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

% ***Judgment reserved on: 17.03.2026***
Judgment pronounced on: 04.05.2026

\+ O.M.P. (COMM) 22/2017

HINDUSTAN PETROLEUM CORPORATION LTD .....Petitioner

Through: Mr. Avneesh Garg, Mr. Utkarsh Sharma, Mr. P. Sinha and Ms. Kanika, Advocates.

versus

POOJA TRIPATHI (DECEASED) THROUGH HER L.RS. .....Respondent

Through: Mr. Arjun Mitra and Ms. Jayanti Jha, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], assailing the **Arbitral Award dated 04.03.2011**[2] passed by the learned Sole Arbitrator, **Sh. V.K. Sawhney**[3].

2. By the Impugned Award, the learned Arbitrator granted the claims of **Smt. Pooja Tripathi**[4] (*since deceased, so now being represented through LRs*) and held the **Termination Letter dated**

[1] A&C Act
[2] Impugned Award
[3] Respondent No.2/learned Arbitrator
[4] Respondent No.1

13.01.2006[5] to be null and void, hence restoring the dealership of the **Retail Outlet situated at Ring Road, Site No.1, Pitampura, Delhi**[6], to Respondent No.1.

3. The learned Arbitrator additionally granted Compensation for loss of profits/income, from the date of takeover of the outlet after the termination of the **Dealership Agreement dated 10.02.2003**[7] till the date on which it is restored to her for operation, by **Hindustan Petroleum Corporation Limited (through its Chief Regional Manager, Delhi Retail Regional Office)**[8] to Respondent No. 1.

<u>BRIEF FACTS</u>:

4. The Petitioner is a Public Sector Oil Company, incorporated as a Government Company under the Companies Act, 1956, engaged *inter alia* in refining, storage, marketing and distribution of Petroleum products throughout the country.

5. On 17.11.1993, the Petitioner issued a Letter of Intent in favour of Smt. Kasturi Tripathi (*Respondent No.1's Mother*) for the dealership of the RO, on compassionate grounds.

6. *Vide* letter dated 27.03.1997, said dealership came to be finalised and Smt. Kasturi Tripathi was appointed as the dealer of the RO.

7. After the demise of Smt. Kasturi Tripathi on 21.02.2002, Respondent No.1 sought transfer of said dealership in her favour. Acceding to said request, the Petitioner, *vide* communication dated 13.01.2003, reconstituted the dealership in her favour, appointing her

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[5] Termination Letter
[6] RO
[7] Agreement
[8] Petitioner/ HPCL

as sole proprietor. Consequently, the Agreement came to be executed as between the parties.

8. It is the case of the Petitioner that, during the subsistence of the dealership, various inspections were conducted at the RO wherein several irregularities were allegedly noticed, *inter alia,* recurring "dry-outs", poor maintenance, inadequate infrastructure, non-compliance with operational standards, and decline in sales performance.

9. On account of the aforesaid alleged deficiencies, various communications and Show Cause Notices dated 15.12.2004, 04.07.2005 and 13.10.2005 were issued by the Petitioner to Respondent No.1, calling upon her to explain said deficiencies and why action, including Termination of the dealership, should not be taken.

10. The Respondent No.1, in pursuance thereof, submitted Replies to such Show Cause Notices attributing the decline in sales and alleged irregularities to external factors such as construction of metro rail and flyovers leading to diversion of traffic, non-supply of adequate products, as well as lack of infrastructural support from the Petitioner. Respondent No.1 also asserted that she had not committed any breach of the Agreement as between the parties, warranting its Termination.

11. The Petitioner, however, being dissatisfied with the explanation furnished by Respondent No.1 in her Replies, proceeded to terminate the Agreement *vide* letter dated 13.01.2006, and took over possession of the RO on 14.01.2006.

12. Aggrieved by such Termination, Respondent No. 1 approached this Court by way of a Writ Petition, being W.P. (C) No.959/2009,

which was disposed of on 17.07.2009 with a direction to the parties to refer the present disputes to Arbitration.

13. Following the same, Arbitration proceedings came to be initiated before the learned Arbitrator, wherein the Impugned Award came to be passed in favour of Respondent No.1.

14. The Petitioner, being aggrieved by said Impugned Award as passed by the learned Arbitrator, has preferred the present Petition under Section 34 of the A&C Act before this Court.

<u>SUBMISSIONS BY THE PETITIONER - HPCL</u>:

15. Learned counsel for the Petitioner would submit that the Impugned Award is liable to be set aside on the ground that the learned Arbitrator has acted in excess of jurisdiction and in derogation of the express terms of the Agreement between the parties. It would be contended that the learned Arbitrator has, in effect, sought to apply principles of equity and fairness in adjudicating the disputes, despite there being no express consent or authorization from the parties to decide the matter on such considerations.

16. Learned counsel for the Petitioner would submit that repeated inspections of the RO revealed serious and persistent irregularities, including, *inter alia*, frequent dry-outs, deficient maintenance and failure to adhere to the prescribed minimum operational standards. It would thus be contended that, notwithstanding the issuance of multiple Show Cause Notices and adequate opportunities, Respondent No.1 failed either to rectify the said deficiencies or to furnish any satisfactory explanation in that regard.

17. Learned counsel for the Petitioner would further contend that the Termination of the dealership of Respondent No.1 was effected

strictly in accordance with the Agreement as well as the applicable **Marketing Discipline Guidelines**[9], and the learned Arbitrator has failed to appreciate the binding nature of these provisions.

18. Learned counsel for the Petitioner further assails the finding of the learned Arbitrator insofar as it attributes the deficiencies in the performance of the RO to external factors such as metro construction and diversion of traffic. It would be contended that such considerations cannot, in law, absolve Respondent No.1 of her contractual obligations under the Agreement.

19. In pursuance thereof, learned counsel for the Petitioner would submit that the Impugned Award suffers from perversity inasmuch as material evidence, including multiple inspection reports and documentary records, has been ignored, while unsubstantiated pleas of Respondent No.1 have been accepted.

20. Learned counsel for the Petitioner would further contend that the Agreement, by its very nature, is determinable, and that the Impugned Award, in failing to take due cognizance of this fundamental aspect, is perverse and unsustainable in law, particularly when the Petitioner was contractually entitled to terminate the Agreement upon the occurrence of specified breaches. To fortify this submission, reliance would be placed on the judgment of the Hon'ble Supreme Court in ***K.S. Manjunath v. Moorasavirappa***[10], wherein the contours of contracts which are determinable in their nature have been articulated.

21. Learned counsel for the Petitioner, in pursuance of the abovesaid contention, would submit that Clauses 2 and 3 of the

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[9] MDG
[10] 2025 SCC OnLine SC 2378

Agreement are to be read with ***K.S Manjunath*** (*supra*) to crystallise the determinable nature of the present Agreement.

22. Learned counsel for the Petitioner would further contend that the Impugned Award is vitiated by "*patent illegality*", inasmuch as the learned Arbitrator has failed to adjudicate the disputes in accordance with the express terms of the Agreement between the parties. It would be submitted that such an approach runs in clear contravention of Section 28(3) of the A&C Act, as it then stood, which mandates that the arbitral tribunal shall, in all cases, decide in accordance with the terms of the contract and take into account the usages of trade applicable to the transaction.

23. To advance this contention, learned counsel would place reliance on the Judgment of the Hon'ble Supreme Court in ***State of Chhattisgarh & Anr. v. Sal Udyog Pvt. Ltd.***[11] wherein it was held that *"patent illegality ground"* for assailing an arbitral award is attracted where the learned arbitrator has failed to decide the dispute in accordance with the terms of the contract between the parties.

24. Learned Counsel for the Petitioner would place reliance on the judgement of the Hon'ble Supreme Court in ***Indian Oil Corporation v. Amritsar Gas Service & Ors.***[12] to vehemently contend that the learned Arbitrator has egregiously erred in granting the relief of Restoration of dealership of the RO to Respondent No.1, which is in the nature of Specific Performance and is impermissible in law, being in contravention of Section 14 of the **Specific Relief Act, 1963**[13].

[11] (2022) 2 SCC 275
[12] (1991) SCC 533
[13] SRA

25. Learned counsel for the Petitioner would further assail the Impugned Award insofar as it grants Compensation towards alleged loss of profits/income in favour of Respondent No.1. It would be contended that the said award of Compensation is wholly speculative in nature and is not founded upon any cogent, reliable, or admissible evidence on record.

26. It would further be urged that there has been no proper quantification of such alleged loss, nor has any legally sustainable basis been set out by the learned Arbitrator for arriving at the amount awarded.

27. Learned counsel would submit that, in any event, no specific prayer seeking Compensation on account of loss of profits/income was made by Respondent No.1 in the Statement of Claims. In this regard, reliance would be placed on Section 21(5) of the SRA to contend that compensation can be granted only where a specific claim to that effect has been expressly made, and in the absence of such a claim, the grant of compensation is legally unsustainable.

28. Proceeding on the aforesaid basis, learned counsel for the Petitioner would submit that the Impugned Award, in disregarding these settled principles, is in conflict with the public policy of India and is further vitiated by patent illegality apparent on the face of the record. It would thus be contended that the Impugned Award falls foul of the statutory grounds for interference and is liable to be set aside under Section 34 of the A&C Act.

29. Lastly, learned counsel for the Petitioner would submit that the Impugned Award has, in effect, been rendered infructuous on account of subsequent events, *namely*, the demise of the original

Claimant/Respondent No.1 herein. In support of this submission, reliance would be placed on the Judgment of the Hon'ble Supreme Court in ***Shipping Corporation of India Ltd. v. Machado Brothers & Ors***[14].

30. Learned counsel for the Petitioner, however, on the aforesaid aspect, fairly clarifies that the aforesaid contention is being reserved and would be urged at the appropriate stage, if and when proceedings under Section 36 of the A&C Act are initiated for the enforcement of the Impugned Award.

SUBMISSIONS BY RESPONDENT NO. 1:

31. ***Per Contra,*** learned counsel for Respondent No.1 would support the Impugned Award and submit that the same is a well-reasoned award, rendered upon due appreciation of the material on record, and does not warrant interference within the limited scope of Section 34 of the A&C Act.

32. Learned counsel for Respondent No.1 would contend that the termination of the dealership was wholly arbitrary, disproportionate, and in violation of the Principles of Natural Justice. Respondent No.1 was not afforded any fair, adequate, or meaningful opportunity of hearing prior to the impugned action being taken. Learned counsel would further submit that the Petitioner failed to comply with the mandatory contractual stipulation requiring the issuance of a three-month prior Notice before effecting termination, as expressly contemplated under the Agreement between the parties, thereby rendering the termination unsustainable.

[14] (2004) 11 SCC 168

33. Learned counsel for Respondent No.1 would further submit that the alleged irregularities relied upon by the Petitioner to justify the termination were either non-existent or, at best, trivial and inconsequential in nature. It would be contended that such allegations pertained merely to minor housekeeping issues and deficiencies relating to staff uniform and appearance, which, in no manner, could be construed as material breaches warranting the extreme and disproportionate penalty of termination. According to learned counsel, the action of termination, in the facts and circumstances of the case, is thus wholly unjustified and contrary to the governing contractual and regulatory framework.

34. Learned counsel for Respondent No.1 would contend that the decline in sales and the alleged operational deficiencies were attributable to factors beyond the control of Respondent No.1, including, *inter alia*, diversion of traffic on account of metro construction and deterioration of the surrounding infrastructure, which materially impacted the viability of the RO. It would be urged that these constraints were repeatedly brought to the notice of the Petitioner; however, there remained a consistent lack of adequate support and supply from them, thereby exacerbating the situation.

35. Learned counsel for Respondent No.1 would further urge that Respondent No.1 had duly responded to each of the Show Cause Notices and had made *bona fide* and earnest efforts to comply with the stipulated requirements; however, despite the same, the Petitioner proceeded in a predetermined and arbitrary manner, without due application of mind to the explanations furnished or the mitigating circumstances placed on record.

36. Learned counsel for Respondent No.1 would submit that the learned Arbitrator has duly appreciated the pleadings, evidence and material on record and returned well-reasoned findings of fact, which, being based on a plausible view, are not amenable to interference within the limited scope of jurisdiction under Section 34 of the A&C Act.

37. Learned counsel appearing on behalf of Respondent No.1 would support the grant of restoration, submitting that the same constitutes a necessary and consequential relief flowing from the finding that the termination was illegal. It would be contended that such relief is aimed at restituting Respondent No.1 to the position she would have occupied but for the wrongful and unlawful action of the Petitioner. Learned counsel thus would urge that the present Petition is, in substance, an attempt to re-agitate the merits of the dispute, which is impermissible within the limited scope of interference under Section 34 of the A&C Act, and is therefore liable to be dismissed.

38. Without prejudice to the aforesaid submissions, learned counsel for Respondent No.1, during the oral submissions, fairly submitted that, insofar as the award of Compensation is concerned, it may be open to this Court to set aside the Impugned Award to that limited extent alone, if the same is found to be legally unsustainable, while sustaining the remainder of the Impugned Award.

ANALYSIS:

39. This Court has heard the learned counsel appearing on behalf of the parties at length and, with their able assistance, has carefully perused the Impugned Award and other material documents placed on

record, including the record of the learned Arbitral Tribunal, as well as the Written Submissions filed by the respective parties.

40. At the outset, it is apposite to note that this Court is conscious of the limited scope of its jurisdiction while examining an objection petition under Section 34 of the A&C Act. The contours of judicial intervention in such proceedings have been authoritatively delineated and settled by a consistent and evolving line of precedents of the Hon'ble Supreme Court.

41. There is a consistent and evolving line of precedents whereby the Hon'ble Supreme Court has authoritatively delineated and settled the contours of judicial intervention in such proceedings. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier judgments, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[15], while dealing with the grounds of conflict with the public policy of India and patent illegality, grounds which have also been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

> *"**Relevant legal principles governing a challenge to an arbitral award***
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> **30.** Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, *(a)* and *(b)*. Clause *(a)* has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause *(b)* is concerned, it has two sub-clauses, namely, *(i)* and *(ii)*. Sub-clause *(i)* of clause *(b)* is not relevant to the controversy in hand. Sub-clause *(ii)* of clause *(b)* provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.

[15] (2025) 2 SCC 417

Public policy

31. “Public policy” is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.

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35. *In Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC 644, a three-Judge Bench of this Court observed that the doctrine of public policy is somewhat open—textured and flexible. By citing earlier decisions, it was observed that there are two conflicting positions which are referred to as the “narrow view” and the “broad view”. According to the narrow view, courts cannot create new heads of public policy whereas the broad view countenances judicial law making in these areas. In the field of private international law, it was pointed out, courts refuse to apply a rule of foreign law or recognise a foreign judgment or a foreign arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked or enforced. However, it was clarified, a distinction is to be drawn while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. It was observed that the application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. It was held that contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required.

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37. What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.

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40. In ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263, paras 35, 38 & 39, which also related to the period prior to the 2015 Amendment of Section 34(2)(b)(ii), a three-Judge Bench of this Court, after considering the decision in ***ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705**, without exhaustively enumerating the purport of the expression “fundamental policy of Indian law”, observed that it would include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. The Court thereafter illustratively referred to three fundamental juristic principles, namely:

(*a*) that in every determination that affects the rights of a citizen or leads to any civil consequences, the court or authority or quasi-judicial body must adopt a judicial approach, that is, it must act bona fide and deal with the subject in a fair, reasonable and objective manner and not actuated by any extraneous consideration;

(*b*) that while determining the rights and obligations of parties the court or Tribunal or authority must act in accordance with the principles of natural justice and must apply its mind to the attendant facts and circumstances while taking a view one way or the other; and

(*c*) that its decision must not be perverse or so irrational that no reasonable person would have arrived at the same.

41. In ***Associate Builders v. DDA*, (2015) 3 SCC 49**, a two-Judge Bench of this Court, held that audi alteram partem principle is undoubtedly a fundamental juristic principle in Indian law and is enshrined in Sections 18 and 34(2)(a)(iii) of the 1996 Act. In addition to the earlier recognised principles forming fundamental policy of Indian law, it was held that disregarding:

(*a*) orders of superior courts in India; and

(*b*) the binding effect of the judgment of a superior court would also be regarded as being contrary to the fundamental policy of Indian law.

Further, elaborating upon the third juristic principle (i.e. qua perversity), as laid down in ***ONGC Ltd. v. Western Geco International Ltd*., (2014) 9 SCC 263**, it was observed that where:

(*i*) a finding is based on no evidence; or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse [***Associate Builders case*, (2015) 3 SCC 49, para 31**].

To this a caveat was added by observing that when a court applies the "public policy test" to an arbitration award, it does not act as a court of appeal and, consequently, errors of fact cannot be corrected; and a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score. Thus, once it is found that the arbitrator's approach is not arbitrary or capricious, it is to be taken as the last word on facts.

The 2015 Amendment in Sections 34 and 48

42. The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not used by the legislature in either Section 34(2)(b)(ii) or Section 48(2)(b). The pre-amended Section 34(2)(b)(ii) and its Explanation read:

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44. By the 2015 Amendment, in place of the old Explanation to Section 34(2)*(b)(ii), Explanations 1 and 2* were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted/added Explanations would apply [***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131**].

46. The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)*(b)(ii)* and Section 48(2)*(b)*, in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it does away with the use of words : (a) "*without prejudice to the generality of sub-clause (ii)*" in the opening part of the pre-amended Explanation to Section 34(2)(b)(ii); and (b) "*without prejudice to the generality of clause (b) of this section*" in the opening part of the pre-amended Explanation to Section 48(2)*(b)*; secondly, it limits the expanse of public policy of India to the three specified categories by using the words "*only if*". Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)*(b)(ii)* or Section 48(2)*(b)* of the 1996 Act.

47. The 2015 Amendment by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the proviso, which 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.

48.*Explanation 1* to Section 34(2)*(b)(ii),* specifies that an arbitral award is in conflict with the public policy of India, *only if*:

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

49. In the instant case, there is no allegation that the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81. Therefore, we shall confine our exercise in assessing as to whether the arbitral award is in contravention with the fundamental policy of Indian law, and/or whether it conflicts with the most basic notions of morality or justice. Additionally, in the light of the provisions of sub-section (2-A) of Section 34, we shall examine whether there is any patent illegality on the face of the award.

50. Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions:

(a) "in contravention with the fundamental policy of Indian law";

(b) "in conflict with the most basic notions of morality or justice"; and

(c) "patent illegality" have been construed.

In contravention with the fundamental policy of Indian law

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in ***Renusagar Power Co. Ltd. v. General Electric Co.*****, 1994 Supp (1) SCC 644**, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

(a) the fundamental policy of Indian law; and/or

(b) the interest of India; and/or

(c) justice or morality.

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55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)*(b)(ii)* and Section 48(2)*(b)* of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of *Explanation 1*. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(a) violation of the principles of natural justice;

(b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)*(b)(ii)*.

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Patent illegality

65. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by the 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

66. In ***ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705**, while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

67. In ***Associate Builders v. DDA*, (2015) 3 SCC 49**, this Court held that an award would be patently illegal, if it is contrary to:

(a) substantive provisions of law of India;

(b) provisions of the 1996 Act; and

(c) terms of the contract [See also three-Judge Bench decision of this Court in ***State of Chhattisgarh v. SAL Udyog (P) Ltd.*, (2022) 2 SCC 275**].

The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a) of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

68. In ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131** this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to "public policy" or "public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality [See ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131**]. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131**].

Perversity as a ground of challenge

69. Perversity as a ground for setting aside an arbitral award was recognised in ***ONGC Ltd. v. Western Geco International Ltd.*, (2014) 9 SCC 263**. Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

70. In ***Associate Builders v. DDA*, (2015) 3 SCC 49** certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:

(i) a finding is based on no evidence; or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

71. In ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131**, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131**].

72. The tests laid down in ***Associate Builders v. DDA*, (2015) 3 SCC 49** to determine perversity were followed in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131** and later approved by a three-Judge Bench of this Court in ***Patel Engg.***

***Ltd. v. North Eastern Electric Power Corpn. Ltd*., (2020) 7 SCC 167**.

73. In a recent three-Judge Bench decision of this Court in ***DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd*., (2024) 6 SCC 357**, the ground of patent illegality/perversity was delineated in the following terms: (SCC p. 376, para 39)

> "*39*. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."

Scope of interference with an arbitral award

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

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

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Scope of interference with the interpretation/construction of a contract accorded in an arbitral award

84. An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an Arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not intefere [See: ***SAIL v. Gupta Brother Steel Tubes Ltd*.**, **(2009) 10 SCC 63;** ***Pure Helium India (P) Ltd. v. ONGC*, (2003) 8 SCC 593; *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181; *MMTC Ltd. v. Vedanta Ltd*., (2019) 4 SCC 163**]. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference [***South East Asia Marine Engg. & Constructions Ltd. v. Oil India Ltd*., (2020) 5 SCC 164**].

Whether unexpressed term can be read into a contract as an implied condition

85. Ordinarily, terms of the contract are to be understood in the way the parties wanted and intended them to be. In agreements of arbitration, where party autonomy is the grund norm, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions used [***BALCO v. Kaiser Aluminium Technical Services Inc*., (2016) 4 SCC 126**].

86. However, reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by the parties thereto. An unexpressed term can be implied if, and only if, the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. Rather, it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract [***Adani Power (Mundra) Ltd. v. Gujarat ERC*, (2019) 19 SCC 9**].

87. But before an implied condition, not expressly found in the contract, is read into a contract, by invoking the business efficacy doctrine, it must satisfy the following five conditions:

(a) it must be reasonable and equitable;

(b) it must be necessary to give business efficacy to the contract, that is, a term will not be implied if the contract is effective without it;

(c) it must be obvious that "it goes without saying";

(d) it must be capable of clear expression;

<u>*(e)* it must not contradict any terms of the contract [***Nabha Power Ltd. v. Punjab SPCL*, (2018) 11 SCC 508**, followed in ***Adani Power case*, (2019) 19 SCC 9**].</u>

(emphasis supplied)

42. In view of the foregoing, the legal position may be crystallised to the effect that a re-appreciation of the factual matrix or reassessment of evidence is wholly impermissible while exercising jurisdiction under Section 34 of the A&C Act. The scope of interference at this stage remains confined to the limited grounds statutorily prescribed and does not extend to a re-evaluation of the merits of the dispute.

43. In the present case, a perusal of the material on record demonstrates that the learned Arbitrator has undertaken a comprehensive and detailed examination of the facts, duly considering the pleadings, evidence, and submissions advanced by the parties.

44. Considering the contentions advanced by the parties and upon a perusal of the relevant portions of the Impugned Award, it emerges that the issues arising for consideration in the present case are two-fold, *namely*:

(a) whether the restoration of the dealership of the RO to Respondent No.1 by the learned Arbitrator was justified; and

(b) whether the award of Compensation towards loss of profits/income in favour of Respondent No.1, as directed against the Petitioner, is sustainable.

Each of these issues is examined separately hereinafter.

(a) <u>***Restoration of Dealership of RO to Respondent No.1***</u>

45. Learned counsel for the Petitioner has contended that, in view of then Section 14 of the SRA, the grant of Restoration of the RO by

the learned Arbitrator in the Impugned Award is impermissible in law for the reason that the Agreement is, by its very nature, determinable, inasmuch as it is liable to be terminated by either party at will or upon the occurrence or non-occurrence of specified contingencies, and therefore, not amenable to Specific Performance.

46. A perusal of the Agreement executed between the parties would reveal that the termination clause is embodied in Clause 3 thereof, which is reproduced herein below for ready reference:

> "**3.** THIS AGREEMENT SHALL REMAIN IN FORCE FOR (SIC) FROM 10th DAY OF FEBRUARY, 2003. <u>HOWEVER THE SAME MAY BE DETERMINED WITHOUT ASSIGNING ANY REASON BY EITHER PARTY BY GIVING THREE MONTHS NOTICE IN WRITING TO THE OTHER OF ITS INTENTION TO TERMINATE THIS AGREEMENT, AND UPON THE EXPIRATION OF ANY SUCH NOTICE THIS AGREEMENT AND THE LICENCE GRANTED AS AFORESAID SHALL STAND CANCELLED AND REVOKED BUT WITHOUT PREJUDICE TO THE RIGHTS OF EITHER PARTY AGAINST THE OTHER IN RESPECT OF ANY MATTER OR THING ANTECEDENT TO SUCH TERMINATION PROVIDED THAT NOTHING CONTAINED IN THIS CLAUSE SHALL PREJUDICE THE RIGHTS OF THE CORPORATION TO TERMINATE THIS AGREEMENT EARLIER ON THE HAPPENING OF THE EVENTS MENTIONED IN CLAUSE 55 OF THIS AGREEMENT.</u> UPON THE EXPIRY OF THE AFORESAID PERIOD OF FIFTEEN YEARS, THE CORPORATION AT ITS OWN MAY ENTER INTO A FRESH AGREEMENT WITH THE DEALER FOR A FUTURE PERIOD OF FIVE YEARS ON THE SAME TERMS AND CONDITIONS AS HEREIN CONTAINED."
>
> ***(emphasis supplied)***

47. A plain reading of the aforesaid Clause 3 makes it evident that the dealership of the RO could be terminated by the Petitioner only upon issuance of a written Notice of three months to Respondent No.1, upon the expiry of which the Agreement, along with the licence in respect of the RO, would stand terminated.

48. However, a perusal of the material on record reveals that no such Notice, as contemplated under the Agreement, was issued by the Petitioner to Respondent No.1 prior to effecting the termination. This indicates that the termination of the dealership of the RO, as sought to be justified by the Petitioner as being in accordance with the terms of the Agreement, may not be in consonance therewith.

49. This Court takes note of the Judgment of the Hon'ble Supreme Court in ***K.S. Manjunath*** (*supra*). The said decision undertakes a detailed examination of the jurisprudence concerning contracts "in their nature determinable" within the meaning of Section 14 of the SRA, and elucidates the principles governing the grant or refusal of specific performance in such cases. For the sake of ready reference, the relevant paragraphs of the said Judgment are extracted herein below:

> "**47.** The High Court of Madras in ***A Murugan* v. *Rainbow Foundation Ltd*, 2019 SCC OnLine Mad 37961**, had further elaborated on the aspect of determinable contracts. For the purpose of ascertaining determinability, the court bifurcated contracts into several categories: (i) contracts that are unilaterally and inherently revocable or capable of being dissolved such as licenses and partnerships at will; (ii) contracts that are terminable unilaterally on a "without cause" or "no fault" basis; (iii) contracts that are terminable forthwith for cause or that cease to subsist "for cause", without a provision for remedying the breach; (iv) contracts which are terminable for cause subject to a breach notice being issued and an opportunity to cure the breach being given, and; (v) contracts without a termination clause, which could be terminated for breach of a condition but not a warranty, as per applicable common law principles. The court held that the abovementioned (iii), (iv) and (v) categories of contract are not determinable contracts. The court further observed that although the (iv) and (v) categories are *terminable* yet the same cannot be said to be in nature *determinable*. The relevant observations are as under:
>
> > *"17. On examining the judgments on Section 21(d) of SRA 1877 and Section 14(c) of the Specific Relief Act, as applicable to this case, i.e. before Act 18 of 2018, <u>I am of the view that Section 14(c) does not mandate that all</u>*

contracts that could be terminated are not specifically unenforceable. If so, no commercial contract would be specifically enforceable. Instead, Section 14(c) applies to contracts that are by nature determinable and not to all contracts that may be determined. If one were to classify contracts by placing them in categories on the basis of ease of determinability, about five broad categories can be envisaged, which are not necessarily exhaustive. Out of these, undoubtedly, two categories of contract would be considered as determinable by nature and, consequently, not specifically enforceable : (i) contracts that are unilaterally and inherently revocable or capable of being dissolved such as licences and partnerships at will; and (ii) contracts that are terminable unilaterally on "without cause" or "no fault" basis. Contracts that are terminable forthwith for cause or that cease to subsist "for cause" without provision for remedying the breach would constitute a third category. In my view, although the Indian Oil case *referred to clause 27 thereof, which provided for termination forthwith "for cause", the decision turned on clause 28 thereof, which provided for "no fault" termination, as discussed earlier. Thus, the third category of contract is not determinable by nature; nonetheless, the relative ease of determinability may be a relevant factor in deciding whether to grant specific performance as regards this category. The fourth category would be of contracts that are terminable for cause subject to a breach notice and an opportunity to cure the breach and the fifth category would be contracts without a termination clause, which could be terminated for breach of a condition but not a warranty as per applicable common law principles. The said fourth and fifth categories of contract would, certainly, not be determinable in nature although they could be terminated under specific circumstances. Needless to say, the rationale for Section 14(c) is that the grant of specific performance of contracts that are by nature determinable would be an empty formality and the effectiveness of the order could be nullified by subsequent termination."*

(Emphasis Supplied)

48. In ***Narendra Hirawat & Co.* v. *Sholay Media Entertainment Pvt. Ltd.*, 2020 SCC OnLine Bom 391**, the Bombay High Court observed that the phrase "*a contract which is in its nature determinable*" would mean a contract which is determinable at the sweet will of a party to it, without reference to the other party or without reference to any breach committed by the other party or without any eventuality or circumstance. In other words, the phrase would contemplate a *unilateral right* in a party to a contract to determine the contract without assigning any reason. The relevant observation is as under:

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49. The Delhi High Court in ***DLF Home Developers Limited* v. *Shipra Estate Limited*, 2021 SCC OnLine Del 4902**, while considering an agreement to sell a property held that the question whether a contract is in its nature determinable must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have the *right to terminate or determine* the contract when the other party is willing to perform and is not in default. In other words, where a contract cannot be terminated so long as the other party remains willing to perform its part, such a contract is not determinable and, in equity, is specifically enforceable. The relevant observation is as under:

> *"78. Section 14 of the Specific Relief Act, 1963 sets out certain classes of contracts that are not specifically enforceable. One such class of contracts comprises of contracts, which are in their nature determinable. Clause (d) of Section 21 of the Specific Relief Act, 1877 expressly provided that contracts which are in their nature 'revocable' are unenforceable. The said statute was repealed and replaced by the Specific Relief Act, 1963. Clause (c) of Section 14(1) of the Specific Relief Act, 1963, as was in force prior to Specific Relief Act, 1877, expressly provided that contracts, which are in the nature determinable, were not specifically enforceable. The word 'revocable' as used in Clause (d) of Section 21 of the Specific Relief Act, 1877 was replaced by the word 'determinable'. The rationale for excluding such contracts, which are in their nature determinable, from the ambit of those contracts which may be specifically enforced, is apparent. There would be little purpose in granting the relief of specific performance of a contract, which the parties were entitled to terminate or otherwise determine. The relief of specific performance is an equitable relief. It is founded on the principle that the parties to a contract must be entitled to the benefits from the contracts entered into by them. However, if the terms or the nature of that contract entitles the parties to terminate the contract, there would be little purpose in directing specific performance of that contract. Plainly, no such relief can be granted in equity.*
>
> *79. Viewed in the aforesaid perspective, it is at once apparent that the contract is in its nature determinable if the same can be terminated or its specific performance can be avoided by the parties. <u>Thus, contracts that can be terminated by the parties at will or are in respect of relationships, which either party can terminate; would be</u>*

contracts that in their nature are determinable. If a party can repudiate the contract at its will, it is obvious that the same cannot be enforced against the said party.

80. However, if a party cannot terminate the contract as long as the other party is willing to perform its obligations, the contract cannot be considered as determinable and it would, in equity, be liable to be enforced against a party that fails to perform the same. Almost all contracts can be terminated by a party if the other party fails to perform its obligations. Such a contract cannot be stated to be determinable solely because it can be terminated by a party if the other party is in breach of its obligations. The party who is not in default would, in equity, be entitled to seek performance of that contract. In such cases, it cannot be an answer to the non-defaulting party's claim that the other party could avoid the contract of the party seeking specific performance, had breached the contract; therefore, the same is not specifically enforceable. Thus, the question whether a contract is in its nature determinable, must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have the right to terminate or determine the contract even though the other party are ready and willing to perform the contract and are not in default.

81. The contention advanced on behalf of Indiabulls that the ATS is in its nature determinable as Indiabulls could terminate it on failure of the other parties to perform their obligations is, plainly, unmerited. This contention is premised on the basis that Indiabulls is correct in its assumption that the other parties had breached the terms of their obligation. Concededly, if the other parties were ready and willing to fully perform their obligations, Indiabulls would not have any recourse to the termination clause. Such recourse is contingent on the failure of the other parties to perform the contract. It cannot be stated that the contract by its very nature is not specifically enforceable because it entitles a party to terminate the contract if the other parties have failed to perform their obligations.

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94. The question whether the contract by its very nature is determinable is required to be answered by ascertaining the nature of the contract. Contracts of agency, partnerships, contracts to provide service, employment contracts, contracts of personal service, contracts where the standards of performance are subjective, contracts that require a high degree of supervision to enforce, and

> *<u>contracts in perpetuity are, subject to exceptions, in their nature determinable.</u> These contracts can be terminated by either party by a reasonable notice.*
>
> ***(Emphasis Supplied)***

50. In ***Affordable Infrastructure & Housing Projects (P) Ltd.* v. *Segrow Bio Technics India (P) Ltd.*, 2022 SCC OnLine Del 4436**, the lease deed provided for a termination clause. Under the termination clause, the respondent had an option to terminate the lease deed by serving a 15 days' written notice in case the petitioner failed to make the payment for two consecutive months. The Delhi High Court on the strength of ***DLF Home*** (supra) observed that almost all contracts can be terminated by a party, if the other party fails to perform its obligations and that such contracts cannot be stated to be determinable solely because it can be terminated by a party if the other party is in breach of an obligation. The non-defaulting party would in equity be entitled to seek performance of that contract. The court held that the question whether a contract is in its nature determinable must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have a right to terminate or determine the contract even though the other party is ready and willing to perform the contract and is not in default. The relevant observation is as under:

> *"37. The law as stated above mandates against grant of stay against Termination Notice in respect of the Contracts which are determinable. The petitioner has relied upon* DLF Home Developers Limited *v.* Shipra Estate Limited, *(2022) 286 DLT 100, wherein it was observed that a party cannot terminate the Contract so long as the other party is willing to perform its obligations. The Contract cannot be considered as determinable as it would in equity be liable to be enforced against a party that fails to perform the same. <u>Almost all Contracts can be terminated by a party, if the other party fails to perform its obligations. Such a Contract cannot be stated to be determinable solely because it can be terminated by a party if the other party is in breach of the obligations. The party who is not in default would in equity be entitled to seek performance of that Contract. In such cases, it cannot be an answer to a non-defaulting party's claim that the other party could avoid the Contract of the party seeking specific performance and the same is not specifically enforceable. Thus, the question whether the Contract is in its nature determinable must be answered by ascertaining whether the party against whom it is sought to be enforced would otherwise have a right to terminate or determine the Contract even though the other</u>*

<u>party is ready and willing to perform the Contract and is not in default."</u>

(*Emphasis Supplied*)

51. The Bombay High Court in ***Kheoni Ventures (P) Ltd.* v. *Rozeus Airport Retail Ltd.*, (2024) 2 HCC (Bom) 60**, also observed that in order to arrive at a conclusion whether a contract is determinable or not, it is to be ascertained whether the parties have a *right to terminate* it on their own, without the stipulation of any contingency and without assigning any reason. The relevant observation is as under:

> *"11. <u>In order to infer whether a contract is determinable or otherwise, it is to be ascertained, whether the parties have a right to terminate it on their own, without stipulation of any contingency and without assigning any reason. An inherently determinable contract would permit either party to terminate it without assigning any reason and merely by indicating, that the contract shall come to an end, either by giving a notice for specified period, if stipulated or even without such a notice."</u>*

(*Emphasis Supplied*)

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62. Since in principle unilateral termination of the contract is impermissible except where the agreement is determinable within the meaning of Section 14 of Act of 1963, it also becomes necessary, at this juncture, to examine whether the ATS dated 28.04.2000 was in its nature determinable. This question requires to be answered on a scrutiny of the terms of the ATS and the nature of the rights and obligations flowing therefrom.

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64. <u>In this backdrop, it would be useful to advert to the classification set out in ***A. Murugan*** (supra), wherein the Madras High Court categorised contracts into five broad classes depending on their ease of determinability. Out of those, the first two i.e., (i) contracts inherently revocable such as licences and partnerships at will, and (ii) contracts terminable unilaterally on a "without-cause" basis, were held to be determinable in nature. The remaining classes, namely, (iii) contracts terminable for cause without provision for cure, (iv) contracts terminable for cause with notice and opportunity to cure, and (v) contracts without a termination clause but terminable only for breach of a condition, were all held not determinable in nature.</u>

65. <u>Further, as laid down in ***DLF Home*** (supra), the question whether a contract is in its nature determinable lies in ascertaining whether the party against whom specific performance is sought has the right to terminate the contract even when the other party is ready and willing to perform. This means if the contract cannot be terminated so long as the other party stands willing to perform, it is not determinable in its nature and would, in equity, be specifically</u>

enforceable. The same reasoning was followed in ***Affordable Infrastructure*** (supra), where it was held that a contract terminable for breach cannot merely for that reason be regarded as determinable, otherwise, no contract could ever be specifically enforced.

66. Applying these principles, the ATS in the present case cannot be said to be a determinable contract. Viewed in light of the classification as set out in ***A. Murugan*** (supra), the ATS would squarely fall within category (v) as mentioned above. The ATS was devoid of any clause enabling termination for convenience or otherwise empowering either party to terminate unilaterally. The only conceivable circumstance in which ATS could be brought to an end in the present case was upon a breach of a condition by either of the parties. Thus, the original vendors did not possess any contractual right to terminate the ATS in the absence of default by the original vendees. The grounds cited in the notice of termination dated 10.03.2003, namely, the subsistence of a status quo order and the death of one of the original vendors cannot be said to be based on any default or breach by the original vendees. The original vendees had performed their part by paying a substantial amount and were also ready and willing to perform the terms of ATS."

(emphasis supplied)

50. A conjoint reading of Clause 3 of the Agreement, along with the relevant observations in ***K.S. Manjunath*** (*supra*), would indicate that the Agreement as between the parties contemplates termination upon issuance of Notice to Respondent No.1, without the necessity of assigning any reasons, by either party. This position stands crystallised from the express stipulation in Clause 3, which provides that *"...HOWEVER THE SAME MAY BE DETERMINED WITHOUT ASSIGNING ANY REASON BY EITHER PARTY BY GIVING THREE MONTHS NOTICE IN WRITING TO THE OTHER OF ITS INTENTION TO TERMINATE THIS AGREEMENT..."*.

51. In view of the foregoing, this Court is of the considered opinion that a plain reading of Clause 3 of the Agreement renders the contract determinable by its very nature, inasmuch as it expressly permits termination without assigning reasons upon issuance of Notice.

However, such determinability does not, as a necessary corollary, validate the impugned termination of the dealership.

52. As noted hereinabove, the contractual stipulation mandates that termination could be effectuated only upon service of a written Notice of three months upon Respondent No.1 by the Petitioner. A perusal of the material on record, including the extracts reproduced hereinabove, reveals the absence of any such Notice issued by the Petitioner to Respondent No.1. The termination, therefore, having been effected in breach of the binding contractual stipulation, is rendered unsustainable in law.

53. It is further pertinent to note that the requirement of issuance of the written Notice of three months constitutes the very foundation of termination under Clause 3 of the Agreement. Consequently, for a termination to be effected strictly in accordance with the contractual terms as agreed between the parties, the issuance and service of such written Notice of three months was a mandatory contractual stipulation that the Petitioner, as per the material on record for the perusal of this Court, has failed to comply with. It is on this ground that the termination of the dealership of RO by the Petitioner has been held to be illegal and rendered null and void.

54. Further, a perusal of the Arbitral Record would indicate that Respondent No.1 had, on multiple occasions, sought support and assistance from the Petitioner for the better operation of the RO. The Petitioner, however, has failed to place on record any material to substantiate the assistance allegedly extended to Respondent No.1 towards the improvement of the functioning of the RO. This position stands crystallised, *inter alia*, from the repeated requests made by

Respondent No.1 for repair of the broken driveway, which remained unaddressed.

55. It is also pertinent to note that Respondent No.1 was evicted from the said RO by the Petitioner on 14.01.2006, whereafter the outlet was converted into a **Company-Owned and Company-Operated**[16] outlet. However, no material has been placed on record to demonstrate any improvement or increase in sales even thereafter, despite the said ground having been cited as the principal basis for termination, allegedly in terms of Clause 9 of the Agreement requiring achievement of a stipulated minimum monthly sale.

56. The Petitioner has thus failed to substantiate that the alleged deficiency in performance was attributable to Respondent No.1, particularly when the same benchmark could not be met even under the COCO model. Moreover, the RO had, under the stewardship of Respondent No.1, been conferred with the award for best diesel sales.

57. Further, Section 28(3) of the A&C Act, as it stood at the relevant time, mandated that the learned Arbitrator shall adjudicate the disputes in accordance with the terms of the contract and take into account the usages of trade applicable to the transaction, which, in the present case, would include the MDG. Then Section 28(3) of the A&C Act is extracted hereinbelow:

> "**28. Rules applicable to substance of dispute-**
>
> ****
>
> (3) In all cases, the arbitral tribunal shall decide <u>in accordance with the terms of the contract</u> and <u>shall take into account the usages of the trade applicable to the transaction</u>."
>
> ***(emphasis supplied)***

[16] COCO

58. A scrutiny of the Impugned Award indicates that the learned Arbitrator, while adjudicating the disputes, has undertaken a detailed and comprehensive analysis of the factual matrix placed before him and has duly considered the relevant clauses of the Agreement as well as the applicable MDG. The learned Arbitrator has, thus, not proceeded on a *prima facie* view, but has engaged in a thorough evaluation of each of the alleged breaches attributed to Respondent No.1 by the Petitioner. Consequently, the view taken by the learned Arbitrator emerges as a plausible one, founded upon a detailed appreciation of the material placed on record.

59. In view of the foregoing, this Court is of the considered opinion that no infirmity can be found in the conclusion arrived at by the learned Arbitrator holding the termination of the dealership of the RO by the Petitioner to be illegal, inasmuch as the mandatory precondition of a three-month Notice was not complied with. The grant of restoration of the RO in favour of Respondent No.1, being a consequential relief in the facts and circumstances of the case, cannot be said to be impermissible and has been justifiably awarded by the learned Arbitrator.

(b) <u>Compensation for Loss of Profits/Income</u>

60. It is a well-settled principle of law that compensation cannot be awarded in the absence of a specific prayer to that effect, as such relief does not arise automatically or incidentally. Unlike ancillary reliefs such as costs or, in certain circumstances, interest, the grant of compensation is inherently contingent upon clear and specific pleadings by the claimant. The statutory mandate in this regard, as embodied in Section 21(5) of the SRA, is unequivocal and admits of

no discretion, inasmuch as it expressly proscribes the award of compensation unless the same has been specifically claimed. This settled position has been consistently affirmed and reiterated in judicial pronouncements. Section 21(5) of the SRA is extracted herein below:

> "**21. Power to award compensation in certain cases-**
>
> ****
>
> (5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:
> Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation."
>
> ***(emphasis supplied)***

61. A perusal of the Impugned Award, as well as the material placed on record before this Court, reveals that the Compensation awarded by the learned Arbitrator is neither founded upon any specific Prayer made by Respondent No.1 nor quantified in definite or ascertainable terms. The relevant portion of the Impugned Award is reproduced herein below:

> "AWARD
> In view of the foregoing facts, finding and circumstances, I hold and award as under:
> That the termination, vide letter No. DRR:RLA:RET dated January 13, 2006 by which the dealership agreement dated 10th February, 2003 has been terminated, is held null and void and quashed.
> That the Respondent Chief Regional Manager, Delhi Retail Regional Office of M/s. Hindustan Petroleum Corporation Limited is directed to forthwith restore the Retail Outlet dealership of the Claimant Smt. Pooja Tripathi at Site No. 1, Pitam Pura, Opp. Punjab Kesari, Ring Road, New Delhi- 110034, which existed prior to the termination of the dealership agreement and was running in the name and style of M/s. Trips Service Station with Smt. Pooja Tripathi as the Sole Proprietress. That the Claimant Smt. Pooja Tripathi should be given compensation for loss of profits/income from the date of take over of the outlet after the termination of the dealership agreement till the date on which the outlet is restored to her physically to be run by her. The compensation will be average annual income from the start of the

retail outlet under her late mother till the date it was taken over by the Respondent Chief Regional Manager, Delhi Retail Regional Office, M/s. Hindustan Petroleum Corporation Limited. The income/profit is to be taken as shown for each year in the income tax returns pertaining to the dealer/retail outlet. In case there is no taxable income for any such period, then the profit as per the audited balance sheet of the retail outlet should be taken for that period. In case of a period of incomplete year, then the proportionate income/profit for that period should be given e.g. If the period from her dealership termination up to the restoration is 62 months, it should be treated as 5 completed years and balance two months should be treated as 1/6th of a year.

THUS IT IS ADJUDICATED AND DIRECTED ACCORDINGLY."

(emphasis supplied)

62. The Hon'ble Supreme Court, in ***Universal Petro-Chemicals Ltd. v. B.P. PLC***[17], has unequivocally held that the grant of compensation, whether in substitution of specific performance or otherwise, is governed by a statutory mandate, and the existence of a specific claim to that effect constitutes a condition precedent. It thus stands crystallised that even where the facts of a case may otherwise justify the award of compensation, the same cannot be granted *dehors* the pleadings. The relevant paragraphs of the said Judgment read as under:

> "**14.** Mr Rakesh Dwivedi, learned Senior Counsel appearing for the appellant submitted at the outset that the relief of specific performance of the collaboration agreement cannot be granted by this Court as the collaboration agreement expired on 31-12-2009. He submitted that the appellant is entitled for damages for the period from 24-8-2005 till 31-12-2009. He relied upon the judgments of this Court in ***Jagdish Singh v. Natthu Singh***, ***Urmila Devi v. Mandir Shree Chamunda Devi*** and ***Sukhbir v. Ajit Singh*** and argued that the appellant is entitled for damages even though such relief was not specifically sought for either in the suit or in the appeal. He referred to the proviso to Section 21(5) of the Specific Relief Act to contend that the appellant should be allowed to seek compensation at any stage of the proceeding.
>
> ****

[17] (2022) 6 SCC 157

16. It was submitted that specific performance of the agreement was a relief that could have been granted at the time when the appellant approached this Court in 2008 but cannot be done at this point of time. Therefore, the appellant is entitled for damages, especially after the appellant succeeded before the High Court which declared the termination notice as illegal.

17. Ms Debolina Roy, learned counsel appearing for the respondent countered the submission of Mr Dwivedi by contending that the judgments cited by the appellant pertained to award of compensation under the Land Acquisition Act wherein the manner of calculation of compensation was either ascertainable or expressly agreed upon between the parties, and are not applicable to the facts of this case. She submitted that the appellants failed to plead relief for damages either in the civil court, before the High Court or even before this Court. She submitted that even assuming that the collaboration agreement expired on 31-12-2009, the appellant did not raise this ground or seek to amend the relief during the pendency of this appeal for the past 13 years.

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19. Ms Roy referred to a judgment of this Court in ***Shamsu Suhara Beevi v. G. Alex*** to contend that the plaintiff who has been remiss in expressly seeking the relief of damages under Section 21(5) of the Specific Relief Act, is not entitled for any such relief. The further contention of the respondents is that damages can only be granted for the loss suffered and not for the loss of profits as per Section 73 of the Contract Act.

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31. The learned Single Judge expressly mentioned in his judgment that the appellant did not claim any relief for damages. Even in the appeal filed by the appellant, no relief for damages was claimed by the appellants. In fact, it was a specific submission on behalf of the appellant before the Division Bench that no relief in the nature of damages and/or compensation could be granted. It was submitted that it was difficult to quantify such damages/compensation as neither the anticipated loss of business nor could estimated value of the goodwill be prospectively assessed. It might be true that the appellant was interested in the relief of specific performance of the collaboration agreement when he filed the special leave petition in 2008 as the collaboration agreement subsisted till 31-12-2009. However, even thereafter no steps were taken by the appellant to specifically plead the relief of damages or compensation.

32. The judgments relied upon by the appellant are not applicable to the facts of this case. Though, the claim in ***Shamsu Suhara Beevi v. G. Alex*** case pertained to grant of compensation in addition to the relief of specific performance, this Court considered the point relating to the relief of compensation in substitution of the performance of the agreement as well.

> **33.** <u>We are afraid that the request of the appellant for grant of damages cannot be accepted</u>.
> **34.** For the aforementioned reasons no relief can be granted to the appellant. Civil Appeal No. 3127 of 2009 is disposed of. Civil Appeal No. 3128 of 2009 is hereby dismissed."
>
> ***(emphasis supplied)***

63. A perusal of the material on record makes it abundantly clear that, in the present case, no claim whatsoever was laid at any stage of the proceedings in respect of Compensation for the alleged loss of profits/income. The grant of such relief is, therefore, *ex facie* contrary to the statutory mandate contained in Section 21(5) of the SRA, as it amounts to conferring a relief wholly beyond the pleadings. Consequently, the Impugned Award, to the extent that it grants Compensation under this head, stands vitiated by patent illegality, the learned Arbitrator having clearly transgressed the permissible confines of the pleadings in awarding such relief.

64. In view of the foregoing, it follows that the Impugned Award is liable to be set aside to the limited extent that it grants Compensation, the same having been awarded in the absence of any specific claim and, in any event, not having been duly quantified or determined in accordance with law.

65. At this juncture, it becomes apposite to advert to the settled principles governing the partial setting aside of arbitral awards and the doctrine of severability, particularly in the context of the Impugned Award insofar as it grants Compensation towards loss of profits/income to Respondent No.1. A Constitution Bench of the Hon'ble Supreme Court, in ***Gayatri Balasamy v. M/s ISG Novasoft***

Technologies Limited[18], has examined this very issue and clarified the legal position in the following terms:

> "**33.** We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award.
> **34.** To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.
> **35.** However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be inter-dependent or intrinsically intertwined. If they are, the award cannot be set aside in part."

66. In the considered view of this Court, this portion of the Impugned Award pertains exclusively to the grant of Compensation towards loss of profits/income to Respondent No.1 for the period commencing from the date of takeover of the RO following termination of the Agreement until the date of its physical restoration for operation.

67. The adjudication of this limited aspect is neither so intrinsically interwoven with, nor dependent upon, the determination of the remaining claims, particularly the restoration of the dealership in favour of Respondent No.1, as to necessitate a reappreciation of the entire evidentiary record or to unsettle the findings returned in respect thereof. The said component is, therefore, clearly severable from the

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remainder of the Impugned Award and is capable of being set aside independently, without in any manner impacting the adjudication pertaining to the restoration of the RO.

CONCLUSION:

68. In view of the foregoing submissions advanced before this Court, the analysis undertaken on the issues arising for consideration, and the judicial precedents noticed hereinabove, the present Petition is partly allowed to the limited extent that the Impugned Award, insofar as it grants Compensation towards loss of profits/income, is set aside. The challenge to the Impugned Award on all other counts stands rejected.

69. The present Petition, along with pending Application(s), if any, stands disposed of in the above terms.

70. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 04, 2026/Sg/kr