RESERVED ON 27TH AUGUST 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

COMMERCIAL APPEAL NO.376 OF 2025

C/W

COMMERCIAL APPEAL NO.374 OF 2025

COMMERCIAL APPEAL NO.375 OF 2025

COMMERCIAL APPEAL NO.380 OF 2025

IN COMAP NO.376/2025

BETWEEN:

SHRI ADITYA CONSTRUCTIONS PRIVATE LIMITED
CORPORATE REGISTERED OFFICE AT
H.NO.2801A, "A" VASUDEV RETREAT
VASUDEV NAGAR, BICHOLIM,
GOA - 403504,
REPRESENTED BY ITS DIRECTOR
SRI. H.S. SHIVASHANKAR,
S/O. SHESHAGIRIYAPPA,
AGED ABOUT 65 YEARS,
"SARVASIDDI", F-70,
GOPALA GOWDA EXTENSION,
SHIVAMOGGA - 577 205.

…APPELLANT

(BY SRI. DWARAKANATH H.S., ADVOCATE)

AND:

1. SMT. H.R. KOUSALYA
S/O. H.V. RAMACHANDRA SHASTRY,

Digitally signed by C K LATHA
Location: High Court of Karnataka

AGED ABOUT 62 YEARS,
RESIDING AT PARVATHI NILAYA,
PARK EXTENSION, DURGIGUDI,
SHIVAMOGGA - 577 205.

2. SRI. S.R. SOMASHEKHARA
FORMER DISTRICT & SESSIONS JUDGE,
SOLE ARBITRATOR,
ARBITRATION & CONCILIATION CENTRE
BENGALURU - 560 009.

…RESPONDENTS

(BY SRI. PRASHANTH CHANDRA S.N., ADVOCATE FOR R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 R/W SECTION 37(1)(C) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO CALL FOR RECORDS FROM THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE AT SHIVAMOGGA OF COM. ARBITRATION PETITION NO.02/2021 FILED UNDER SECTION 34 OF THE ARBITRATION & CONCILIATION ACT, 1996; SET ASIDE THE ORDERS PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE AT SHIVAMOGGA DATED 02.05.2025 IN COM. ARBITRATION PETITION NO.2/2021 ALLOWING THE PETITION FILED BY THE 1ST RESPONDENT UNDER SECTION 34 OF ARBITRATION & CONCILIATION ACT, 1996 R/W SECTION 10(3) OF COMMERCIAL COURTS ACT, 2015 AND ETC.

IN COMAP NO.374/2025

BETWEEN:

SHRI ADITYA CONSTRUCTIONS PRIVATE LIMITED
CORPORATE REGISTERED OFFICE AT
H.NO.2801A, "A" VASUDEV RETREAT
VASUDEV NAGAR,
BICHOLIM, GOA - 403504,
REPRESENTED BY ITS DIRECTOR
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AGED ABOUT 65 YEARS,
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SHIVAMOGGA - 577 205.

...APPELLANT

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AND:

1. MR. H.R. HARINDRANATHA SHASTRY
S/O. H.V. RAMACHANDRA SHASTRY,
AGED ABOUT 62 YEARS,
RESIDING AT PARVATHI NILAYA,
PARK EXTENSION, DURGIGUDI,
SHIVAMOGGA - 577 205.

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FORMER DISTRICT & SESSIONS JUDGE,
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IN COMAP NO.375/2025

BETWEEN:

SHRI ADITYA CONSTRUCTIONS PRIVATE LIMITED
CORPORATE REGISTERED OFFICE AT
H.NO.2801A, "A" VASUDEV RETREAT
VASUDEV NAGAR, BICHOLIM,
GOA - 403 504,
REPRESENTED BY ITS DIRECTOR
SRI. H.S. SHIVASHANKAR,
S/O. SHESHAGIRIYAPPA,
AGED ABOUT 65 YEARS,
"SARVASIDDI", F-70,

GOPALA GOWDA EXTENSION,
SHIVAMOGGA - 577 205.

...APPELLANT

(BY SRI. DWARAKANATH H.S., ADVOCATE)

AND:

1. SMT. H.R. KOUSALYA
W/O. H.V. RAMACHANDRA SHASTRY,
AGED ABOUT 91 YEARS,
RESIDING AT PARVATHI NILAYA,
PARK EXTENSION, DURGIGUDI,
SHIVAMOGGA - 577 205.

2. SRI. S.R. SOMASHEKHARA
FORMER DISTRICT & SESSIONS JUDGE,
SOLE ARBITRATOR,
ARBITRATION & CONCILIATION CENTRE,
BENGALURU - 560 009.

...RESPONDENTS

(BY SRI. PRASHANTH CHANDRA S.N., ADVOCATE FOR R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 R/W SECTION 37(1)(C) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO CALL FOR RECORDS FROM THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE AT SHIVAMOGGA OF COM. ARBITRATION PETITION NO.04/2021 FILED UNDER SECTION 34 OF THE ARBITRATION & CONCILIATION ACT, 1996; SET ASIDE THE ORDERS PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE AT SHIVAMOGGA DATED 02.05.2025 IN COM. ARBITRATION PETITION NO.4/2021 DISMISSING THE PETITION FILED BY THE APPELLANT UNDER SECTION 34 OF THE ARBITRATION & CONCILIATION ACT, 1996 R/W SECTION 10(3) OF COMMERCIAL COURTS ACT, 2015 AND ETC.

IN COMAP NO.380/2025

BETWEEN:

SHRI ADITYA CONSTRUCTIONS PRIVATE LIMITED
CORPORATE REGISTERED OFFICE AT
H.NO.2801A, "A" VASUDEV RETREAT
VASUDEV NAGAR,

BICHOLIM, GOA - 403 504,
REPRESENTED BY ITS DIRECTOR
SRI. H.S. SHIVASHANKAR
S/O. SHESHAGIRIYAPPA,
AGED ABOUT 65 YEARS
"SARVASIDDI", F-70,
GOPALA GOWDA EXTENSION,
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AGED ABOUT 62 YEARS,
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FORMER DISTRICT & SESSIONS JUDGE,
SOLE ARBITRATOR,
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THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 R/W SECTION 37(1)(C) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO CALL FOR RECORDS FROM THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE AT SHIVAMOGGA OF COM. ARBITRATION PETITION NO.01/2021 FILED UNDER SECTION 34 OF THE ARBITRATION & CONCILIATION ACT, 1996; SET ASIDE THE ORDERS PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT SHIVAMOGGA DATED 02.05.2025 IN COM. ARBITRATION PETITION NO.01/2021 ALLOWING THE PETITION FILED BY THE 1ST RESPONDENT UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996 R/W SECTION 10(3) OF COMMERCIAL COURTS ACT, 2015 AND ETC.,

THESE COMMERCIAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE K.S. HEMALEKHA)

1. All these four appeals are preferred by Shri. Aditya Constructions Private Limited, under Section 37 (1)(C) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] read with Section 13(1A) of the Commercial Courts Act, 2015 assailing the orders dated 02.05.2025 [**impugned order**] passed by the III Additional District and Sessions Judge, Shivamogga [**Commercial Court**], in Commercial Arbitration Petition Nos.1/2021 to 4/2021 arising out of the common award dated 24.06.2021 [**Arbitral Award**] passed in A.C Nos.84/2018 and 85/2018. Since all these appeals arise out of the common Arbitral Award and involve common questions of fact and law, they are heard together and are disposed of by this common judgment.

2. For the sake of convenience, the appellant shall hereinafter be referred to as claimant and the respondents as landowners.

PREFATORY FACTS

3. The respondent in A.C No.84/2018, Smt. H.R.Kousalya, is the owner of land bearing Re.Sy.No.58 measuring 5 acres 18 guntas, whereas respondent in A.C No.85/2018, H.R Harindranatha Shastry, is the owner of land bearing Sy.No.53/5 measuring 4 acres 37 guntas both situated at Mullakere Village, Shivamogga [**scheduled properties**]. The landowners had obtained conversion of the scheduled properties for non-agriculture purposes and also secured approval of layout plans from the Shivamogga Urban Development Authority [**SUDA**].

4. The landowners entered into separate development agreements dated 17.01.2014 with the claimant for developing the scheduled properties into residential layouts. Under the agreements, the claimant was required to undertake development of the scheduled properties, obtain necessary statutory approvals and form residential sites. The parties agreed that 60% of the saleable sites would be allotted to the landowners and remaining 40% to the claimant. Power of attorney was also executed in favour of the claimant on 18.01.2014 to facilitate the development works and obtaining of necessary permissions. Addendums dated

21.01.2014 were also stated to have been executed between the parties.

5. According to the claimant, pursuant to the development agreements, it undertook substantial development works, including formation of roads, underground drainage, construction of culverts, laying of water pipelines and development of parks. It was contended that except for erection of electrical poles, drawing of electricity supply lines and asphalting of roads, the remaining development works had substantially been completed.

6. It was further contended that completion of remaining works was prevented by the failure of the landowners to obtain consent from the owners of adjoining properties for providing access and laying utility lines, as well as permission from forest department for removal of certain trees. The claimant asserted that despite repeated requests, the landowners failed to extend the necessary cooperation.

7. The landowners on the other hand, contended that under the development agreements, the obligation to obtain sanction layout plans and other statutory permission was that of the claimant. It

was alleged that the claimant had failed to obtain a fresh sanction layout plan from SUDA and had undertaken development works without requisite statutory approvals. It was further contended that the claimant had failed to complete the development within the stipulated period and had therefore committed breach of the contractual obligations.

8. In these circumstances, the landowners by separate notices dated 28.05.2016, terminated the development agreements and revoked the powers of attorney executed in favour of the claimant. Aggrieved by the termination, the claimant invoked the arbitration clause contained in the respective agreements and sought the following reliefs in A.C.84/2018 as under :

> "WHEREFORE, the petitioner pray that the Hon'ble Authority may be pleased to pass orders and direct the Respondent to:
>
> a) tender co-operation to the Petitioner to submit the layout plan to SUDA, Shimoga for release of first installments of sites/plots.
>
> b) To execute the supplementary agreement in terms of Clause-II of the development agreement dated 17-01-2014 so as to enable the petitioner to take its 40% share of saleable area of sites/plots in the approved layout plan.
>
> c) To get the registered GPA duly registered in the office of the Sub-Register, Shimoga to empower the petitioner to deal with the sites/plots allotted to its share as per the agreed ratio with other essential requirements.

(d) For an Order of specific performance of the Joint Development Agreement dated 17-01-2014;

(e) For an Order declaring that the notice issued dated 28-05-2016 produced as Annexure-C is not valid in law and is void ab-initio.

(f) For an Order for payment of Rs.25,00,000/- in addition to specific performance as pleaded in paragraph 12(L);

(g) For an Order directing the Respondent to register the Joint Development Agreement dated 17-01-2014.

(h) If for any reason this Hon'ble Tribunal were to come to the conclusion that specific performance is not possible, for a direction to the Respondent to pay an amount of Rs.5,36,03,989/- (Rupees Five Crore thirty-six lakhs three thousand nine hundred and eighty-nine only) as per paragraph 12(J)

And that this Hon'ble court may deem fit in the facts and circumstances of the case, in the interest of justice and equity."

9. And in A.C 85/2018 as under :

"WHEREFORE, the Petitioner prays that the Hon'ble Authority may be pleased to pass orders and direct the Respondent to:

a) Tender co-operation to the Petitioner to submit the layout plan to SUDA, Shimoga for release of first installments of sites/plots and to the forest department, MESCOM and other department for necessary approvals.

b) To execute the supplementary agreement in terms of Clause-II of the development agreement dated 17-01-2014 so as to enable the petitioner to take its 40% share of saleable area of sites/plots in the approved layout plan.

c) To get the registered GPA duly registered in the office of the Sub-Register, Shimoga to empower the

petitioner to deal with the sites/plots allotted to its share as per the agreed ratio with other essential requirements.

d) For an Order of specific performance of the Joint Development Agreement dated 17/01/2014;

e) For an Order declaring that the notice issued dated 28/05/2016 produced as Annexure-C is not valid in law and is void ab-initio.

f) For an Order for payment of Rs.25,00,000/- in addition to specific performance as pleaded in paragraph 12(L);

g) For an Order directing the Respondent to register the Joint Development Agreement dated 17/01/2014.

h) If for any reason this Hon'ble Tribunal were to come to the conclusion that specific performance is not possible, for a direction to the Respondent to pay an amount of Rs.5,21,42,306/-(Rupees Five crores twenty-one lakhs forty-two thousand three hundred and six only) as per paragraph 12(J).

And that this Hon'ble court may deem fit in the facts and circumstances of the case, in the interest of justice and equity."

PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

10. Since the dispute arose out of similar development agreements and involving substantially common questions, the proceedings, A.C Nos.84/2018 and 85/2018 which were registered pursuant to the order passed by this court in CMP Nos.286/2017 and 287/2017, were clubbed together and common evidence was recorded and both the matters were disposed of by a common Arbitral Award dated 24.06.2021.

11. Before the Arbitral Tribunal, the claimant sought specific performance of development agreements, a declaration that the termination notices dated 28.05.2016 were invalid, and direction to the landowners to cooperate in obtaining the statutory approvals and performing their contractual obligations. Alternatively, the claimant sought monetary compensation towards the expenditure incurred on development works, interest and damages. The total monetary claims were ₹ 5,36,03,989 in A.C 84/2018 and ₹ 5,21,42,306 in A.C 85/2018.

FINDINGS OF THE ARBITRAL TRIBUNAL

12. Upon consideration of the pleadings, oral and documentary evidence and the terms of development agreements, the learned Arbitral Tribunal held that the execution of addendums dated 21.01.2014 had been established. However, upon interpretation of clauses 6 and 8 of the development agreements, the Arbitral Tribunal found that the obligation to obtain sanction layout plans and requisite statutory approvals rested upon the claimant.

13. The Arbitral Tribunal further recorded that the claimant had failed to obtain a fresh sanction layout plan or renewal of the earlier approval from SUDA. The claimant had neither established

submission of an application for such approval nor payment of the prescribed fee. The Arbitral Tribunal found that the claimant has failed to establish completion of the development works within the stipulated period and had not proved that delay was attributable to any omission or commission on the part of the landowners.

14. Consequently, the Arbitral Tribunal held that the claimant had failed to establish its continuous readiness and willingness to perform its contractual obligations and that the landowners were justified in terminating the development agreements and revoking the powers of attorney by notices dated 28.05.2016. Accordingly, the claim for specific performance and the additional claim of ₹ 25,00,000/- were rejected.

15. However, while considering the alternative claim of monetary compensation, the Arbitral Tribunal examined the applicability of Sections 64, 70 and 73 of the Indian Contract Act, 1872 [**Contract Act**]. The learned Arbitral Tribunal held that the claimant, having failed to establish breach of contract on the part of the landowners, is not entitled to damages under Section 73. Nevertheless, invoking Section 64 of the Contract Act, the Arbitral Tribunal held that the landowners, having rescinded the development

agreements, were liable to restore benefits received under the agreements. Taking into consideration the oral evidence of PW1, the admissions of RW-1 and the report of the Court Commissioner as establishing that development works had been carried out and the vouchers and invoices at Exs.P24 to P348 as establishing the expenditure incurred, the Arbitral Tribunal partly allowed the alternative monetary claims and awarded ₹ 1,21,46,306 in A.C No.84/2018 and ₹ 1,09,76,249 in A.C No.85/2018 with interest at 8.5% per annum from the date of award till payment. Thus, while refusing specific performance, the Arbitral Tribunal granted monetary compensation aggregating to ₹ 2,31,22,555.

Proceedings before the Commercial Court under Section 34 of the A&C Act

16. Aggrieved by the Arbitral Award dated 24.06.2021, both the claimant and the landowners independently invoked Section 34 of the A&C Act before the Commercial Court. The claimant preferred Commercial Arbitration Petition Nos.3/2021 and 4/2021 challenging the award insofar as it declined specific performance of the development agreements and rejected the remaining monetary claims. On the other hand, the landowners preferred

Commercial Arbitration Petition Nos.1/2021 and 2/2021, challenging the Arbitral Award insofar as monetary compensation had been granted to the claimant under Section 64 of the Contract Act.

Findings of the Commercial Court

17. The Commercial Court, by common order dated 02.05.2025 passed in Commercial Arbitration Petition Nos.3/2021 and 4/2021, dismissed the petitions preferred by the claimant. The Commercial Court concurred with the findings of the Arbitral Tribunal that the claimant has failed to obtain the requisite sanction layout plans and had not established readiness and willingness to perform its contractual obligation. It held that refusal of specific performance was based on appreciation of the contractual terms and evidence and did not warrant any interference within the limited scope of Section 34 of the A&C Act. The Commercial Court also declined to interfere with the rejection of additional monetary claims.

18. Insofar as Commercial Arbitration Petition Nos.1/2021 and 2/2021 preferred by the landowners are concerned, the Commercial Court, by a separate common order of the same date, allowed both petitions. The Commercial Court held that the Arbitral

Tribunal had erred in invoking Section 64 of the Contract Act to award compensation to the claimant. It observed that development works had been undertaken without obtaining the requisite statutory approval from SUDA and that the claimant had failed to establish that the landowners had actually derived any benefit from such works.

19. The Commercial Court further held that the expenditure incurred by the claimant could not, by itself, be equated with the benefit received by the landowners. In the absence of evidence establishing that development works could be properly utilised or approved by competent authority, the award directing reimbursement of the expenditure was held to be contrary to law.

20. Consequently, the Commercial Court set aside the common Arbitral Award insofar as it granted monetary compensation to the claimant under paragraph 131 (iii) of the Arbitral Award, thus, the Commercial Court dismissed Commercial Arbitration Petition Nos.3/2021 and 4/2021 preferred by the claimant, while allowing Commercial Arbitration Petition Nos.1/2021 and 2/2021 preferred by the landowners. The result was that the refusal of specific

performance stood undisturbed whereas the monetary compensation awarded to the claimant was set aside.

PRESENT APPEALS

21. Aggrieved by the aforesaid orders, the claimant have preferred the present appeals. Commercial Appeal Nos.374/2025 and 375/2025 arise out of the dismissal of Commercial Arbitration Petition Nos.3/2021 and 4/2021 respectively, whereas Commercial Appeal Nos.376/2025 and 380/2025 arise out of the orders allowing Commercial Arbitration Petition Nos.2/2021 and 1/2021 respectively.

CONTENTIONS

22. The learned counsel appearing for the appellant/claimant would contend that the Commercial Court has failed to appreciate the true scope and effect of development agreements and addendums executed between the parties. It is submitted that the addendum specifically contemplated development and sharing of residential sites in accordance with the layout plans already approved by SUDA and that the claimant had substantially carried out the development works in accordance with those plans. It is

contended that the landowners had full knowledge of the development activities undertaken by the claimant and had actively participated in obtaining various permissions. It is contended that the landowners or their representatives had regularly supervised the development works without raising any objection. Having permitted the claimant to undertake substantial development at considerable expense, the landowners could not subsequently deny the claimant's entitlement by insisting upon a fresh sanction layout plan.

23. Insofar as monetary compensation awarded by the Arbitral Tribunal is concerned, it is contended that the Arbitral Tribunal upon appreciation of the oral and documentary evidence had recorded findings regarding development works undertaken and expenditure incurred by the claimant. It is stated that the award of compensation under Section 64 of the Contract Act was based on the benefit received by the landowners consequent upon such development. The Commercial Court, while exercising jurisdiction under Section 34 of the A&C Act, could not have reassessed the evidence and substituted its own conclusion for those recorded by the Arbitral Tribunal. It is further contended that the Commercial

Court exceeded the limited scope of interference permissible under Section 34 of the A&C Act.

24. Per contra, the learned counsel appearing for the respondents/landowners supporting the impugned order passed by the Commercial Court would contend that the Arbitral Tribunal, having categorically held that the claimant had failed to discharge his contractual obligation and that the landowners were justified in terminating the development agreements, could not have proceeded to award reimbursement of the expenditure incurred by the claimant by invoking Section 64 of the Contract Act. It is submitted that the development agreements expressly obligated the claimant to obtain requisite approval from the competent authority before undertaking development works. Admittedly, no fresh sanction layout plan or renewal of the earlier approval was obtained. The claimant nevertheless proceeded to undertake development works contrary to the terms of agreement and the applicable statutory requirements.

25. It is contended that Section 64 of the Contract Act contemplates restoration of the benefit received by the party rescinding a voidable contract and does not provide for

reimbursement of the expenditure incurred by the defaulting party. It is contended that the claimant was therefore required to establish not merely that certain development works had been undertaken, but that the landowners actually received a benefit thereunder capable of restitution. It is contended that the Tribunal confined its enquiry to whether the claimant had incurred expenditure on development and proceeded to quantify such expenditure and no independent finding was recorded regarding the nature, extent or value of benefit received by the landowners. The learned counsel would submit that the monetary award by the Arbitral Tribunal suffered from patent illegality inasmuch as the Arbitral Tribunal granted relief without determining the essential statutory requirement of benefit received under Section 64 of the Contract Act.

REASONS AND CONCLUSION

26. At the outset, it is necessary to bear in mind the limited scope of interference with the Arbitral Award under Section 34 of the A&C Act and further restricted scope of appellate jurisdiction under Section 37 of the A&C Act. The Court exercising jurisdiction under Section 34 does not sit in appeal over the findings of the Arbitral

Tribunal. Re-appreciation of evidence or substitution of another plausible interpretation of the contract is impermissible merely because a different conclusion could have been reached. Interference is warranted only where the award suffers from infirmity falling within the grounds enumerated under Section 34, including patent illegality appearing on the face of the award, in the case of domestic arbitration.

27. The Apex Court in **Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI)**[1], explained the expression "fundamental policy of Indian law" and reiterated the limited scope of interference under Section 34 of the A&C Act. It held that the expression of "fundamental policy of Indian law" must be understood in the manner explained in paragraph Nos.18 and 27 of decision in **Associate Builders vs DDA**[2] and held at paragraph Nos.34, 35 and 36 as under:

> "34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of *Associate Builders* i.e. the fundamental policy of Indian law would be

[1] (2019) 15 SCC 131
[2] (2015) 3 SCC 49

relegated to “Renusagar” understanding of this expression. This would necessarily mean that *Western Geco* expansion has been done away with. In short, *Western Geco*, as explained in paras 28 and 29 of *Associate Builders*, would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(*a*)(*iii*) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of *Associate Builders*.

35. It is important to notice that the ground for interference insofar as it concerns “interest of India” has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. This again would be in line with paras 36 to 39 of *Associate Builders*, as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of *Associate Builders*, or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of *Associate Builders*. 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*, as understood in *Associate Builders*, and paras 28 and 29 in particular, is now done away with."

28. In **Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation Limited**[3], the Hon'ble Supreme Court held that an Arbitral Award may be interfered with on the ground of patent illegality where the findings are based on no evidence, where vital evidence has been ignored, where the award contains no reasons, or where the view taken by the arbitrator is not even a plausible view. At the same time, the Court reiterated that patent illegality must go to the root of the matter and that the Court cannot re-appreciate evidence or act as an appellate authority.

29. The Supreme Court observed that a view which is not even reasonably possible, or a finding based on no evidence or ignoring vital evidence can constitute patent illegality. Taking these principles in view, the challenge raised in these present appeals require consideration under two distinct heads namely (I) refusal of specific performance of the development agreements and (II) setting aside of the monetary compensation awarded by Arbitral Tribunal.

[3] (2022) 1 SCC 131

(I) Commercial Appeals Nos. 374/2025 and 375/2025 -Refusal of specific performance

30. The principal contention of the appellant is that the development agreements dated 17.01.2014 were followed by addendums dated 21.01.2014, under which the parties have agreed to develop and share the residential sites in accordance with the layout plans previously approved by SUDA. It is contended that the landowners had full knowledge of the development works undertaken by the claimant and had actively participated in the same. Therefore, according to the appellant, the failure to obtain a fresh sanction layout plan could not be treated as a ground for denying specific performance. It is not in dispute that the parties entered into separate development agreements dated 17.01.2014. The execution of addendums dated 21.01.2014, though disputed by landowners, was held to have been established by the Arbitral Tribunal upon consideration of the oral and documentary evidence.

31. Clauses 6 and 8 of the development agreements read thus :

> "**6) OBLIGATIONS OF THE SECOND PARTY/DEVELOPERS:**
>
> The SECOND PARTY/DEVELOPERS shall, on its own and at its own cost & expenses, perform the following, namely;
>
> i) To prepare and finalize the demarcation Plan, layout Plan and applications required for the formation of Layout

with amenities and facilities on the Scheduled Property as per the scheme formulated;

ii) To take all steps to obtain the layout plan sanctioned by the Competent Authority or any statutory authority for development of the Scheduled Property;

iii) To develop and form layout at its own cost and expenses, on the Scheduled Property after obtaining necessary approvals, sanctions, license etc., in accordance with such alterations, additions, modifications as may, from time to time become necessary.

iv) Deliver a copy of complete sanctioned plan of the layout to the FIRST PARTY/OWNER along with the possession of his share of the sites on completion of layout in all aspects.

v) To obtain the required completion certificate from the component authority for having completed the project in accordance with the Plan and permissions.

vi) To sell or enter in to any Agreement for Sale of developed plots of their 40% share.

x x x

8) LAYOUT PLAN:

i) The SECOND PARTY/DEVELOPERS at its cost shall Design the Project / create the layout plans/drawings/designs etc., for the Scheduled Property, as per the bye-laws, rules and regulations for development and formation of layout and submit the same to the competent authority for sanction, approval. The SECOND PARTY/ DEVELOPERS is empowered to modify. add and/or delete the contents in the Sanctioned plan as per the specific regulatory requirements or as per the situational requirements of development and shall seek ratification of the same from appropriate authorities as may be deemed necessary from time to time.

ii) It shall be the exclusive responsibility of the SECOND PARTY/DEVELOPERS to secure all necessary

> clearances from the statutory authorities at its cost and to meet the cost of preparation of the Layout Plan and getting them sanctioned for development and formation of project on the Scheduled Property within three or four months from the date of registration of this Development Agreement, subject to clearance from the government authorities and production of all the required documents by The FIRST PARTY/OWNER.
>
> iii) The SECOND PARTY/DEVELOPERS is entitled to make at its cost such modifications, additions, deletions etc., in the Sanctioned Plan either as directed/required by the authorities concerned or due to technical or other exigencies, however, in accordance with the Bye-laws of the statutory authority or any competent authority and without causing any prejudice to the interest of the FIRST PARTY/OWNER."

32. The Arbitral Tribunal specifically examined clauses 6 and 8. Clause 6 deals with the obligation of the developer, which requires the claimant to obtain necessary approvals from the competent authorities at its own cost and undertake development in accordance with the sanction plan. Clause 8 also requires the claimant to obtain layout plans and secure necessary ratification or approval from the appropriate authorities. The Arbitral Tribunal also considered the admission of PW1, the Director of the claimant company, that obtaining the sanction layout plan was the responsibility of the claimant. PW1 further admitted that no fresh sanction layout plan had been obtained from SUDA subsequent to the execution of the development agreements. Neither any

application for obtaining a fresh approval or renewal of the earlier plan nor payment of the prescribed fee was established by the claimant. The finding of the Arbitral Tribunal that obtaining the requisite statutory approval was contractual obligation of the claimant is founded upon the express terms of the agreements and the admission elicited in the evidence. Such a finding recorded by the Arbitral Tribunal cannot be characterized as perverse or as one based on an interpretation which no reasonable person could adopt. Even assuming that the landowners had knowledge of the works undertaken, their conduct cannot dispense with the statutory compliance governing approval of residential layouts.

33. It is also relevant that under the development agreements, the claimant was required to commence the development works within 90 days from the date of approval and complete the project within the stipulated period, subject to permissible extension. The Arbitral Tribunal, upon consideration of the evidence, found that the claimant had failed to establish that the delay was attributable to any omission or commission on the part of the landowners. The Arbitral Tribunal also found that the claimant's contention that the landowners had failed to secure consent from the adjoining owners

and permission from the Forest Department was not substantiated, as the letters dated 27.11.2015 and 19.12.2015, said to have been addressed to the claimants in that regard, were neither produced nor put to RW1 in cross-examination. The Arbitral Tribunal found that the claimant had failed to establish continuous readiness and willingness to perform its part of the contract and declined to grant specific performance.

34. The Commercial Court, while considering the Commercial Arbitration Petition Nos.3/2021 and 4/2021, examined the findings recorded by the Arbitral Tribunal and concluded that refusal of specific performance did not suffer from any infirmity warranting interference under Section 34 of the A&C Act. We find no reason to take a different view. The Arbitral Tribunal has considered the relevant contractual provisions, the oral and documentary evidence and conduct of the parties. The conclusion that the claimant failed to perform its essential contractual obligation is a plausible view arising from the material on record. Accordingly, we find no merit in Commercial Appeal Nos.374/2025 and 375/2025, which challenge the refusal of specific performance of development agreements.

II) Commercial Appeal Nos.376/2025 and 380/2025 - setting aside monetary compensation

35. The question that arises for consideration in these appeals is whether the Arbitral Tribunal was justified in awarding monetary relief to the claimant under Section 64 of the Contract Act and whether the Commercial Court was justified in interfering with that portion of the Arbitral Award in exercise of its jurisdiction under Section 34 of the A&C Act.

36. It is not in dispute that the claimant had undertaken certain development works on the scheduled properties belonging to the landowners. The Arbitral Tribunal has also recorded that the claimant has failed to obtain requisite approval from SUDA as contemplated under the development agreements, and that the landowners were justified in terminating the agreements. Consequently, the relief of specific performance was declined.

37. The claimant had specifically pleaded in para 12(B) of the claim petition that the development works were undertaken lawfully, that the landowners had received the benefit thereof and that the claimant had not undertaken such works gratuitously. On that basis, the claimant sought specific performance or alternatively

monetary compensation towards expenditure incurred, interest and loss of expected profits. The landowners disputed that they had received the benefit from development works. The Arbitral Tribunal rejected the applicability of Section 70 of the Contract Act, holding that the works had been undertaken pursuant to an express contract and moreover, without obtaining requisite statutory approval. It also rejected the claim for damages under Section 73, and found that the breach of contract was attributable to the claimant and not to the landowners. Having arrived at these findings, the Arbitral Tribunal proceeded to invoke Section 64 of the Contract Act to award monetary relief to the claimant. The relevant portion of the findings recorded by the Arbitral Tribunal is extracted below for ready reference :

> "89. In para 12(B) of the claim petition it is stated that the claimant has lawfully done the development work and it did not do so gratuitously and respondents have taken benefit of the development work and therefore they are bound to compensate the claimant. During the course of arguments Sri H.S. Dwarkanath referred to Section 70 of the Indian Contract Act. No doubt as per Section 70 if a person, lawfully does anything for any other person, not intending to do so gratuitously and the latter enjoys the benefit, he is bound to make compensation to the former. But it cannot be lost sight of that Section 70 finds a place in Chapter V of the Contract Act with the title "OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT". This is not a case where the relationship between the claimant and the respondents resembles that

created by a contract. On the other hand, there is a contract itself. Therefore Section 70 is not applicable. Moreover for the applicability of Section 70, the person claiming the compensation should have lawfully done a thing. In this case, the claimant without getting the plan renewed proceeded with the work and therefore cannot be said to have done the work lawfully.

90. Reference in this context may be made to the 14th Edition of the Indian Contract Act by Pollock & Mulla. At page 1074 this is what the learned authors have stated "Unlike s. 65, s. 70 covers a wider ground; it cannot be invoked in case of a benefit received under a contract. In Moselle Solomon v. Martin & Co., Lord William J. held that the terms of s. 70 were very wide, and it was applicable even when the plaintiff could sue upon the contract, express or implied. Jack J. held to the contrary, i.e., the section was not applicable where there was an express contract. The latter, it is submitted, is the correct view. The section has, therefore, no application where there is an express contract."

x x x

92. Having said that neither Section 70 nor Section 73 applies to this case, question still remains whether the claimant in law is entitled to monetary relief under this head viz., the amount spent for development. While discussing issue No.5 and additional issue No.1 it is observed that Section 39 of the Contract Act is apposite and that the respondents have rightly terminated the development agreements. If that be so, under which provision the claimant would be entitled to the amount spent on development is the question. In my opinion it is Section 64 of the Contract Act which reads as follows:

> "**64. Consequences of rescission of voidable contract.-** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far

> as may be, to the person from whom it was received."

A passage at page 995 of the 14th Edition of the Indian Contract Act by Pollock and Mulla commenting on Section 64 is relevant and it reads as follows:

> "In rescinding a contract, the courts act on the principle that, as the transaction ought never to have been made, the parties are to be placed, as far as possible, in a situation in which they would have stood, if there had never been any such transaction.
>
> The broad principle on which this and the following section rest, has been stated:
>
> No man can at once treat the contract as avoided by him, so as to resume the property which he parted with under it, and at the same time keep the money or other advantages which he has obtained under it."

x x x

99. Now we may refer to the report of the Commissioner. He has also been examined as CW-1. I have gone through his evidence. I have heard both the learned counsel as to what they had to say about his evidence. His report makes a reference at various places to the quality of work and he has assessed it by referring to the prescribed norms. In my opinion there is no need to dilate on it. It is because RW-1 as already noticed has admitted all crucial suggestions regarding execution of the work. I have come to a conclusion that there is no breach of contract on the part of the respondents and therefore the question of awarding damages or compensation to the claimant would not arise. If the alleged breach had been established by the claimant, probably the quality of the work turned out by him would have been of some relevance while assessing the quantum of damages. <u>We are now on the only question whether the claimant has spent money for carrying out the work and whether it is entitled to it.</u> For this purpose I am of the firm opinion that there is no need to

> refer to what all is elicited in the oral evidence of the Commissioner."
>
> [Emphasis Ours]

38. Section 64 of the Contract Act reads as under :

> "**64. Consequences of rescission of a voidable contract.—**When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he had received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received."

39. Section 64 contemplates restoration of the benefit received by a party rescinding a voidable contract. The statutory requirement is therefore not merely that the other contracting party should have incurred expenditure in performance of the agreement. What is required to be established is that the party rescinding the contract has actually received a benefit thereunder which is liable to be restored. In the present case, a careful examination of the Arbitral Award as stated supra particularly para 99 and the discussion that follows, would indicate that the Arbitral Tribunal confined its enquiry to the question whether the claimant had spent money in carrying out development works and, if so, the amount so expended. The Arbitral Tribunal proceeded to scrutinize the documentary evidence,

and accounts for determining the expenditure incurred by the claimant.

40. Significantly, the Arbitral Tribunal did not undertake any independent examination as to whether the landowners had actually received a benefit from the development works, notwithstanding the absence of requisite statutory approval nor did it determine the nature, extent or value of any such benefit. The fact that certain works had been carried out on the properties and that the expenditure had been incurred by the claimant cannot, by itself, establish that the landowners had received a corresponding benefit. The distinction between the expenditure incurred by the claimant and the benefit received by the landowners is fundamental to the application of Section 64 of the Contract Act. The Arbitral Tribunal was therefore required to examine whether the works undertaken without obtaining statutory approval had conferred any legally recognizable benefit upon the landowners. This essential question has not been addressed in the Arbitral Award.

41. The admission of RW1 that certain development works had been undertaken, or alternative submission made on behalf of the landowners that the expenditure could at best be approximately

₹ 60,00,000 cannot be construed as an unequivocal admission that the landowners had received a benefit of that value. Such material may establish execution of works or expenditure incurred, but it does not dispense with the statutory requirement of establishing the benefit received. The Arbitral Tribunal, however, proceeded to award ₹ 1,21,46,306 in A.C No. 84/2018 and ₹ 1,09,76,249 in A.C No.85/2018, substantially on the basis of the expenditure found to have been incurred by the claimant, without determining whether the landowners had received a corresponding benefit capable of restitution. It is well settled that an Arbitral Award cannot be interfered with merely because another interpretation of a contract or another appreciation of the evidence is possible. However, the principle that the plausible view of the Arbitral Tribunal must be respected presupposes that the Arbitral Tribunal has addressed the essential legal requirements governing the relief awarded. Where the statutory provision invoked by the Arbitral Tribunal requires proof of a particular fact, and the award proceeds to grant relief without determining that essential requirement, the conclusion cannot be protected merely by describing it as a plausible view.

42. The Commercial Court, while considering Commercial Arbitration Petition Nos.1/2021 and 2/2021, has noticed the absence of material establishing that development works could be lawfully utilized by the landowners. The burden of establishing the existence and extent of a benefit capable of restitution rested upon the claimant. The Arbitral Tribunal could not presume such benefit merely from the proof of expenditure. Such an error goes to the very foundation of the monetary relief granted and constitutes patent illegality. We are therefore of the considered view that the Commercial Court was justified in setting aside the monetary portion of the Arbitral Award. The appellant has failed to establish any ground warranting interference with the order passed by the Commercial Court. Accordingly, COMAP Nos.376/2025 and 380/2025 are liable to be dismissed.

43. For the foregoing reasons, all the appeals are dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

CKL