**IN THE HIGH COURT OF KARNATAKA
AT BENGALURU**

DATED THIS THE 6TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.G.S. KAMAL

COM.S NO.6 OF 2022

BETWEEN:

ACTIONCOR CONSULTANTS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT 41,
POORVI MARG, VASANTH VIHAR, NEW DELHI,
REPRESENTED BY MR.K.K.MORADIAN, DIRECTOR.

…PETITIONER

(BY SRI. SHREYAS JAYASIMHA, ADVOCATE)

AND:

ALYOTECH SAS
HAVING ITS PRINCIPAL OFFICE AT 8,
RUE VOLNEY-75002, PARIS, FRANCE.

…RESPONDENT

(BY SRI. ACHAL ANAND V.J., ADVOCATE)

Digitally signed by SAROJA HANGARAKI
Location: High Court of Karnataka, Dharwad Bench

THIS COMMERCIAL SUIT/PETITION IS FILED UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996, (A) CALL FOR THE RECORDS ON THE FILE OF THE ARBITRAL TRIBUNAL CONSTITUTED BY THE PARTIES IN ACCORDANCE WITH ARTICLE 14 OF THE SHARE PURCHASE AGREEMENT DATED 15 DECEMBER 2010 IN THE MATTER OF DISPUTES BETWEEN THE PETITIONER AND THE RESPONDENT HEREIN AND; (B) SET ASIDE THE AWARD DATED 25 APRIL 2017 PRODUCED AT ANNEXURE-A ABOVE FOR THE REASONS AND GROUNDS STATED ABOVE AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 18.08.2026 FOR ORDER COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE M.G.S. KAMAL

CAV ORDER

1. This Commercial Suit/Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996') by the claimant-petitioner herein, aggrieved by the award dated 25.04.2017 passed by the sole Arbitrator, in terms of which the claim made by the petitioner as well as the counterclaim made by the respondent herein have been dismissed.

2. Brief facts of the case are:

2.1 That the petitioner, a company registered under the Companies Act, 1956, with its office at New Delhi, is engaged in the business of providing consultancy services to companies in the areas of design, engineering, information technology products and energy infrastructure. One K.K.Moradian (KKM), an expert in recognizing areas of synergy and in implementing outsourcing work, is the Director responsible for the management of the petitioner company.

2.2 The respondent is a company incorporated under the laws of France engaged in the business of providing high-

technology consulting to companies engaged in the telecom, aerospace, defence, auto, retail, rail, health, banking, insurance, energy and nuclear sectors. It has its business establishments in France, Canada, Belgium, the Netherlands, Lebanon and Morocco.

2.3 In the year 2008, the respondent was intending to expand its business in India. That after prolong discussions, deliberation on the investment, attainable growth and mutual obligations, including requirement of Indian investment, between KKM to Mr.Carlos Bedran, the then chairman of the respondent company, a consulting agreement dated 31.03.2009 was entered into between one Univerve, KKM's consultancy firm, and the respondent. In terms of the said agreement, Univerve was appointed as the respondent's consultant. Univerve was to render its expertise in corporate financial advisory services and provide collaborative contracts that would eventually lead to an investment in the respondent company.

2.4 A Non-Disclosure Agreement (NDA) and a strategic plan were shared. According to the strategic plan, the

respondent projected its growth from a 110-million-euro entity to a 464-million-euro entity in 3 years.

2.5 KKM informed Mr.Bedran of a company known as Winfoware Technologies Ltd. (WTL), with a strong profile in the telecommunications sector that also had 30% of the respondent's business, was a good prospect for a potential investment in India, which after deliberations agreed to be a target company.

2.6 Once WTL had been finalized as a target company, discussions and negotiations began with the promoters of WTL for investment by the respondent and the petitioner around November 2009. At that time when WTL was identified as a target company, two simulation models were prepared in order to assess the potential business prospects. The model assumed that there would be Euro 2,600,000 worth of work sent by the respondent to WTL in the first year and Euro 5,500,000 worth of work in the second year. The minimum amount of work valued in Euros that was required to make the project successful was Euro 1,500,000 in the first year and Euro 3,000,000 in the second year. Both the models also included Euro

225,000 for the training of WTL employees for High Value Projects, which was to be budgeted and provided by the respondent. The said simulation models constituted a reasonable expectation that the petitioner had at the time of investment of funds in WTL. KKM had sent a summary of the skill set to the employees of WTL and to Mr. Bedran, as he had shown interest in the respondent partnering with WTL, in order to gain approval of the same.

2.7 Mr.Bedran had suggested KKM to be the chairman of WTL. The respondent, and the petitioner jointly invested EUR 700,000 for the purchase of shares and the infusion of funds into the company to acquire jointly approximately 70% of WTL's shares. Thus, the investment in WTL was valued at approximately Euro 1,000,000, including a future infusion of capital in WTL of over Euro 400,000. Due to the respondent's unwillingness to invest more than Euro 200,000, the petitioner was persuaded, based on the respondent's representation that he would be bought out at a higher value at a later date, to invest an amount of Euro 300,000. While the promoter of WTL, Mr. Srikumar Narayan, and Mr. Shantakumar Varambally were willing to keep a 30% shareholding that was valued at

approximately Euro 300,000, there was a shortfall of approximately Euro 200,000, and in order to plug this shortfall of funds, Kaynes Technology India Pvt. Ltd. was brought in as an investor in WTL. Kaynes was selected because it had experience in manufacturing electronic systems for a few French companies and therefore would have been in a better position to contribute to WTL's growth.

2.8 The aforesaid discussions and negotiations culminated in execution of a Share Purchase Agreement and Shareholders Agreement in Paris on 15.12.2010. The said agreements were entered into between the petitioner, the respondent, the promoters of WTL and representatives of Kaynes. Share Purchase Agreement and Shareholders' Agreement dated 15.12.2010 provided the shareholding patterns. Clause 5.5 of the Shareholders' Agreement gives the respondent the exclusive right to purchase 31% of the petitioner's shareholdings, thereby taking its own shareholding in WTL to 51%. This option to have its share holding purchased by the respondent was granted exclusively to the petitioner. Thus indicating the intention of both the petitioner and the respondent that the

respondent would be investing in WTL as a fully functional subsidiary. Considering the requirement of finding a suitable target company, Univerve was given a success fee of EURO 25,000, which also indicates the respondent's intention to use KKM's services to find an Indian subsidiary.

2.9 A press release was issued subsequent to execution of the Shareholders' Agreement and Share Purchase Agreement by the respondent and the petitioner, along with a video message from Mr. Bedran to the employees of WTL, which assured them of the respondent's long-term interest in India.

2.10 Subsequent to the execution of Share Holders Agreement and the Share Purchase Agreement, there has been a complete breach by the respondent of its obligations under the Share Holders Agreement. Respondent made no efforts to contact any of its clients in France or Canada for offshore work. No sales meeting was held. Respondent failed to introduce any of the employees of WTL to its clients for the purpose of securing offshore work, especially in telecom, banking and retail, which constitute

60% of the business of the respondent and required no training. The breaches committed by the respondent are as under:

(a) Respondent had conveyed that it would contact only three clients, namely Airbus, Thales, and Safran, all of whom were carrying on business in only one field, aerospace, and only in France, and that too without any employee of WTL present. The aerospace sector constituted only 18% of the respondent's sales. No attempts were made by the respondent in telecom, banking, insurance, retail, energy and nuclear, naval, rail, public administration, and health, etc.

(b) No efforts were made in Canada or any other country to outsource the work to WTL in India. No efforts were made to contact customers who could have offloaded high-volume work to WTL in India.

(c) Respondent failed to make any serious efforts in the main sector where WTL had the requisite skills, i.e., the telecom sector. No representatives from WTL were invited or included in any meetings or discussions with any clients in Canada or France, where major banking and telecom operations existed, that could have resulted in outsourced or any other work for WTL.

This amounted to a breach of Article 3.4 of the Shareholders' Agreement.

(d) Respondent failed to pursue any project with WTL in India. It refused to train even a single employee of WTL. WTL was unable to benefit from the respondent's name, reputation, skills, and experience and therefore, without training and experience, WTL was unable to pursue high-value projects in India independently.

(e) No meetings were held in India, and no work was done with the respondent for procuring jobs or projects either for itself or for WTL, which amounted to a breach of Article 3.3 of the Shareholders' Agreement.

(f) Respondent, still being a shareholder of WTL, separated out the Canadian operation in April 2013 during the lock-in period, which constituted 40% of the respondent's business focused on the telecom and banking sectors. WTL was not informed of this and only became aware of the sale/separation in November 2013. Petitioner became aware of the sale of Alyotech Group in 2013 with the hope that the new buyer would focus on offshore work and further create and exploit synergies with WTL. Petitioner was never told that the respondent would consider the sale of its business in a piecemeal manner. Petitioner was not aware that

the subsidiaries of the respondent were to be sold in isolation and in breach of the shareholders' agreement.

(g) Respondent altogether failed to explain and clarify the reason for not extending exclusivity under clause 12.4 of the Shareholders' Agreement to the new buyers/purchasers.

(h) When nearly 40% of the Canadian business was sold, the exclusivity that the petitioner had for the country was not transferred to the new company. Thus, petitioner lost the potential of over 50% of the business that would have come from Canadian operations, which were heavily concentrated in banking and telecommunications and involved English-speaking clients.

(i) Neither any brand nor any trademark of the respondent was ever licensed to WTL. There was no agreement for licensing the intellectual property of the respondent, which amounted to a breach of Article 3.5 of the shareholders' agreement.

(j) Respondent failed and neglected to submit its nomination to be represented on the board of directors of WTL, which amounted to a breach of Clauses 6, 7 and 8 of the shareholders' agreement. Respondent never attended any Annual General Meeting of WTL nor any WTL Board of Directors meeting held in India, nor did it appoint any proxy

to attend these meetings. There ought to have been 3 nominees out of 5 for the 51% share held jointly by the petitioner and the respondent. As the respondent did not appoint its nominee, the petitioner did not have control over the board and was thus ineffective as non-executive Chairman.

(k) Contrary to the understanding before the shareholders' agreement was executed, the respondent was to depute someone for three months upon execution of the agreement. No one was sent for the said duration. Thus, no work from India was effectuated.

3. Being aggrieved by the aforesaid acts and omissions of the respondent, and in an attempt to resolve the dispute and differences amicably, the petitioner addressed a letter dated 26.08.2013 to the Chairman of the respondent. Respondent unreasonably denied and dismissed the issue raised by the petitioner and did not come forward to address the concerns of the petitioner. The petitioner was therefore compelled to initiate arbitration pursuant to Clause 14 read with Annexure-B of the shareholders' agreement on 12.12.2013. Respondent accepted the notice for arbitration through a reply dated 23.12.2013. Accordingly, the Sole Arbitrator was appointed to

adjudicate upon the dispute between the parties in which the petitioner had sought the following reliefs:

> *a. to pay a sum of Euros 300,000 to the claimant along with interest at the rate of 15% per annum from 15.12.2010 till the date of actual payment by the respondent;*
>
> *b. pay a sum of Euros 75,000 as compensation to the claimant for loss of opportunity to earn dividends from Winfoware Technologies Private Limited;*
>
> *c. pay a sum of Euros 300,000 to the claimant as compensation for giving up exclusivity of its relationship with the Respondent in the Canadian operations and the telecom sector;*
>
> *d. pay a sum of Euros 600,000 to the claimant as compensation for 300 man-days of time spent by Mr. K. K. Moradian's, time spent on behalf of the claimant for making efforts to ensure that WTL becomes a successful and commercial venture, efforts to mitigate the losses suffered by WTL and for opportunity lost on the amount invested by the Claimant in WTL;*
>
> *e. pay some of Euros 22,000 as reimbursement of expenses incurred by claimant in working for the profitability of WTL.*
>
> *f. pay costs of the proceedings to the petitioner;*
>
> *g. pay interest of 15% per annum on the above mentioned claims from 15.12.2010 till the date of actual payment responded.*

4. The respondent had also sought a counterclaim as under:

> *a. pay a sum of Euros 300,000 to the respondent as claimed in para 10A of the respondent's statement of defence;*
>
> *b. pay a sum of Euros 260,78 to the respondent as claimed in para 10B of the respondent's statement of defence;*
>
> *c. pay a sum of Euros 548,292 at the rate of interest 15% per annum to the respondent as claimed in para 10C of the respondent's statement of defence;*

4.1 The aforesaid claim petition and the counterclaim have been dismissed by the Sole Arbitrator by the impugned Award dated 25.04.2017, being aggrieved by which the petitioner is before this Court.

SUBMISSIONS:-

5. Sri.Shreyas Jayasimha, learned counsel appearing for the petitioner reiterating the averments and grounds urged in the petition and additional grounds urged by way of amendment (in terms of I.A.1/2022 filed under Order VI Rule 17 of Code of Civil Procedure), and, taking this Court extensively through the records the parties submitted;

5.1 That the award passed is in violation of agreed arbitral procedure. There was a delay in passing the award, which warrants setting aside. *Firstly,* the parties had agreed that the entire duration of the proceedings shall not exceed six months from the date of reference and that the parties would strictly adhere to this timeline. *Secondly,* the arbitrator was required to deliver the award within 30 days of the conclusion of the proceedings. In the instant case, the statement of claim, the statement of defence, and the counterclaim were submitted in the year 2014. The award was rendered three years later, i.e., on 25.04.2017, which

is in violation of the arbitration procedure agreed upon by the parties and in violation of Section 34(2)(a)(v) of the Act, 1996. No reasons are assigned by the Tribunal for deviation from the agreed arbitral procedure.

5.2 The award violates the mandatory obligation to give reasons. The decision was not based on the legal basis required by the agreement between the parties. It denied the petitioner its right to have its evidence mindfully considered, given that Section 31(3)(a) of the Act, 1996, provides that the Arbitral Tribunal shall state the reasons upon which it is based unless the parties have agreed that no reasons are required to be given. The parties have not agreed at any stage that no reasons were to be given in the award. As such, the Arbitral Tribunal was under an unqualified and mandatory statutory obligation to set out the reasons for every finding made. Thus, the arbitral award fails on multiple accounts. The right to a full opportunity to present one's case requires mindful consideration of the evidence and submissions put forth. A Tribunal that receives evidence but fails to consider it, and receives submissions but declines to address them, fails to provide an opportunity to present the case.

5.3 The award conflicts with the fundamental policy of Indian law. The impugned award did not take notice of the judgments produced before the arbitrator, including *Jai Narain Parasrampuria v. Pushpa Devi Saraf,* reported in *(2006) 7 SCC 756,* and *Rhodia International Holdings Limited & Anr v. Huntsman International,* reported in *[2007] EWCA Civ 62*, which have held that the best-effort clause places a party in a more onerous position than the reasonable-efforts clause. The decision of the Apex Court forming a part of the fundamental policy of Indian law has been neglected by the Arbitral Tribunal, which has applied a standard of reasonableness and adequacy without applying the best-efforts clause. The Tribunal has failed to appreciate that in terms of clause 3.3, the respondent was required to contribute by way of providing its name, reputation, training, skill and expertise and making available skilled manpower to India on a specific billable basis for project assignment.

5.4 That, in terms of clause 3.4, it was required to make best efforts to refer and outsource the subcontract jobs and assignments for the company. Clause 3.4 has not been appreciated by the Arbitral Tribunal. Firstly, the Tribunal

was required to see whether the respondent had exhausted all the avenues to refer its existing clients to WTL. Secondly, it was required to see whether it had exhausted all avenues in trying to outsource subcontract jobs and assignments to retailers from the existing clients. Thirdly, it was required to see whether, in case projects were won or even otherwise, in the respondent's opinion, training was necessary; whether the respondent made any efforts to ensure that WTL was in a viable position, manpower-wise, to execute potential offshore work.

5.5 The Arbitrator failed to consider that the respondent neither took any initiative with respect to acquiring projects for WTL nor provided any on-the-job training to any WTL employees. No efforts were made by the respondent to outsource work to India from its existing clients. No efforts were made to obtain orders from telecom, banking, retail, and other sources. No efforts were made to send the respondent's personnel to India to meet the customers.

5.6 The Arbitrator erred in holding that the obligation to train the Indian consultant in France was at the discretion of the respondent. The impugned award failed to acknowledge

the intent of the parties when they entered into the shareholders' agreement, i.e., KKM to facilitate the respondent's operations in India. The respondent received the benefits of establishing its presence in India without deploying its own resources. The respondent made no efforts to bring business to the petitioner.

5.7 The Arbitrator has not properly applied the provisions of Section 73 of the Indian Contract Act, 1872. Once a breach is established, Section 73 entitles the aggrieved party to compensation for all the losses and damages that naturally arise from the breach. Entitlement to compensation arises independently of Section 73 of the Contract Act. The respondent acknowledged and benefited from KKM's work and paid a success fee of EUR 25,000 for finding a suitable target company, which established the respondent's intent to use and pay for KKM's services. Yet the respondent refused to compensate for the greater time and effort expended after the Shareholders' Agreement was executed. The impugned award contravenes the fundamental policy of Indian law and is in conflict with the most basic notions of justice.

5.8 Complete failure to address the breach of Articles 3.5, 6.2, 7, 8, and 5.3, providing for a breach in the sale of the Canadian operation. The sale of the Canadian operation was without any information being provided to the petitioner. The purpose of Article 5.3 was to ensure that all parties remained committed to the joint ventures during the given period of the commercial model. Article 12.4 of the Shareholders' Agreement required the respondent, in the event of a change of control, to ensure that the acquiring party assumed all the obligations of the respondent under the Shareholders' Agreement, including the exclusivity obligations under Clauses 4.1 and 4.2, which have been breached.

5.9 The arbitral award wrongly found that there was no privity of contract between the petitioner, WTL, and Alyotech Canada, which finding materially contradicts the express terms of Article 1.2 of shareholders' agreement. The respondent also sold its telecom business without extending the exclusive obligation to the new buyer. This was a separate breach from the sale of the Canadian operation. The Arbitral Tribunal has not determined this issue.

5.10 The Arbitral Tribunal also has not addressed the specific agreement which provided that the salespersons and the respondent would come to India for three months upon execution of the shareholders' agreement to meet the potential customers. This issue has remained unadjudicated.

5.11 The arbitration award also erroneously concluded that KKM's awareness of the respondent's current limitation constituted an effective waiver of the respondent's contractual obligation. Such a finding is contrary to the evidence on record. The same constitutes a contravention to fundamental policy of Indian law.

5.12 The respondent has claimed compensation for time spent by its employees on business development activities. But there is no finding on whether the expenses were actually incurred by WTL under the separate MOU. This goes directly to the question of the respondent's *bona fides* in asserting that it made its best efforts. The failure of the Arbitral Tribunal to examine and resolve this material factual dispute amounts to a failure of its fundamental

adjudicatory obligation to determine the issues of fact and law before the Tribunal.

5.13 The shareholders' agreement is in the nature of a joint venture. Failure of the Arbitral Tribunal to recognize this has distorted its entire analysis. Contending as above, sought for allowing of the petition.

5.14 He relies upon the following judgments:

1. *PSA SICAL TERMINALS (P) LTD., V. V.O. CHIDAMBRANAR PORT TRUST, (2023) 15 SCC 781.*
2. *SSANGYONG ENGINEERING V. NHAI R(2019) 15 SCC 131*
3. *SEPCO ELETRIC POWER CONSTRUCTION V. GMR KAMALANGA ENERGY 2025 INSC 1171.*
4. *UNION OF INDIA (UOI) VS. JAIN ASSOCIATES AND ORS., MANU/SC/0752/1994.*
5. *SIKKIM SUBBA ASSOCIATES V. STATE OF SIKKIM, (2001) 5 SCC 629.*
6. *ONGC LTD., V. WESTERN GECO INTERNATIONAL LTD., (2014) 9 SCC 263.*
7. *NATWARALAL SHAMALDAS AND CO. VS. MINERALS AND METALS TRADING CORPORATION OF INDIA MANU/DE/0572/2002.*
8. *M.D., ARMY WELFARE HOUSING ORGANIZATION VS. SUMANGALSERVICES PVT., LTD., MANU/SC80797/2003.*
9. *DELHI AIRPORT EXPRESS VS. DMRC (2022) 1 SCC 131.*
10. *ONGC GARWARE V. SHIPPING CORPORATION (2007) 13 SCC 434.*

11. *STATE OF RAJSTHAN VS. PURI CONSTRUCTION (1994) 6 SCC 485.*

12. *GAYATRI BALASAMY V. M/S ISG NOVASOFT TECHNOLOGIES LTD., S.L.P (C) NOS.15336-15337 OF 2021.*

6. Per contra, Sri Udaya Holla, learned Senior Counsel appearing for the respondent, submitted:

6.1 That the relief sought by the petitioner in the claim petition is without any basis. That the present petition being one under Section 34, the scope of intervention by the Courts is very limited. The insistence of the claimant on re-appreciation of the evidence is not permissible.

6.2 Referring to the Shareholders Agreement dated 15.12.2010 he submitted that the said agreement is between five different parties, of which the petitioner is the majority shareholder. He referred to Clause 5.5 of the Shareholders' Agreement, providing for final shareholding, and submitted that the petitioner's consortium holds 31.03% of the shares while the respondent Alyotech holds only 19.98%. He also referred to Clause 6.2 of the Shareholders' Agreement, providing for the management and constitution of the Board of

Directors, to contend that the entire control and management of the company was with the petitioner.

6.3 He then referred to paragraph 15 of the claim petition and submitted that, even according to the claimant, it was only willing to invest a maximum amount of EUR 300,000, and the respondent was willing to invest a maximum amount of EUR 200,000. The petitioner, who is claiming an award for payment of EUR 300,000 along with interest at the rate of 15% per annum from 15.02.2010, is required to prove the actual investment made by it. No evidence of any nature whatsoever in this regard is produced by the petitioner to show that such an amount was invested. In the absence of any proof of investment, the very basis of the claim is unjustified. Therefore, he submits that the very claim petition lodged by the Petitioner is speculative and imaginative.

6.4 That shareholders' agreement essentially provided for purchase of shares of a company by name Winfoware Technologies Ltd., obligations and undertakings, if any, were only towards and in respect of the said WTL. The said company has not been made a party to the arbitration proceedings.

6.5 He referred to clauses 3.3 and 3.4 of the agreement to contend that the respondent *ad litem* was required to make its best efforts to refer and outsource the subcontracted jobs and assignments for the company for its existing clients. An evidence of the efforts so made by the respondent-Alyotech SAS company has been brought on record, which has been duly appreciated by the Arbitrator.

6.6 He referred to clause 4 of the shareholders' agreement providing for a territory/non-compete provision to submit that it was WTL company that had been vested with a right of refusal in the event of Alyotech making over its projects, providing manpower, etc. Therefore, he submitted that the presence of Alyotech and the presence of WTL were essential.

6.7 He referred to the points for determination framed by the arbitrator and the reasons assigned in the impugned award to contend that each and every issue that was raised had been addressed by the Arbitral Tribunal. Hence sought for dismissal of the petition.

6.8 He relies upon the following judgments in support of his submissions:

1. *"SANTA SILA DEVI AND ANOTHER VS. DHIRENDRA NATH SEN AND OTHERS AIR 1963 SC 1677.*
2. *SATNA STONE AND LIME COMPANY LIMITED MADHYA PRADESH AND OTHERS VS. UNION OF INDIA AND ANOTHER (2008) 14 SCC 785.*
3. *P.R. SHAH SHARES AND STOCK BROKERS PRIVATE LIMITED (2012) 1 SCC 594*
4. *OIL AND NATURAL GAS CORPORATION VS. WIG BROTHERS BUILDERS AND ENGINEERS PRIVATE LIMITED (2010) 13 SCC 377*
5. *SHARMA AND ASSOCIATES CONTRACTORS PRIVATE LIMITED VS. PROGRESSIVE CONSTRUCTIONS LIMITED (2017) 5 SCC 743*
6. *DYNA TECHNOLOGIES PRIVATE LIMITED VS. CROMPTON GREAVES LIMITED (2019) 20 SCC 1*
7. *STATE OF RAJASTHAN VS. PURI CONSTRUCTION CO LID., AND ANOTHER (1994) 6 SCC 485*
8. *SHARMA AND ASSOCIATES CONTRACTORS PRIVATE LIMITED VS. PROGRESSIVE CONTRACTIONS LIMITED (2017) 5 SCC 743*
9. *RAVINDRA KUMAR GUPTA AND COMPANY VS. UNION OF INDIA 2010(1)SCC 409*
10. *MMTC LIMITED VS. VEDANTA LIMITED 2019 (4) SCC 163*
11. *RASHTRIYA ISPAT NIGAM LIMITED VS. DEWAN CHAND RAM SARAN 2012 (5) SCC 306*
12. *NATIONAL HIGHWAYS AUTHORITY OF INDIA VS. ITD CEMENTATION INDIA LIMITED 2015(14)SCC 21.*
13. *SWAN GOLD MINING LIMITED VS. HINDUSTAN COPPER LIMITED 2015(5) SCC 739*

14. *HRD CORPORATION (MARCUS OIL AND CHEMICAL DIVISION) VS. GAIL (INDIA) LIMITED (FORMERLY AS AUTHORITY OF INDIA LIMITED) 2018(12) SCC 471*

15. *ATLANTA LIMITED THROUGH ITS MANAGING DIRECTOR VS. UNION OF INDIA REPRESENTED BY CHIEF ENGINEER MILITARY ENGINEERING SERVICE 2022(3) SCC 739*

16. *DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED VS. DELHI METRO RAIL CORPORATION LIMITED 2022 (1) SCC 131*

17. *RELIANCE INFRASTRUCTURE LIMITED VS. STATE OF GOA 2024(1) SCC 479*

18. *PROJECT DIRECTOR, NATIONAL HIGHWAYS NO.45 E AND 220 NATIONAL HIGHWAYS AUTHORITY OF INDIA VS. M. HAKEEM AND ANOTHER (2021) 9 SCC 1*

19. *GAYATRI BALASAMY VS. ISG NOVASOFT TECHNOLOGIES LIMITED 2025 SCC ONLINE SC 986".*

7. Heard and perused the records.

POSITION OF LAW ON THE SCOPE OF INTERFERENCE WITH THE AWARD UNDER SECTION 34 OF THE ACT, 1996

8. Before adverting to the rival submissions made by the learned counsel for the parties, it is appropriate to refer to the position of law governing consideration of an application under Section 34 of the Act, 1996.

9. In the case of ***Reliance Infrastructure Limited Vs State of Goa***[1] dealing with the scope of challenge to an award

[1] (2024) 1 SCC 479

under Section 34 and the scope of appeal under Section 37, referring to its earlier judgments on the issue and summarizing the principles in paragraphs 25 to 31, has held as under:

> ***The scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the Act***
>
> ***25.*** *Having regard to the contentions urged and the issues raised, it shall also be apposite to take note of the principles enunciated by this Court in some of the relevant decisions cited by the parties on the scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the 1996 Act.*
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> ***26.*** *In MMTC MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, this Court took note of various decisions including that in Associate Builders v. DDA, (2015) 3 SCC 49 and exposited on the limited scope of interference under Section 34 and further narrower scope of appeal under Section 37 of the 1996 Act, particularly when dealing with the concurrent findings (of the arbitrator and then of the Court). This Court, inter alia, held as under : MMTC case, paras 11-14)*
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> *"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 [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] 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.*
>
> *12. 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.

13. It is relevant to note that after the 2015 Amendment 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 (2-A) 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 reappreciation of evidence.

14. 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."

***27**. In Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 , this Court has set out the scope of challenge under Section 34 of the 1996 Act in further details in the following words:*

> *"37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), 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.*
>
> *38. Secondly, it is also made clear that reappreciation 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.*

39. To elucidate, para 42.1 of Associate Builders , namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders, 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.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders, namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, 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."

***28**. The limited scope of challenge under Section 34 of the Act was once again highlighted by this Court in PSA Sical Terminals and this Court particularly explained the relevant tests as under : (SCC paras 40 to 42)*

"40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the Court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. 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". It is only such arbitral awards that shock the conscience of the Court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, 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.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders, which read thus : (SCC pp. 75-76)

'31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law 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.

32. A good working test of perversity is contained in two judgments. In CCE & Sales v. Gopi Nath & Sons:1992 Supp (2) SCC 312 , it was held : (SCC p. 317, para 7)

"7. … It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law." ' "

29. *In Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131, this Court again surveyed the case law and explained the contours of the Courts' power to review the arbitral awards. Therein, this Court not only reaffirmed the principles aforesaid but also highlighted an area of serious concern while pointing out "a disturbing tendency" of the Courts in setting aside arbitral awards after dissecting and reassessing factual aspects. This Court also underscored the pertinent features and scope of the expression "patent illegality" while reiterating that the Courts do not sit in appeal over the arbitral award. The relevant and significant*

passages of this judgment could be usefully extracted as under, paras 26, 28-30 & 42)

"26. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law.

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28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account.

The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".

30. Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression "public policy of India" and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.

***

42. The Division Bench referred to various factors leading to the termination notice, to conclude that the award shocks the conscience of the Court. The discussion in SCC OnLine Del para 103 of the impugned judgment [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] amounts to appreciation or reappreciation of the facts which is not permissible under Section 34 of the 1996 Act. The Division Bench further held DMRC v. Delhi Airport Metro Express (P) Ltd., that the fact of AMEL being operated without any adverse event for a period of more than four years since the date of issuance of the CMRS certificate, was not given due importance by the Arbitral Tribunal. As the arbitrator is the sole Judge of the quality as well as the quantity of the evidence, the task of being a Judge on the evidence before the Tribunal does not fall upon the Court in exercise of its jurisdiction under Section 34. [State of Rajasthan v. Puri Construction Co. Ltd., (1994) 6 SCC 485] On the basis of the issues submitted by the parties, the Arbitral Tribunal framed issues for consideration and answered the said issues. Subsequent events need not be taken into account."

(emphasis supplied)

30. *In Haryana Tourism Ltd. v. Kandhari Beverages Ltd., (2022) 3 SCC, this Court yet again pointed out the limited scope of interference under Sections 34 and 37 of the Act; and disapproved interference by the High Court under Section 37 of the Act while entering into merits of the claim in the following words : (SCC p. 240, paras 8-9)*

"8. So far as the impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to : (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court is hence not sustainable."

31. *As regards the limited scope of interference under Sections 34/37 of the Act, we may also usefully refer to the following observations of a three-Judge Bench of this Court in UHL Power Co. Ltd. v. State of H.P. (2022) 2 SCC (Civ) 401 : (SCC p. 124, paras 15-16)*

"15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."

POINTS FOR CONSIDERATION:

10. Present controversy with regard to the validity or otherwise of the award passed by the learned Arbitrator has to be adverted to with reference to the aforesaid enunciation of law by the Apex Court. Viewed as such, the grounds urged and submissions made on behalf of the petitioner and respondent would give rise to the following points for consideration:

    (i) Whether the impugned award is in breach of the arbitration procedure agreed upon by the parties and, therefore, in violation of the provisions of Section 34(2)(a)(v) of the Act, 1996?

    (ii) Whether the impugned award is required to be set aside on the ground of delay in delivering the same?

    (iii) Whether the impugned award is in conflict with the fundamental policy of Indian law, and whether it has taken note of the judgment in the case of Jai Narain Parasrampuria v. Pushpa Devi Saraf, reported in (2006) 7 SCC 756, and Rhodia International Holdings Limited & Anr v. Huntsman International, reported in [2007] EWCA Civ 62, on the aspect of "best efforts" ?

    (iv) Whether the impugned award suffers from lack of reasoning and mindful consideration of the petitioner's case, thereby violating the provisions of Section 31(3)(a) of the Act, 1996?

    (v) What order?

Regarding Point No. (i):

(i) Whether the impugned award is in breach of the arbitration procedure agreed upon by the parties and, therefore, in violation of the provisions of Section 34(2)(a)(v) of the Act, 1996?

11. Annexure-B to the shareholders' agreement sets down the procedure for resolution of the dispute. Perusal of the impugned award at paragraph 13 indicates that the learned Arbitrator has taken note of Clause 7 of the arbitration procedure at Annexure-B, which provided that the arbitration was "an only documents proceeding". Learned Arbitrator has also taken note of Clause 8 of the said agreement, providing for a procedure whereby, if the parties require, the Arbitrator may hear the witnesses. It is further noted that the petitioner had requested to lead oral evidence and also to submit oral arguments, which request was granted. Similarly, the respondent was also given liberty in respect of its defence as well as a counterclaim.

12. It is necessary in this regard to note that two witnesses have been examined on behalf of the claimant as CW1 and CW2, and 39 documents have been exhibited. Similarly, two witnesses have been examined on behalf of the respondent as RW1 and RW2, and 66 documents have been exhibited. The parties have also filed a compilation of the documents and detailed written submissions.

13. Therefore, although the procedure provided under Clause 7 of the arbitration procedure set out in Annexure-B to the

shareholders' agreement was "an only documents proceeding", at the request of the parties the learned Arbitrator has indeed provided full opportunity for leading oral evidence and also for submitting oral arguments.

14. Thus, the parties have fully participated in the entire arbitration process and have been provided with full and equal opportunity to present their respective cases. None of the parties has raised questions regarding alleged deviation from the agreed arbitration procedure. Therefore, the contention that the impugned award is in violation of the provisions of Section 34(2)(a)(ii) and (v) of the Act, 1996 cannot be accepted.

Point No.(i) is answered accordingly.

Regarding Point No.(ii):-

(ii) Whether the impugned award is required to be set aside on the ground of delay in delivering the same?

15. Another ground raised by the petitioner concerns the delay in the learned Arbitrator passing the award. It is contended that the Claim Statement, Defence Statement and Counterclaim were submitted in 2014 and the award was to be rendered within six months, whereas the impugned

award was delivered on 25.04.2017, that is, after three years; therefore, there is violation of Section 34(2)(a)(v) of the Act, 1996. This contention is contrary to records made available by the Petitioner in this matter, as noted hereunder.

16. The memo dated 05.06.2024 filed by the petitioner along with the documents enclosed therewith reveals that the written submissions were filed by the petitioner and the respondent on 15.10.2014 and 16.10.2014, respectively.

17. Minutes of the meeting of the arbitration held on 30th October 2014, found at Part 4 of the document compilation, reveal that upon the application dated 01.10.2014 filed by the Petitioner for an order requiring the Respondent to place on record the documents mentioned in the schedule to said application, for the purpose of finding out whether the Respondent did make its best efforts as required under the agreement, fresh hearing dates were fixed on 24th and 25th February 2015 for the submissions of the Claimant and 5th and 9th March 2015 for the submission of the Respondent.

18. The Memo dated 31.07.2024 filed by the Petitioner, along with the depositions of the witnesses, indicates that the

affidavits in lieu of examination-in-chief of CW1 and CW2 were filed on 04.08.2015 and elaborate cross-examination of the said witnesses was conducted during August and on 29th, 30th September and 23rd November 2015. Similarly, affidavits evidence of RW1 and RW2 were filed on 27.08.2015 and elaborate cross-examination of the said witnesses was conducted on 23rd November 2015 and 18th January 2016. The impugned award was passed on 25.04.2017.

19. Apex Court in the case of ***Lancor Holdings limited v. Prem kumar Menon***[2], while answering the question as to *"what is the effect of undue and unexplained delay in the pronouncement of an arbitral award upon its validity?"*, has at paragraph 87.1.1 after surveying all the precedents on the point, held as under:

> *"87.1.1. Delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. However, each such case would have to be examined on its own individual facts to ascertain whether that delay had an adverse impact on the final decision of the Arbitral Tribunal, whereby that award would stand vitiated due to the lapses committed by the Arbitral Tribunal owing to such delay. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein, such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India, thereby attracting Section 34(2)(b)(ii)*

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[2] *(2026) 4 SCC 392*

of the 1996 Act or Section 34(2-A) thereof, as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the 1996 Act as a condition precedent to lay a challenge to that delayed and tainted award under Section 34 thereof."

20. In the instant case, apart from filing a claim and counterclaim, affidavits in lieu of examination-in-chief, and conducting elaborate cross-examinations of the witnesses, the parties have filed detailed written arguments with citations. Delay, if any, in the considered view of this Court, and also for the reasons assigned while answering points (iii) and (iv) infra, has not had any effect on the delivery of the arbitral award. It is not the case that the award has been passed based on frail human memory, making it impossible for the learned Arbitrator to have total recall of the oral evidence, as pointed out in the aforesaid judgment of the Apex Court. Therefore, this Court is not persuaded to accept the contention of the learned counsel for the petitioner on this count, requiring setting aside of the award on the ground of delay.

Point No.(ii) is answered accordingly.

Regarding Point No.(iii):-

(iii) Whether the impugned award is in conflict with the fundamental policy of Indian law, and

whether it has taken note of the judgment in the case of Jai Narain Parasrampuria v. Pushpa Devi Saraf, reported in (2006) 7 SCC 756, and Rhodia International Holdings Limited & Anr v. Huntsman International, reported in [2007] EWCA Civ 62 on the aspect of "best efforts" ?

21. The question what constitutes "fundamental policy of Indian Law", has been dealt with by the Apex Court in the case of ***ONGC Vs WESTERN GECO INTERNATIONAL LTD,***[3] wherein at paragraphs 35, 38, 39, and 40, it has been held as under:

> ***35****. What then would constitute the "fundamental policy of Indian law" is the question. The decision in ONGC [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression "fundamental policy of Indian law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a "judicial approach" in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration.*

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[3] (2014) 9 SCC 263

Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

38. *Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.*

39. *No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury principle [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.*

40. *It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest.*

22. The entire controversy in the instant case revolves around the Petitioner's allegation that the respondent did not

make the "best efforts" to procure clients and outsource the work to WTL. Learned Arbitrator in this regard has referred to Clauses 3.3 and 3.4 of the shareholders' agreement relied upon by both parties to justify their respective cases, which read as follows:

> *"**3.3** ALYOTECH's contribution shall be by way of providing its name, reputation, training skills and experience, and make available skilled manpower to India on specific billable basis for projects and assignments. If necessary for the fulfilment of these projects, ALYOTECH will provide on-the-job training to skilled IT professionals from India in different fields of ALYOTECH's business. Alyotech shall also provide its name under a Name Licence Agreement as further provided in Article 3.5.*
>
> ***3.4** ALYOTECH will make best efforts to refer and outsource sub-contracted jobs and assignments for the COMPANY for its existing clients. In case projects are won, or even otherwise if ALYOTECH is of the opinion that such training is necessary, a team of Indian consultants shall be trained in France by ALYOTECH experts. The gross costs for the training, excluding the salaries in India, is estimated to be Euro 15 to 20K per person for a 100 days, and shall be borne by ALYOTECH, and the salaries in the home country of such personnel shall be borne by WINFOWARE subject to any bilateral tax or other treaties in this regard. After the training, these IT professionals would assist ALYOTECH in offloading large volume low cost work to India and subject to transfer pricing norms if applicable."*

23. At paragraph No.17 of the impugned award, the learned Arbitrator has taken note of the aforesaid Clauses 3.3 and 3.4 of the shareholders' agreement. At paragraph No.18, the learned Arbitrator has noted that Clause 3.3 requires the provision of training to IT professionals relating to projects and assignments and that, since no specific

projects or assignments were won by the parties, there was no question of providing on-the-job training.

24. At paragraph No.19, the learned Arbitrator, referring to the requirement under Clause 3.4 of the shareholders' agreement for the respondent to make "best efforts," has adverted to the evidence of RW1 and RW2 with regard to attempts made by them to outsource the work. The learned Arbitrator has also taken note of the fact that the said Clause 3.4 gives the respondent discretion to provide necessary training depending upon the nature of the work. The learned Arbitrator has also taken note of the evidence of an unfavourable response from the existing clients to making an investment in WTL and held that the respondent's decision, in furtherance of the discretion vested in it in terms of Clause 3.4, was not to be found fault with.

25. At paragraphs 20 and 21, the learned Arbitrator has adverted to the petitioner's contentions regarding adequate efforts/best efforts not being made by the respondent to project WTL as the party selected by the respondent for subcontracting the jobs and assignments. It has taken note of the deposition of RW1 with regard to all

the projects of the respondent requiring French-speaking personnel, and the portfolio of the respondent's business was mainly to provide manpower resources in Canada and Hyland and, to an extent, in France. The potential clientele of any project with WTL was to come from France. It has also appreciated the evidence of the respondent that either the work obtained was not capable of being subcontracted to WTL because of the nature of the work or the project was too small to be subcontracted.

26. As regards existing contract-cum-work not being able to be outsourced because of lack of familiarity with French language, the learned Arbitrator has taken note of the evidence that the contracting party of the respondent did not want its work to be outsourced.

27. At paragraph 23, the learned Arbitrator has adverted to the evidence of RW2 with regard to the best efforts made as contemplated under Clause 3.4 of the shareholders' agreement to secure the work for WTL. It has taken note of the fact that immediately after the signing of the shareholders' agreement, the investment made by the respondent in WTL was announced in every possible forum, representations were made on the new investment

both internally to build expertise and externally to potential customers, and its existing customers were contacted and informed regarding the potential of WTL. The respondent trained its staff and had them attend exhibitions and seminars for business development in respect of new investments. It has also taken note of the fact that RW1 was appointed by the respondent as the person in charge of the relationship between the respondent, petitioner and WTL. RW1, together with a team of executives of the respondent company, had begun to conduct business development and assessment exercises to solicit clients for WTL.

28. At paragraph 24, the learned Arbitrator has taken note of press releases of the investment during the years 2011 and 2012, as well as the launch of the website and the presentations made of the projects.

29. At paragraph 25, the learned Arbitrator has taken note of the respondent's participation in the Eurosatory Exhibition for manufacturers of European defence and recruitment, where WTL was included in the list of companies associated with the respondent for offshore work.

30. At paragraph 26, the learned Arbitrator has taken note of RW2's visit to India during October 2011 specifically to meet WTL and its customers, during which period WTL had organized only two meetings to meet its customers, which were poorly organized.

31. At paragraph 27, the learned Arbitrator has taken note of the decisions cited by the petitioner on the aspect of 'best efforts' in the case of ***Jai Narain Parasurampurai Vs Pushpa Devi Saraf***[4] and the judgment of the High Court of England and Wales in the case of ***Rhodia International holdings Vs Huntesman Intl LLC (0)***[5]. The learned Arbitrator has taken note of the scope of the terms "best efforts", "best endeavors" and "reasonable endeavors".

32. ***Jai Narain Parasurampurai Vs Pushpa Devi Saraf,*** the Apex Court dealing with a case involving performance of terms of contract in respect of immovable property at paragraph 90 has held as under:

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[4] (2006) 7 SCC 756

[5] (2007 EWHC 292)

"90. *In Malhotra v. Choudhury (1978) 3 WLR 825:, Stephenson, L.J., in the fact situation obtaining therein, opined:*

"But as counsel for the plaintiff pointed out, the question which the judges were summoned by their Lordships to answer and which was proposed for their consideration was 'Whether, upon a contract for the sale of real estate, where the vendor, without his default (my emphasis), is unable to make a good title, the purchaser is by law entitled to recover damages for the loss of his bargain?' That is the question which was answered in the judgment of Pollock, B., which was also the judgment of Kelly, C.B., Keating and Brett, JJ, and the question as it was stated by both Denman, J. and Pigott, B. I note this is the way in which the rule is stated in Williams on Contract of Sale of Land, cited by Megarry, J. in Wroth v. Tyler [1974 Ch 30:

'Where the breach of contract is occasioned by the vendor's inability, without his own fault (my emphasis), to show a good title, the purchaser is entitled to recover as damages his deposit, if any, with interest, and his expenses incurred in connection with the agreement, but not more than nominal damages for the loss of his bargain.'

It is not necessary to decide how far the words 'without his default' go, if I am right in thinking that inability without default is what one has to consider as attracting the rule in Bain v. Fothergill [(1874-80) All ER Rep 83] .

There may be cases in which there has been no lack of bona fides, yet the rule in Bain v. Fothergill [(1874-80) All ER Rep 83 : 31 LT 387 (HL)] has been excluded. I would not however venture to suggest that anything less than lack of good faith could exclude the rule. But it seems from later decisions that fraud, in the full sense of that word such as would found an action for deceit, may not be necessary to exclude the rule. No doubt Blackett-Ord V-C had in mind that fraud must be strictly alleged and proved in all ordinary circumstances. But in my judgment, unwillingness to use best endeavours to carry out a contractual promise is bad faith, and for there to be bad faith which takes the case out of this exceptional rule it is not necessary that there should be either a deliberate attempt to prevent title being made good or anything more than the unwillingness which I find it inevitable to infer in this case. If a man makes a promise and does not use his best endeavours to keep it, it cannot take much and, in my judgment, may not need more to make him guilty of bad faith and to entitle the victim of his bad faith to his full share of damages to compensate him for what he has lost by reason of that breach of contract and bad faith."

33. In ***Rhodia International Holdings*** the observation made by the High Court of England and Wales at paragraph 33 and 34 reads as under:

> *"33. I am not convinced that (apart from that decision of Rougier J) any of the judges in the cases upon which Mr Beazley relied were directing their minds specifically to the issue whether "best endeavours" and "reasonable endeavours" mean the same thing. As a matter of language and business common sense, untrammelled by authority, one would surely conclude that they did not. This is because there may be a number of reasonable courses which could be taken in a given situation to achieve a particular aim. An obligation to use reasonable endeavours to achieve the aim probably only requires a party to take one reasonable course, not all of them, whereas an obligation to use best endeavours probably requires a party to take all the reasonable courses he can. In that context, it may well be that an obligation to use all reasonable endeavours equates with using best endeavours and it seems to me that is essentially what Mustill J is saying in the Overseas Buyers case. One has a similar sense from a later passage at the end of the judgment of Buckley LJ in IBM v Rockware Glass at 343, to which Mr Edwards-Stuart QC for Huntsman drew my attention.*
>
> *34. That there is a distinction between best endeavours and reasonable endeavours and that the latter is less stringent than the former is not only supported by the decision of Rougier J in UBH but by the decision of Kim Lewison QC (as he then was) sitting as a Deputy High Court Judge, in Jolley v Carmel Limited [2000] 2 EGLR 154 upon which Mr Edwards-Stuart relied. At p 159 the judge said:*
>
> > *"Where a contract is conditional upon the grant of some permission, the courts often imply terms about obtaining it. There is a spectrum of possible implications. The implication might be one to use best endeavours to obtain it (see Fischer v Toumazos [1991] 2 EGLR 204), to use all reasonable efforts to obtain it (see Hargreaves Transport v Lynch [1969] 1 WLR 215) or to use reasonable efforts to do so. The term alleged in this case [to use reasonable efforts] is at the lowest end of the spectrum."*
>
> *Mr Beazley sought to suggest that somehow this analysis was distinguishable because it was concerned with the implication of a term, but I cannot see any basis for such a distinction. It seems to me that the judge's analysis is equally applicable to the construction of the phrase reasonable efforts or reasonable endeavours whether it is an express or an implied term of any particular contract.*

34. It is indeed in the light of the aforesaid principles of law that the learned Arbitrator at paragraph No.28 has adverted to the question as to whether the respondent had made best efforts with reference to the terms of the shareholders' agreement and overall purpose as reflected in its language. Having adverted to the same, the learned Arbitrator has concluded that the evidence on record shows the extent of the efforts made by the respondent and the cost incurred by the respondent for the project of WTL as its associate for procurement work that could be outsourced to WTL.

35. Learned Arbitrator, adverting to the second part of Clause 3.4, has found that training for the Indian consultants in France was required only when the respondent considered such training necessary and that no material was produced to show such training to be necessary. The learned Arbitrator has thus come to the conclusion that there was no breach of Clause 3.4 on the part of the respondent.

36. This Court has gone through the depositions of CW.1, CW.2, RW.1, and RW.2 produced along with the memo dated 31.07.2024 by the petitioner. In fact, CW.1 has

admitted that the candidate selected by WTL was not proficient in French and did not even have basic knowledge of French. He also admitted that the respondent had organized a strategic workshop with all country managers around June 2012. He also admitted that WTL did not solicit any business as a result of the presentation made at the workshop. He also admitted that all the countries where the respondent had its business were represented at the meeting. CW.1 was confronted with the documents at Ex. C-A1 and C-BB and pleaded ignorance about the questions posed on the said documents. The said witness has also admitted the press release issued by the respondent with the link of WTL on their website projecting WTL to its customers as one of its business entities for a global delivery services. Witness has pleaded ignorance about the respondent circulating an internal newspaper to its employees regarding WTL being an offshore solution for the respondent group. He has also admitted an e-mail dated 21.04.2011 issued by one Gonzales calling upon WTL to send its existing presentation and examples of projects undertaken by it. In response to a specific question as to whether any e-mail was sent in response to the same, the witness pleaded ignorance. These lines of

questioning and the response to the same by CW.1 indicate and support the case of the respondent making its best efforts in furtherance of its obligations in terms of Clause 3.4 of the shareholders' agreement.

37. Thus, perusal of the depositions of the said witnesses, who were subjected to elaborate cross-examination on various aspects, including the allegation made by the petitioner of breach of Clause 3.4 by the respondent and the denial of the same by the respondent's witnesses, including efforts made by both sides to procure the work for WTL, reveals nothing significant that has not been taken note of by the learned Arbitrator in the aforesaid paragraphs. Nothing to indicate that there is any lack of judicial approach, perversity or irrationality in appreciating the contentious issue by learned Arbitrator.

38. Therefore, the contention urged on behalf of the petitioner that the impugned award fails to distinguish the ratio between the said two judgments and that such failure would amount to a failure to take notice of the fundamental policy of Indian law, warranting a challenge under Section 34(2)(b)(ii) of the Act, 1996 cannot be countenanced.

39. Point No.(iii) is answered accordingly.

Regarding point No.(iv):-

(iv) Whether the impugned award suffers from lack of reasoning and mindful consideration of case of the petitioner thereby violates provisions of Section 31(3) (a) of the Act, 1996?

40. One of the vehement contentions of the learned counsel for the petitioner is that the learned Arbitrator has not given the Petitioner full opportunity to present its case, and the same would amount to depriving the Petitioner of an opportunity as provided under Section 18 of the Act, 1996. It is contended that the right to present one's case is not merely the right to tender documents and cross-examine witnesses. It includes the right to have one's evidence, submissions, and arguments mindfully considered and adjudicated upon by the Tribunal, lest the right to be heard be meaningless.

41. The learned Arbitrator has framed the following points for determination of the claim and the counterclaim made by the parties.

> *"1. Whether the Arbitral Tribunal has jurisdiction to entertain the claim of the claimant as alleged in paragraphs 2 to 7 of the statement of defence?*
>
> *2. Whether Statement Of Claim is liable to be rejected for misjoinder/non-joinder of necessary parties?*

3. Whether claimant has fulfilled his obligation under Recital A under clause 3.2 and 6.5 of SHA?

4. Whether respondent has fulfilled his obligation under clause 3.3 and 3.4 of SHA?

5. Whether sale of Alyotech Canada's operations amounts to breach of the SHA by the Respondent?

6. Whether the Claimant is entitled to reliefs as sought for in the Statement Of Claim?

7. Whether the Respondent is entitled to a sum of Euros 300,000 from the Claimant towards the loss of reputation suffered by the Respondent on account of the Claimant?

8. Whether the Respondent is entitled to a sum of Euros 2,60,878 from the Claimant towards compensation for the time spent by its employees on business development activities of Winfoware and expenses of trips made to India?

9. Whether the Respondent is entitled to a sum of Euros 5,48,292 from the Claimant as compensation towards damages suffered by the Respondent due to breach of the SHA by the Claimant?

10. Whether the Respondent is entitled to payment of interest at the rate of 15% per annum on its claims in the counter claim from the date of filing till the date of actual payment to the Respondent?

11. What order as to costs?

12. What reliefs?

42. The learned Arbitrator has answered points Nos. 1, 3 and 4 in the affirmative, points 2 and 5 to 10 in the negative.

43. While answering the points as above, the learned Arbitrator has rejected both the claim and the counterclaim made by the parties. The present application under Section 34 is filed only by the Petitioner, who was a claimant

before the Arbitrator. No application is filed by the respondent questioning the rejection of its counterclaim. Therefore, scrutiny of the impugned award in the light of the aforesaid exposition of law on this point is restricted only to the extent of rejection of the Petitioner's claim.

44. Learned counsel for the petitioner, in his endeavour to point out that the reasons assigned by the learned Arbitrator were inadequate, as, according to him, the learned Arbitrator had not adverted to the documentary evidence furnished by the petitioner, copies of which are produced in this Application in the compilation—Part 1 and 2, referred to the documents at Annexures-C6, C9, C10, C11, and C17 to C34 extensively, read the contents of the said documents, and submitted that the impugned award does not specifically refer to the contents of these documents and therefore the impugned award suffers from lack of reasoning, thereby violating Section 31(3)(a) of the Act, 1996.

45. Document at C6 is spreadsheet purportedly giving commercial details of the respondent's business strategy in India. C9 to C10 are the presentation prepared by WTL and giving its profile and profile of the key people. C11 to

16 are email exchanges between petitioner and respondent during October and November 2009 in relation to investment in WTL. C17 is the transcription of video message issued by chairman of the respondent making promise to the employees of WTL and instilling confidence in them with regard to investment in WTL. C18 is a press release, issued by respondent, acknowledging the trust placed by the Petitioner and other shareholders in the respondent. C19 is the email correspondence with regard to proposed training of candidates in France. C20 to C31 are the e-mail correspondence exchanged between the parties apparently indicating possible business opportunities for WTL, to which, according to the petitioner, respondent failed to take any steps to procure the business projects and missed several opportunities in India. C32 to 35 are email dated 24.07.2012 issued by KKM to the respondent about dire situation of WTL due to lack of any substantial business and projects, as was originally promised by respondent. That though the respondent acknowledge the concern by reply email but did not take any steps to mitigate the situation that WTL was facing.

46. This Court is unable to accept the aforesaid contention. Learned Arbitrator, as noted while answering point No.(iii), in paragraphs 19 to 28 of the impugned award, has adverted to the allegation of breach of clause 3.4 of the shareholders' agreement made by the petitioner with regard to the respondent's not performing its obligation to make 'best efforts' to refer and outsource the subcontractor's jobs and assignments in the company for the existing clients and to provide training to the employees in India. In this regard, the learned Arbitrator has referred to evidence of RWs. 1 and 2 with regard to all the efforts according to them made to obtain the work to be outsourced to WTL in India. The learned Arbitrator has also referred to the contents of the affidavit of RW2 and other materials furnished by the respondent *in extenso*. It is only thereafter that the learned Arbitrator has come to the conclusion that there is sufficient evidence to show the efforts made by the respondent to procure the work for WTL and declined to accept the contentions of the petitioner that these efforts were not adequate and fell short of the obligation cast on the respondent to make the best effort to secure the work.

47. Besides, at paragraphs Nos. 35, 36, 37 and 38 of the impugned order, the learned Arbitrator, while referring to the respondent's allegation regarding the petitioner's breach of Clauses 3.2 and 6.5 of the shareholders' agreement, indeed referred to the documents relied upon by the petitioner being e-mails exchanged between the parties more particularly from May to October 2011 at Ex. C-AQ and Ex. C-AS and the evidence of CW.1 regarding information given by him to the respondent regarding availability of potential customers. At paragraph 37 it has referred to extensive cross examination of KKM in respect of his attempts in procuring the orders for WTL. Therefore the contention that the learned Arbitrator not adverting to these documents cannot be accepted.

48. At Paragraphs 39 and 40 of the impugned award the learned Arbitrator has adverted to grounds urged with regard to alleged breach of clauses 6.2 and 6.5 of shareholders agreement providing for constitution of Board of Directors of WTL. Finding of the learned Arbitrator in negating the case of the Respondent on this point is now sought to be urged as by the Petitioner as rendering the impugned award an internally self-contradictory which

purportedly constitutes a contravention of fundamental policy of Indian Law. Mere negation of case of the Respondents on this aspect of the matter need not necessarily result in acceptance of the case of the Petitioner, which is required to be proved and established independently.

49. Contention as regards the learned Arbitrator, not adverting to the provisions of Section 73 of the Contract Act providing for compensation for loss or damage caused by breach of contract, is concerned, as pointed out by learned Senior counsel appearing for the respondent, consideration of a claim for compensation for loss or damage caused by a breach of contract would arise if the petitioner establishes the breach of the terms of the contract; it should also establish the actual loss suffered by it on account of the breach committed by the respondent. Learned Senior counsel appearing for the respondent, pointing out paragraphs 15 and 20 of the claim petition, submitted that in terms of the agreement entered into between the parties, the petitioner was required to invest Euro 300,000 and there has been no evidence of the petitioner having invested such amount. Therefore, he

submitted that, in the absence of the petitioner pointing out substantial investment had been made and proving a breach of the terms by the respondent, there was no question of applying the provisions of Section 73 of the Contract Act, and the claim in this regard would be speculative and baseless. There is indeed a considerable force in this submission made by the learned Senior counsel for the Respondent. No material is placed in this regard before the learned Arbitrator for assessment of the investment and corresponding loss suffered by the Petitioner.

50. On the question of the sale of the Canadian operation of the Respondent, the contention is that the learned Arbitrator has wrongly held there to be no privity of contract between the petitioner, WTL and Alyotech Canada. That such finding is contrary to Article 1.2 of the shareholders' agreement, which provides for "affiliates" to be part of the agreement. That the sale of the respondent's shares in the Canadian company affected the petitioner's right of first refusal under Article 4.1 of the shareholders' agreement amounts to a contravention of the fundamental policy of Indian law.

51. In this regard, it is seen that the learned Arbitrator, at paragraph 29, apart from opining that there was no privity of contract between the said entities and that there was no bar on the respondent from selling the shareholding in its group company under Clause 4 of the shareholders' agreement, has also found that Mr. KKM was aware of the respondent's attempt to sell its shares in the Canadian company and that, in March and April 2013, Mr. KKM forwarded a proposal for the sale of the respondent's shares in the said Canadian company and made no grievance regarding such proposed sale. Therefore, this contention urged with regard to the breach of Clause 4 of the shareholder agreement has been negated by the learned Arbitrator.

52. Clause 4.1 of the shareholders' agreement provides that WTL shall have the first right of refusal for all projects done in India by Respondent and manpower recruited in India for projects in foreign countries. Likewise, the WTL shall have the right of refusal to Respondent for the Projects it pursues in France, Canada, the Netherlands, Belgium, Switzerland, and Morocco, and such refusal

shall, at all times, be taken by the unanimous decision of the Board and communicated to Respondent accordingly.

53. Perusal of said clause indicates the right of refusal reserved in favour of WTL is in respect of projects being done by the respondent. The clause does not speak anything whatsoever with regard to the sale of shareholdings, as noted by Learned Arbitrator in paragraph 29 of the impugned award. This interpretation cannot be faulted, as the clause does not specifically prohibit or create a bar against the sale of the shareholding. Besides, admittedly, Mr. KKM forwarded a proposal for the sale of the respondent's shares in the said Canadian company and made no grievance regarding such proposed sale, indicating even his understanding of the said clause. As held by the Apex Court in the case of ***Rashtriya ISPAT Nigam Ltd Vs Devan Chand Ram Saran,***[6] if the view taken by the Arbitrator is a possible one, it cannot be subjected to judicial review, even if the contract is capable of two interpretations.

54. Appreciation of evidence is the sole domain of the Arbitrator. As it is a settled principle of law, the Arbitrator

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[6] (2012) 5 SCC 306

is the sole judge of the quality as well as quantity of the evidence, and the Court under Section 34 of the Act, 1996 shall not take up the task of being the judge of the evidence before the Arbitrator, with hardly any scope for reassessing or re-appreciating the evidence by the Court. The Court also cannot examine the reasonableness of the reasons assigned in the award. The Court cannot substitute its evaluation or conclusion of law or facts to conclude that the Arbitrator had acted contrary to the terms of the agreement. {**Satna Stone and Lime Company Limited, Madhya Pradesh and others Vs Union of India and anr[7], Oil and Natural Gas Corporation Vs WIG Brothers Builders & Engineers Private Ltd.,[8] Sharma and Associates Contractors Private Ltd., Vs Progressive Constructions Ltd.,[9], MMTC Ltd., Vs Vedanta Ltd.,[10] }**

55. As held by the Apex Court in the case of ***PSA Sical Terminals (P) Ltd., Vs V.O. Chidambranar Port Trust,[11]*** to term an award as perverse, indicating

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[7] (2008) 14 SCC 785
[8] (2010) 13 SCC 377,
[9] (2017) 5 SCC 743
[10] (2019) 4 SCC 163
[11] (2023) 15 SCC 781

illegality, one will have to satisfy the test enumerated in paragraph 42 of the said judgment, which is,

> *(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.*

56. As already noted above, in paragraphs 18 to 28, the Tribunal has adverted to the depositions of the parties and the material placed for its consideration; it therefore cannot be said that the said finding is based on no evidence at all or without appreciation of the same, or that the learned Arbitrator has taken into consideration something that was irrelevant.

57. In the aforesaid circumstances, the findings and conclusion arrived at by the learned Arbitrator cannot be said to be opposed to the judicial approach or against the principles of natural justice, nor are they so perverse and irrational that no reasonable person would have arrived at such a conclusion, resulting in miscarriage of justice.

58. Thus, the contention of learned counsel for the petitioner that the impugned award suffers from non-appreciation of

crucial evidence, non-consideration of oral evidence, and lack of intrinsic scrutiny of evidence, resulting in the award being baseless, cannot be countenanced.

59. The reliance placed by the learned counsel for the petitioner on the judgments in the cases of *Natwarlal Shamaldas and Co., M.D., Army Welfare Housing Organization, Delhi Airport Express, ONGC Garware, Puri Construction, Gayatri Balasamy (Supra)* is of no avail in the facts and circumstances of the case.

Point No.(iv) is answered accordingly.

60. For the aforesaid reasons and analysis, this Court is of the considered view that the grounds urged by the claimant do not meet the requirements of law warranting interference under Section 34 of the Act, 1996.

61. Accordingly, following:

ORDER

Petition is ***dismissed.***

Sd/-
(M.G.S. KAMAL)
JUDGE

SBN/SH