.2021 under Section 138 of the Negotiable Instruments Act, 1881. The respondent had given a reply dated 27.02.2021 in response to the notice dated 12.02.2021.

11. Since the dispute had arisen between the parties, the appellant had invoked the Arbitration clause vide notice dated 04.03.2021, to which the respondent had submitted his reply on 13.03.2021. The appellant filed an application under Section 11(6) of the Act, which resulted in the appointment of the Arbitrator.

12. The claim of the appellant was for an amount of Rs. 24,18,482/- with interest at the rate of 12% per annum from 18.03.2020 till 31.01.2024 which



is to the tune of Rs.11,24,296/-. Hence the total claim of the appellant was Rs.35,42,778/- including interest.

13. Though, the appellant had relied upon documents which have been numbered as C-1 to C-10 in support of its claim, the finding of the learned Arbitrator was that the originals of the said documents have not been produced by the appellant before the Arbitrator. It may be stated that upon a reading of one of the applications filed by the appellant, it is noted that the said documents are in possession of the Enforcement Directorate who had initiated certain proceedings against the Managing Director of the appellant Company. Be that as it may, the finding of the learned Arbitrator in paragraph 39 is the following :

“39. Many opportunities were given to the Claimant to clarify and clarifications were also sought, insisting the Claimant to bring the original documents on record, but original documents were never produced. Going by the basic requirements of execution of documents, where signs, seals, signatures and names of witnesses etc. are some of the requisites, this Tribunal can exercise such powers under Section 73 of the Indian Evidence Act, still the undersigned was required to see the original documents before arriving at any conclusion qua the documents, as there would have been reasonable sufficiency of proof of the documents, but the same was not done by the Claimant.”

14. The aforesaid makes it clear that the appellant had not submitted the original documents of the photocopies as filed along with the statement of claim. The submission of learned counsel for the appellant is that the appellant had filed an application for bringing on record the additional documents. On a specific query as to which were the documents that were sought to be brought on record by the appellant, the learned counsel only stated “certain documents”. On a further query whether the originals of the



additional documents which were sought to be brought on record were available with the appellant, his answer is though, in the affirmative but the fact remains no documents have been brought on record before the Arbitrator.

15. The finding of the learned counsel for the Arbitrator, being what it is in paragraph 39 of the award and the same being the basis for the learned Arbitrator to reject the claim, we are of the view no infirmity can be seen in the award passed by the learned Arbitrator. Even the learned District Judge(Commercial) in the impugned order, has delineated the scope of Section 34 of the Act by referring to various judgments to hold as under:

“9. The scope of judicial review under Section 34 of the Arbitration and Conciliation Act, 1996, is circumscribed by specific and limited grounds. It is well-established that the court does not sit in appeal over the arbitral award and cannot re-appreciate the evidence unless there are compelling reasons such as a breach of the fundamental policy of Indian law, conflict with the most basic notions of morality or justice, or a patent illegality appearing on the face of the award. The Hon'ble Supreme Court has time and again emphasized, notably in MMTC Limited v. Vedanta Limited, (2019) 4 SCC 163, that the Court does not sit in appeal over the arbitral award and cannot reappreciate the evidence as an appellate forum. As long as the Arbitrator's view is a plausible one based on the evidence, interference is not warranted, even if another view is possible.

10. Applying these settled principles to the facts of the present case, this Court finds that the petitioner's challenge essentially invites a re-evaluation of the evidence and re-interpretation of the contract, which is impermissible. The Arbitrator has taken into account the entire contractual framework, including Modern Trade Agreement dated 25.04.2019, purchase order, invoices dated 17.03.2020 and 18.03.2020, legal notice dated 06.01.2021 and 12.02.2021 and reply of the respondent dated 27.02.2021, and has rendered findings supported by cogent reasons. No material has been placed before this Court to



demonstrate that the award suffers from patent illegality on the face of the record or that it is opposed to the fundamental policy of Indian law. In fact, a careful reading of the award shows that the Arbitrator has discussed all relevant issues, weighed the rival claims with reference to the evidentiary record, and delivered a logical and reasoned award.

11. It is equally important to note that the grounds urged by the petitioner do not fall within any of the limited grounds of challenge prescribed under Section 34(2)(a) or 34(2)(b) of the Act. The petitioner has not demonstrated that it was unable to present its case before the Arbitrator, that the award deals with disputes not contemplated by or not falling within the terms of submission to arbitration, or that the arbitral procedure was not in accordance with the agreement of the parties. There is also no allegation of fraud, corruption, or violation of principles of natural justice. At best, the grievance of the petitioner pertains to the merits of the findings, which cannot form the basis for setting aside a reasoned award.

*12. Further, the reasoning given by the learned Arbitrator is neither perverse nor so irrational that it shocks the conscience of the Court. The findings are based on the evidence produced and cannot be said to be such that no reasonable person could have arrived at them. It is well recognized, particularly following the law laid down in *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49, that unless the award is so unfair, capricious, or unjust that it defies logic or morality, the Court should not interfere. In the present case, no such infirmity has been demonstrated.*

*13. Hon'ble Supreme Court in *MMTC Limited v. Vedanta Limited*, (Supra), held that the Court must not act as an appellate forum to re-appreciate evidence or interfere with the findings of the arbitral tribunal unless there is a patent illegality or a violation of the public policy of India. The relevant paragraphs of the judgment are reproduced as under:*

"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii), i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a



violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See *Associate Builders v. DDA*, (2015) 3 SCC 49). Also see *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation*, (2006) 4 SCC 445; and *McDermott International v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181). It is relevant to note that after the 2015 amendments to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence. 12. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such



interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings. 13. Having noted the above grounds for interference with an arbitral award, it must now be noted that the instant question pertains to determining whether the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. However, this question has been addressed by the Courts in terms of the construction of the contract between the parties, and as such it can be safely said that a review of such a construction cannot be made in terms of re-assessment of the material on record, but only in terms of the principles governing interference with an award as discussed above."

14. The grounds for setting aside an arbitral award under Section 34 are limited and specific. An award can be set aside only if it is contrary to the fundamental policy of Indian law, the interests of India, or if it is patently illegal. The petitioner has failed to establish any of these grounds.

15. The Hon'ble Supreme Court in Ssangyong Engineering & Construction Co. Ltd. v. National Highway Authority of India, [2019 (3) Arb. L.R. 152 (SC)], clarified that an award can be set aside on public policy grounds only if it shocks the conscience of the Court. The arbitral award in this case does not meet this threshold. The Tribunal's findings are based on a careful consideration of the evidence and the contractual terms agreed upon by the parties. Below are the reproduced relevant paragraphs of the judgment:

"23. 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 paragraphs 18 and 27 of Associate Builders (supra), i.e., the fundamental policy of Indian law would be relegated to



the “Renusagar” understanding of this expression. This would necessarily mean that the Western Geco (supra) expansion has been done away with. In short, Western Geco (supra), as explained in paragraphs 28 and 29 of Associate Builders (supra), 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 paragraph 30 of Associate Builders (supra).

24. 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 paragraphs 36 to 39 of Associate Builders (supra), as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

25. 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 paragraphs 18 and 27 of Associate Builders (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of Associate Builders (supra). 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 (supra), as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with.

26. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), 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.

27. Secondly, it is also made clear that re-appreciation 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.

28. To elucidate, paragraph 42.1 of Associate Builders (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), 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.

29. The change made in Section 28(3) by the Amendment Act really follows what is stated in paragraphs 42.3 to 45 in Associate Builders (supra), 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(2A).

30. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), 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."

16. In view of the above discussion, it is evident that the petition is nothing but an attempt to reagitate issues that have been comprehensively dealt with by the learned Arbitrator. Such a disguised appeal against the arbitral award is impermissible under the limited scope of Section 34 proceedings. The petition is accordingly dismissed at the stage of admission, without issuance of notice to the respondent. File be consigned to record room after due compliance."

16. We do not see any merit in the appeal, the same is dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 9, 2025

SS