



2025:DHC:7431



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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) 178/2016

UNION OF INDIA

..... Petitioner

Through: Ms. Nidhi Raman, CGSC along with
Mr. Zubin Singh, Mr. Akash Mishra,
Ms. Rashi Kapoor, Advocate and
Mr. Mohit Kumar (DMS) for UOI.

versus

M/S INCOM ICABLES PVT. LTD.

..... Respondent

Through: Mr. Sumeet Kaul, Mr. Himanshu
Singhal and Mr. Saurav Pandey,
Advocates.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition assails an arbitral award dated 15.10.2014, which, *inter-alia*, set aside a demand notice dated 21.09.2012 (hereinafter referred as 'the demand notice') issued by the petitioner against the respondent/claimant imposing "general damages" to the tune of Rs. 5,57,17,827.57/-.
2. The present petition has been filed in the backdrop of tender no.4108097309 floated by the petitioner in November 2009 for supply of "6 Quad × 0.9mm Jelly Filled Underground Screened, Armoured Cable for a total quantity of 956.50 Kms". The said tender was awarded to the respondent/claimant *vide* an Advance Acceptance dated 23.02.2010.



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Pursuant thereto, five Purchase Orders bearing Nos. 08099747194090; 08099747193140; 08099747165252; 080099747163235 and 080997471-72124 dated 30.03.2010 (hereinafter referred as “the purchase orders”) were placed by the petitioner on respondent for supply of the afore-mentioned cable.

3. The disputes pertaining to the purchase orders arose between the parties on account of issuance of demand notice claiming “general damages” to the tune of Rs.5,57,17,827.57/-, pursuant to the purchase orders being cancelled on 29.12.2012 by the petitioner. The petitioner claimed that the delivery period was to commence after 01.04.2010 and to be completed within five months. However, despite extension of the delivery period vide Modification Advices dated 29.12.2010 and 16.09.2011, the supplies pursuant to the said purchase orders were never made by the respondent/claimant. The demand notice reads as under: -

*“NORTHERN RAILWAY
Demand Notice*

*REGISTERED
NO. 08099747194090/P-08*

*HEADQUARTERS OFFICE
BARODA HOUSE, NEW
DELHI.
Dated 21-09-2012*

*M/s Incom Cables Pvt. Ltd.
A-90, Naraina Industrial Area, Phase-I, New Delhi-110028*

Sub: This office P.Os No. 08099747194090, 08099747193140, 08099747165252, & 08099747172124 all dt. 30/03/2010 for supply of 6 Quad 0.9 mm Jelly Filled underground screened armoured cable at different consignees total qty. 956.50 KM.

Ref: This office cancellation letters no. 08099747194090, 08099747193140, 08099747165252, 08099747163235 & 08099747172124 all dt. 21/09/2012

In continuation to this office letters under reference whereby the subject



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P.Os have been cancelled with general damages, this is to inform you that the Purchaser is entitled to claim from you a sum of Rs. 5,57,17,827.57 (Rs. Five crores fifty seven lakhs seventeen thousand eight hundred twenty seven and paise fifty seven only) towards general damages calculated against cancellation of P.Os as per details given below:

S. No.	P.O. NO. And Date	Qty.	G.D. amount	Cancellation advice No. & Date
1	08099747194090 Dt. 30/03/2010	115 KM	Rs. 6698954.70	08099747194090 Dt. 30/03/2010
2	080997471931410 Dt. 30/03/2010	631.5 KM	Rs. 36785999.07	080997471931410 Dt. 30/03/2010
3	08099747165252 Dt. 30/03/2010	100 KM	5825178.00	08099747165252 Dt. 30/03/2010
4	08099747163235 Dt. 30/03/2010	10 KM	Rs. 582517.80	08099747163235 Dt. 30/03/2010
5	08099747172124 Dt. 30/03/2010	100 KM	5825178.00	08099747172124 Dt. 30/03/2010
			55717827.57	

You are, therefore, hereby called upon to deposit the said amount with the Chief cashier & Paymaster/Northern Railway/New Delhi creditable to Misc. stores purchase account cap 09300 within 30 days and forward the cash receipt in original to this office by 25/10/2012, failing which the purchaser will be compelled to take such further action as per the terms & conditions of the contract.

This is without prejudice to the other rights of the President of India under the contract and law.

Please acknowledge the receipt.

(A.K.Sirohi)

Dy. CMM/Sig./C-1

For & on behalf of the President of India

Copy to:

1. FA & CAO/SAB/NR/Baroda House/New Delhi.
2. Chief Cashier and Pay Master, Northern Railway, Baroda House, New Delhi
3. The. FA & CAO/C/LKO
4. FA & CAO/Kashmere Gate/Delhi
5. Sr. DAQ/NR/FZR
6. Sr. DAO/NR/UMB



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7. Sr. DAO/NR/MB

8. Dy. CSTE/P/LKO 9. Dy.CSTE/P/SW/NDLS 10. Dy. CSTE/SPL/TKJ 11. Sr.DSTE/NR/FZR

12. Sr. DSTE/NR/UMB 13. Sr. DSTE/MB 14. Sr.DSTE/Tele/MB.”

4. The aforesaid allegations were refuted by the respondent *vide* communication dated 16.10.2012 *inter-alia* contending that the respondent/claimant repeatedly *vide* various communications/letters, informed the petitioner that the production of goods under the purchase orders will commence only upon receipt of payment pending in other contract/s executed between the parties and confirmation from the petitioner that they have sufficient funds for making payment towards the purchase orders. The petitioner was also requested to withdraw the demand notice.

5. The aforementioned communication was responded by the petitioner *vide* communication dated 11.01.2013, wherein, it refused to withdraw the demand notice and instead a notice dated 26.03.2013 came to be issued to all other Railway zones directing as under:-

“NORTHERN RAILWAY

HEADQUARTERS OFFICE
BARODA HOUSE
NEW DELHI
Dated 26/03/2013

NO. 08099747194090/P-08
All FA&CAOs/Indian Railways

- 1.FA &CAO/WESTERN RAILWAY, CHURCHGATE,STATION
BLDG.MUMBAI
- 2 FA &CAO/CENTRAL RAILWAY, MUMBAI.
3. FA &CAO/E.RAILWAY, FAIRLEY PLACE, KOLKATA.
4. FA &CAO/S.E.RAILWAY, GARDEN REACH, KOLKATA.
5. FA &CAO/N.E.RAILWAY, GORAKHPUR.
6. FA &CAO/S.C.RAILWAY,SECUNDEERABAD.
7. FA &CAO/N.F.RAILWAY, MALIGAON, GAUHATI.
8. FA &CAO/SOUTHERN RAILWAY,CHENNI.
9. FA &CAO/N.C.RAILWAY, ALLAHABAD.



10. FA & CAO/E.C.RAILWAY,HAZIPUR.
- 11 FA & CAO/W.C.RAILWAY,JABALPUR.
12. FA & CAO/N.W.RAILWAY,JAIPUR.
13. FA & CAO/S.W.RAILWAY,HUBLI (KARNATAKA)
14. FA & CAO/S.E.RAILWAY, BILASPUR.
- 15 FA & CAO/EAST COAST RAILWAY/BHUBANESHWAR (ORISSA)

Sub: Withholding of an amount of Rs. 5,57,17,827.57(Rs. five crore fifty seven lakh seventeen thousand eight hundred twenty seven and paisa fifty seven only) recoverable from M/s Incom Cables Pvt. Ltd. A-90, Naraina Industrial Area, Phase-I, New Delhi-110028 towards General Damages calculated against cancellation of P.O Nos. 08099747194090, 08099747193140, 08099747165252, 08099747163235 & 08099747172124 all dt. 30/03/2010 for supply of 6 Quad 0.9 mm Jelly Filled underground screened armoured cable at different consignees total qty. 956.50 km cancelled with General Damages.

It is brought to your kind notice that an amount of Rs. 5,57,17,827.57(Rs. five crore fifty seven lakh seventeen thousand eight hundred twenty seven and paisa fifty seven only) is due to be recovered from M/s Incom Cables Pvt. Ltd. A-90, Naraina Industrial Area, Phase-I, New Delhi-110028 against P.O Nos. 08099747194090, 08099747193140, 08099747165252, 08099747163235 & 0809974772124 all dt. 30/03/2010 cancelled with General Damages.

In view of above, it is, requested to kindly withhold the above amount from any pending bills or forthcoming bills of the above noted firm under advice to this office.

(A.K. Sirohi)
Dy. CMM/Sig.C-I
FOR CONTROLLER OF STORES"

6. Since the disputes persisted between the parties, the respondent/claimant issued a notice dated 28.05.2013 invoking arbitration in terms of clause 2900 contained in the Indian Railways Standard Conditions of Contract, Ministry of Railways (Railway Board), Government of India (hereinafter referred as "*the IRS Conditions of Contract*"). Consequently, a sole arbitrator was appointed to adjudicate the disputes *vide* letter no.



ARB/2/P8/2013 dated 02.09.2013 by the General Manager, Northern Railway, Baroda House, New Delhi in terms of the aforesaid clause. Subsequently, the arbitral tribunal passed the impugned award *inter-alia* setting aside the demand notice issued by the petitioner against the respondent/claimant.

7. The respondent/claimant before the learned Sole Arbitrator sought two claims/reliefs which are as under:-

“Claim No. 1

The Claimant prays for quashing and setting aside of the demand of Rs. 5,57,17,827.57/- raised by the Respondent for the first time on 21-09-2012 vide Letter No. 08099747194090/P-08 against P.Os No.s. 08099747194090, 08099747193140, 08099747165252, 08099747163235 and 08099747172124 all dated 30/03/2010 for supply of 6 Quad 0.9 mm Jelly filled underground screened armoured cable at different consignees total qty. 956.50 k.m. and subsequent follow up demands.

Claim No. 2

The Respondent shall be permanently restrained, barred and stopped from advising/ directing other departments /branches/ divisions/ zones/officers/ employees of the Indian Railway to stop/ Withhold payment lawfully due to the Claimant on account of the present dispute arising out of demand of Rs. 5,57,17,827.57/- raised by the Respondent for on 21-09-2012 vide Letter No. 08099747194090/P-08 against P.Os No.s. 08099747194090 08099747193140, 08099747165252, 08099747163235 and 08099747172124 all dated 30/03/2010 for supply of 6 Quad 0.9 mm Jelly filled underground screened armoured cable at different consignees total qty. 956.50 k.m. and subsequent follow up demands.”

8. It was contended by the respondent/claimant that in the arbitral proceedings the petitioner/ Union of India without any principal or formula raised claim/s for “general damages”. Furthermore, the “general damages” claimed by the petitioner are illegal and beyond the terms of the contract agreed between the parties.



9. It was submitted that no such “general damages” could have been imposed without proof thereof. It was further submitted that the petitioner did not even float a fresh tender for supply of the material which was subject matter of the contract between the parties and, therefore, there was no occasion for fastening/ imposing any damages on the respondent/claimant.

10. It was further submitted that the threat on the part of the petitioner in seeking to withhold money payable to respondent/claimant in other contracts in the guise of recovery of aforesaid “general damages” was illegal and unsustainable.

11. In the Statement of Defence filed on behalf of the petitioner, the aforesaid contentions were refuted by the petitioner. It was reiterated that “general damages” were recoverable from the respondent/claimant. It was further averred as under:-

“26. That the contents of Para 26 of the Claim Statement as stated as wrong and denied. It is denied that till date the Respondent has not floated a fresh tender for the said goods (6 Quad Cable). The Respondent had floated an open tender No. 4108128046 opened on 13.07.2012 against which purchase order was placed @ Rs. 1,94,000.00 per km., ED extra @ 12.36%, ST-Extra @ 5% and freight charges extra. It is pertinent to note that the Claimant not even participated in this tender. It is also pertinent to note that though the purchase made against tender referred above was @ Rs. 2,28,877.32 per km. + freight charges extra, General Damages imposed on the Claimant against the defaulted contracts have been worked out on the basis of the rate of Rs. 2,02,331.15 per km. Thus the Respondent has been absolutely fair in assessing the damages to be recovered from the Claimant. Further, as brought out in Para No. 25 above, the General Damages imposed on the Claimant are as per the law of the land.

THE IMPUGNED ARBITRAL AWARD

12. In the above background, the learned arbitrator formulated the points that arose for consideration as under:-



“ 20. The entire dispute between the parties can thus in short be summed up as under:-

- a. Whether the Contract stands Repudiated on 10.04.2010 as claimed by the Claimant;*
- b. Whether extension of Delivery Period was unilateral on the part of the Respondent and thus not binding upon the Claimant;*
- c. Whether Risk Purchase has been made by the Respondent;*
- d. Whether demand for General Damages can be made by the Respondent under IRS Conditions and can be claimed through counter claim;*
- e. Whether the respondent can withhold payments of the Claimant in other contracts to recover General Damages under this Contract;”*

13. The Arbitral Tribunal rejected the plea of the respondent/claimant that the contract was repudiated on 10.04.2010. Further, the award also finds that Modification Advices dated 29.12.2010 and 16.09.2011 issued by the petitioner/ Union of India were not only belated but also unilateral and thus unenforceable.

14. It was also found that pursuant to non-performance and eventual termination of the contract, the petitioner/ Union of India had not taken recourse of the risk purchase clause contained in the IRS Conditions of Contract as clause 0702. It was noted that by virtue of the said clause the petitioner could have either taken recourse to liquidation of damages under sub-clause (a) of Clause 0702 or carry out Risk Purchase under sub-clause (b) of Clause 0702 for recovery of any loss due to breach of contract.

15. As regards, imposition of “general damages” the award finds as under:-

“d. The Respondent in this matter has imposed General Damages to the tune of Rs.5,57,17,827.57 vide its Demand Notice dated 21.09.2012. The Respondent has submitted a Calculation Sheet along with its Counter Claim to support its claim. While the Claimant has vehemently contended and argued that there was no such clause in the contract and



even otherwise the law does not permit the Respondent to claim such General Damages. The Respondent has in Para 26 of its Reply to the claim Petition has referred to Tender No.4108128046 dated 13.07.2012 against which purchase order was placed for Rs. 1,94,000.00 per Km., ED extra @ 12.36%, ST extra@ 5% and freight charges extra. The calculation sheet for General Damages calculated at Rs.5,57,17,827.57 refers to another Tender for arriving at the amount of General Damages

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xxx

xxx

It would also be relevant to point out here that the two citations referred by the Claimant have relied on various Supreme Court rulings while arriving at the conclusion and have clearly held that the party claiming damages must establish that it has suffered loss due to the breach of contract on the part of defaulting party. If no such loss is demonstrated then damages cannot be claimed. The objection is to compensate the aggrieved party and not to enrich itself from such breach.

It is a well defined Contract, hence, in my considered view, the parties are bound by the terms and conditions of the contract. It has been pointed out by the Claimant, there is no provision for General Damages in the IRS Conditions of Contract, therefore, the Respondent could not have imposed such General Damages arbitrarily. I have perused the IRS Conditions of Contract and I find there is force in the contention of the Claimant. The Remedy available to purchaser is to go for Risk Purchase and recover the risk purchase loss from Claimant. But as brought out in Para (c) above, no such risk purchase has been made.”

16. Thus, the impugned award found that the petitioner/Union of India could not have imposed “General Damages”.

SUBMISSIONS ON BEHALF OF THE PARTIES

17. Learned counsel on behalf of the petitioner submitted that the learned Sole Arbitrator, by setting-aside the demand notice, has gone beyond the scope and terms of the contract and therefore the impugned award suffers from patent illegality, and is against the public policy.

18. It is further submitted that the contract between the parties was in existence till 21.09.2012 and came to be cancelled on account of wilful non-



performance of the contract and therefore the petitioner is entitled to damages under Section 73 and 74 of the Contract Act, 1872.

19. Learned counsel for the petitioner submitted that in view of the non-performance on the part of the respondent/claimant imposition of “general damages” was justified. It was further submitted that the “general damages” had been imposed on the basis of the prices discovered in fresh tender bearing tender no. 4108128046, opened by the petitioner on 13.07.2012 pertaining to the supply of same material. It is stated that the aforementioned assessment was undertaken by the petitioner in consonance with clause 0702 of the IRS Conditions of Contract.

20. It is further contended that the Arbitral Tribunal has erred in concluding that damages cannot be claimed if loss is not proved since exceptions have been carved out in implementing the said rule. It is submitted that even a semblance of loss or a legal injury is enough to award claim for damages.

21. Learned counsel for the respondent/claimant submitted that there is no basis for interfering with the impugned award and that the present petition transgresses the limits of Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as “*the A&C Act*”).

22. It is submitted that no loss has been suffered by the petitioner/ Union of India so as to justify the imposition of “general damages”. It is stated that no evidence was lead with regard to any alleged risk purchase or supplies obtained from any other supplier. Further, it was submitted that the petitioner is still withholding a huge sum of Rs. 1,69,53,620/- payable under other contracts.

23. It is submitted that the actions on the part of the petitioner/ Union of



India in seeking to impose “general damages” and withholding legitimate payments due to the respondent/claimant has been wholly unfair and unreasonable. It is submitted that in the aforesaid conspectus the imposition of “general damages” is wholly unsustainable.

REASONING AND CONCLUSION

24. Having examined the award, this Court finds that no ground is made out for interfering with the same in exercise of its jurisdiction under Section 34 of the A&C Act.

25. Admittedly, the purchase orders issued by the petitioner on the respondent/claimant were not executed, inasmuch as no supply of cables as contemplated thereunder was made by the respondent/claimant. Although, it was urged by the respondent/claimant in the arbitration proceedings that the contract was repudiated on 10.04.2010, the said plea was rejected by the learned Sole Arbitrator. The award also finds that modifications sought by the petitioner/ Union of India *vide* modification letters dated 29.12.2010 and 16.09.2011 were belated, unilateral and hence unenforceable.

26. Crucially, the award notes that the petitioner/ Union of India did not take any steps for imposition of liquidated damages under sub-clause (a) of Clause 0702 and carrying out Risk Purchase under sub-clause (b) of Clause 0702 of the IRS Conditions and Contract and carried out risk. The award categorically finds that these options were not exercised by the petitioner/ Union of India. It has also been noticed that the tender no. 4108128046 dated 13.07.2012 on the basis of which “general damages” have been purportedly computed, was not issued for the purpose of any risk purchase. As such, the price at which purchase order was issued pursuant to the



aforesaid tender has no nexus with any actual loss.

27. The learned Sole Arbitrator held that:-

“It would also be relevant to point out here that the two citations referred by the Claimant have relied on various Supreme Court rulings while arriving at the conclusion and have clearly held that the party claiming damages must establish that it has suffered loss due to the breach of contract on the part of defaulting party. If no such loss is demonstrated then damages cannot be claimed. The objection is to compensate the aggrieved party and not to enrich itself from such breach.”

28. The above conclusion in the impugned award is unexceptional; the law is well-settled and reiterated by the Courts in numerous cases that it is impermissible to claim damages without proof of actual damages.¹

29. In ***All India Medicos thr its Prop. Monika Chawla vs All India Institute of Medical Science***, 2024 SCC OnLine Del 6858, a Division Bench of this Court by placing reliance on ***Kailash Nath Associates v. Delhi Development Authority***, (2015) 4 SCC 136 has held as under: -

“42. The impugned order also rightly notices that certain complaint/s were found actionable against the appellant culminated in a penalty being imposed on the appellant. However, the impugned order grievously errs in holding that the imposition of penalty of Rs. 5331/- was by itself sufficient to justify the forfeiture of performance security of Rs. 50 Lakhs in terms of Clause 3 of the License Agreement. The said conclusion drawn is contrary to well established principles of law. As held by the Supreme Court in Kailash Nath Associates v. Delhi Development Authority, forfeiture of earnest money or performance security must be predicated on proof of actual loss being shown. The relevant observations in Kailash Nath Associates (supra) are as under:—

“43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable

¹ ***Fateh Chand vs. Balkishan Dass***, (1964) 1 SCR 515; ***Maula Bux vs. Union of India***, (1969) 2 SCC 554; ***Kailash Nath Associates v. Delhi Development Authority***, (supra); ***R.B Enterprises vs Union of India***, 2023 SCC OnLine Del 8321.



by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found *inter alia* in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a *sine qua non* for the applicability of the section.

43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

43.6. The expression “whether or not actual damage or loss is proved to have been caused thereby” means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded....”

(emphasis supplied)

43. In the present case, the order/communication dated 17.12.2013, although refers to financial loss on account “wastage of precious man hours”, fails to disclose the extent thereof. Also, importantly, whenever the respondent deemed it fit to impose a penalty on the appellant, the quantum thereof was determined by the respondent itself and the same was also duly paid by the appellant.

44. As such, in the absence of financial loss being established, it was impermissible to forfeit the performance guarantee Rs. 50 of Lakhs. The conclusion in the impugned judgment that just because of penalty of Rs. 5331/- was levied on a previous occasion, the same would serve as a justification for forfeiting the performance guarantee Rs. 50 of Lakhs, is



completely antithetical to the dicta laid by the Supreme Court in Kailash Nath Associates v. Delhi Development Authority (supra) and followed in the catena of judgments. The fact that the respondent itself had previously quantified the penalty that was required to be imposed on the appellant for violating License conditions, is demonstrative of the fact that the forfeiture of performance security of Rs. 50 Lakhs, has no nexus with any actual loss.”

30. As such, the impugned award rightly notes that the imposition of “general damages” was unsustainable. No fault whatsoever can be found with the said conclusion.

31. The legal position is well settled that the scrutiny in exercise of jurisdiction under Section 34 of the A&C Act is not akin to that of an Appellate Court. The scope of interference with the Arbitral Award is extremely circumscribed and unless the view taken by the arbitrator is so perverse that it cannot be characterised as a possible view, it is impermissible to interfere with an arbitral award.

32. The legal position in this regard has been restated and reiterated in catena of decisions² and is now authoritatively settled in terms of the judgment of the Supreme Court in **OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited and Another** 2024 SCC OnLine SC 2600. The relevant portion in **OPG Power Generation Private Limited** (supra) reads 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 vitiated 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

² *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.



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 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."

(emphasis supplied)

33. In the circumstances, this Court finds no ground to interfere with the impugned award in exercise of the jurisdiction under Section 34 of the A&C Act.

34. The present petition is accordingly dismissed.

SACHIN DATTA, J

AUGUST 28, 2025/uk/sl