



2026:DHC:3507



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

Date of decision: 23rd APRIL, 2026

IN THE MATTER OF:

+ **O.M.P. (COMM) 180/2026, I.A. 9690/2026, I.A. 9691/2026, I.A. 9692/2026**

SAHAJ BHARTI TRAVELS

.....Petitioner

Through: Mr. Dushyant Yadav, Mr. Pankaj
Kumar Yadav and Mr. Sudhir Yadav,
Advocates.

versus

HCL TECHNOLOGIES LTD

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) has been filed by the Petitioner challenging an Award dated 04.09.2025 passed by the learned Arbitral Tribunal (hereinafter referred to as “Tribunal”) while adjudicating the disputes that arose between the parties herein.

2. Shorn of unnecessary details, facts of the case as discernible from the material on record are as follows:

a. The Petitioner is a proprietorship firm engaged in the business of providing transport Services on contractual basis and is an



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experienced company in the field of providing Employee transport Services. The Respondent is an Indian multinational information technology (IT) services and consulting company having its registered office at 806, Siddarth, 96, Nehru Place, New Delhi-110019.

- b. The Petitioner and the Respondent entered into a Service Agreement dated 19.11.2015 w.e.f from 20.04.2015 to 30.04.2018 (hereinafter referred to as ("Agreement")). The agreement between the parties was mutually extended till 31.12.2018
- c. As per the agreement entered between the parties, the Petitioner was to deploy and operate the vehicles specifically described in Schedule-A of the agreement for the purpose of commutation for the Respondent's employees from various points in the NCR to all facilities of the Respondent company spread over the Delhi-NCR region.
- d. As per clause 28 of the agreement, the payment terms were also decided amongst the parties, and the Petitioner had to submit the bills to the Respondent on the 5th of every month for the services rendered for the previous month. The payment of the said invoice was to be released within 45 days of receipt of invoices. While the Petitioner was theoretically supposed to raise invoices based on actual services, the practice involved the Respondent sending its own data/calculations based on which the Petitioner then raised invoices based on those figures.



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- e. An important term of the agreement was with respect to the Minimum Running Guarantee of 7000 KM/cab/month on cumulative basis for dedicated registered fleet with HCL which was effective from 1.09.2015.
- f. Clause 39 of the agreement stated that no terms or conditions of the agreement could be modified, amended or waived except by the written agreement signed by both the parties.
- g. For setting the terms of the Minimum Running Guarantee, the parties held a meeting on 02.12.2015. It was discussed that the vehicle should fall under the category of vintage as prescribed under the agreement, and all the vehicles should be GPS enabled.
- h. The Respondent vide its email dated 9.12.2015 requested the Petitioner firm along with other vendors to furnish the ODO meter reading of each and every vehicle for the last 4 months and the said data was sent by the Petitioner firm on 10.12.2015. The Respondent shared the working on the Minimum Running Guarantee payment vide their email dated 14.01.2016. It is the case of the Petitioner that the invoices shared by the Respondent were completely absurd which was pointed out by the Petitioner there and then vide his email dated 16.01.2016, 20.01.2016 and 28.01.2016.
- i. Subsequently, on 8.07.2016, the Respondent sent an email to the Petitioner, thereby informing of its decision that the arrangement with respect to the MG payment shall continue only till



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31.07.2016. The Petitioner alleged this withdrawal caused severe financial constraints, eventually forcing it to sell its vehicles at heavy losses.

- j. During the subsistence of the agreement, Petitioner called upon the Respondent to settle the claim towards the outstanding payment of the Minimum Running Guarantee. On 28.05.2018, the parties decided to bifurcate the payments to Minimum Guarantee into two tranches. One tranche of payment comprised of Minimum Running Guarantee payment from September 2015 to July, 2016 and the other tranche comprised of payment from August 2016 to December 2018. On 29.11.2018, the Respondent offered a one-time settlement of Rs. 20,58,818, which was rejected by the Petitioner.
- k. Being aggrieved by non-payment towards Minimum Running Guarantee under the Agreement, the Petitioner issued a demand notice under the Insolvency and Bankruptcy Code, 2016 on 08.05.2019, and filed a petition before the National Company Law Tribunal (NCLT). On 17.01.2022, the NCLT allowed the petition but it was later set aside by the National Company Law Appellate Tribunal (NCLAT) on 26.05.2022.
- l. Following the NCLAT order, the Petitioner invoked the arbitration clause on 27.07.2022 and a Sole Arbitrator was appointed by the Delhi High Court on 16.07.2023



3. Before the Tribunal, the Petitioner sought to recover a total of Rs. 3,27,15,438/- from the Respondent, representing unpaid Minimum Running Guarantee dues up to the expiration of the agreement on December 31, 2018, along with 12% interest per annum and the costs of the proceedings.

4. The Tribunal framed the following issues:

“a. Whether the Claimant is entitled to an Award amounting to Rs.79,71,771/-? OPC

b. Whether the Claimant is entitled to an interest on the amount of Rs.79,71,771/- from the month of September 2015 till 12th of October 2023 @ 12% per annum? OPC

c. Whether the Claimant is entitled to an Award amounting to Rs.2,47,43,667/- OPC

d. Whether the Claimant is entitled to an interest on the amount of Rs.2,47,43,667/- from the month of September 2016 till 12th of October, 2023 @ 12% per annum? OPC

e. Whether the Claimant is entitled to the cost of the proceedings, if so, how much?

f. Relief.”

5. While answering issues, the Tribunal clubbed the Issues (a) and (c) and Issues (b) and (d). Issues (a) and (c) deal with the entitlement of the Claimant i.e., Petitioner herein, for the amounts of Rs.79,71,771/- and Rs.2,47,43,667/- for the two trenches respectively. The Tribunal held that the claims to be barred by limitation. Since the claims under Issues (a) and (c) were barred by limitation, Issues (b) and (d) did not arise for consideration. As far as costs are concerned, the Tribunal directed the



Parties to bear their own costs. Resultantly, the Petitioner being aggrieved by the rejection of all the claims, has approached this Court under Section 34 of the Act, raising objections to the Award.

6. The issue which this Court has to consider is whether the decision of the Tribunal in rejecting the claims of the Petitioner on the ground of limitation, is hit by any of the parameters under Section 34 of the Act or not.

7. The Tribunal held that the Minimum Running Guarantee payment arose on monthly basis but the Petitioner has clubbed the claims which arose on month to month basis cumulatively. The Tribunal has tabulated the amounts claimed for each month under Issues (a) and (c) in the form of a chart which reads as under:

Month	Cab eligible for MG	Approved Km	MG Km	Non-Paid	Rate	Amount
Sept 2015	14	84252	98000	13748	13.52	185873
Oct 2015	16	101872	112000	10128	13.52	136931
Nov 2015	19	103890	133000	29110	13.06	380177
Dec 2015	22	118560	154000	35440	13.6	481984
Jan 2016	29	132989	203000	70011	13.06	914344
Feb 2016	33	149262	231000	81738	13.06	1067498
Mar 2016	33	153918	231000	77082	14.86	1145439
Apr 2016	34	171070	238000	66930	14.86	994580
May 2016	35	201560	245000	43440	14.86	645518
June 2016	34	176616	238000	61384	14.56	893751
July 2016	33	139091	231000	91909	14.69	1350143
Total						Rs.79,71,771

Month	Cabs	MG Kms	Kms	Rate	Invoice Amount	Balance
Aug 2016	35	7000	245000	14	2284800	1145200
Sep 2016	35	7000	245000	14	2342706	1087294
Oct 2016	35	7000	245000	14	2287038	1142962
Nov 2016	34	7000	238000	14	1863287	1468713
Dec 2016	34	7000	238000	14	1981991	1350009
Jan 2017	34	7000	238000	14	1972912	1359088
Feb 2017	34	7000	238000	14	1843213	1488787
Mar 2017	34	7000	238000	14	2551161	780839
Total						Rs.98,22,892



8. The Tribunal held that the application under Section 11(6) of the Act was filed by the Petitioner only on 07.12.2022 which is after 4 years from the date the last services were delivered.

9. The Tribunal held that even otherwise, the Petitioner has not raised monthly invoices within 60 days as per the terms of the primary Agreement and hence the entire claims arising from September 2015 to December 2018 are barred by limitation. The Tribunal, after applying the directives in the Order passed by the Apex Court in **Suo Motu Writ Petition (Civil) No. 3/2020** In Re: Cognizance for Extension of Limitation, held that the Petitioner is not entitled to the extended period of limitation as granted by the Apex Court.

10. On the aspect of Section 14 of the Limitation Act 1963, the Tribunal rejected the plea of the Petitioner that as it had approached the NCLT under Section 9 of the Insolvency and Bankruptcy Code, 2016, it is therefore entitled to the benefit of Section 14 of the Limitation Act as it was pursuing proceedings before a wrong forum with bona fide intent. The Tribunal reasoned that as the NCLAT dismissed the Petitioner's application as one being without any merit, it was not entitled to the benefit of Section 14 of the Limitation Act.

11. Learned Counsel for the Petitioner submits that the impugned award suffers from an error apparent on the face of the record with respect to the Tribunal's findings on the aspect of Limitation that its claims are time



barred. It is stated that the agreement between the parties was executed on 19.11.2015 though the same was effective from 20.04.2015 to 30.04.2018. It is submitted that during the course of the agreement, the parties executed three addenda namely, the first addendum executed on 17.07.2017 effective till 30.04.2018, the second addendum dated 22.01.2018 effective from 01.05.2018 to 30.06.2018 and the third addendum dated 01.07.2018 effective from 01.07.2018 to 30.09.2018. Under the said arrangement, there was no alteration in the Minimum Running Guarantee obligations until 30.04.2018 and hence the obligations of the parties continued in their original form.

12. It is the case of the Petitioner that for the purpose of calculating limitation, the Tribunal has overlooked the fact that the dispute with respect to the Minimum Running Guarantee Payment was continuing in nature as parties were actively communicating on the issue starting from January 2016 and the last communication being on 25.06.2019. This demonstrates that the dispute was alive and subsisting throughout the contractual period thereby negating the findings on limitation.

13. It is submitted by the Learned Counsel for the Petitioner that as the cause of action was continuing in nature, it squarely falls within the ambit of Section 22 of the Limitation Act

14. The Learned Counsel for the Petitioner submits that the Tribunal has erred in the application of Section 14 of the Limitation Act to the facts of the present case. The Petitioner is entitled to the benefit of Section 14 of the Limitation Act, 1963 as the petition before the NCLT was filed on 06.08.2019 and the same was filed in good faith and with a bona fide belief



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in the correctness of the advice rendered by the Petitioner's previous counsel. In light of this, the period from 06.08.2019 to 22.05.2022, during which the petitioner was pursuing bona fide proceedings before the NCLT and NCLAT is liable to be excluded for computation of Limitation under Section 14 of the Limitation Act. Reliance has been placed on Roopinder Singh vs. Emaar MGF limited & Ors., (2025) SCC OnLine Del 8255.

15. Learned Counsel for the Petitioner submits that Section 14 of the Limitation Act needs to be construed liberally and with due diligence and cannot be measured by any absolute standard. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances.

16. Further reliance is placed on the Order passed by the Apex Court in **Suo Motu Writ Petition (Civil) No. 3/2020** In Re: Cognizance for Extension of Limitation wherein the period from 15.03.2020 till 28.02.2022 stood excluded for the purpose of calculating limitation. It is submitted by the Counsel for the Petitioner that the agreement was valid till 31.12.2018. Thereafter, it was automatically terminated as there was no consensus among the parties to continue with the aforesaid agreement. So, the period of limitation should begin from 01.01.2019 and the period of 3 years was to expire on 30.12.2021. Since the period from 15.03.2020 till 28.02.2022 stood excluded, the period of limitation after excluding the period from 15.03.2020 till 28.02.2022 would expire on 31.01.2024 as the period of limitation would commence from 01.03.2022 after the COVID period and the notice invoking arbitration was sent on 27.08.2022.



17. Heard the Learned Counsel for the Petitioner and perused the material on record.

18. In 2015, there were major amendments in the Arbitration and Conciliation Act and the grounds for challenging an arbitral Award have been narrowed down by the amendments. Section 34 of the Act lays down the grounds on which an Award can be set aside. Section 34(2)(b)(ii) of the Act states that an Award can be set aside if it is in conflict with the Public Policy of India. Explanation-1 to Section 34(2)(b) of the Act explains as to when it can be said that an Award is in conflict with the Public Policy of India. It states that an Award is in conflict with the Public Policy of India only if it is induced or affected by fraud or corruption, is in violation of Sections 75 or Section 81, is in contravention with the Fundamental Policy of India or is in conflict with the most basic notions of morality or justice.

19. In the facts of the present case, a perusal of the tabulated chart reproduced above indicates that all the claims prior to March 2017 are patently hit by limitation as the period within which claims could be raised expired before 15.03.2020 i.e. prior to the implementation of lockdown due to the COVID-19 pandemic. The approach of the Tribunal in criticising the Petitioner for clubbing the periods cannot be faulted with and this approach cannot be said to be in conflict with the Public Policy of India. Payment was to be made by the Respondent separately for each month and therefore the limitation for each month would start separately. Though the demand notice was sent on 08.05.2019 but the demand notice cannot give rise to a separate cause of action. The notice under Section 21 of the Act was sent on 27.08.2022.



20. At this juncture, it is apposite to extract the relevant portion of the Order dated 10.01.2022 passed by the Apex Court in **Suo Motu Writ Petition (Civil) No. 3/2020 - In Re: Cognizance for Extension of Limitation** wherein the Apex Court has laid down the guidelines for calculating the limitation, and the same reads as under:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from



15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.” (emphasis supplied)

21. A perusal of Paragraph III indicates that if the limitation expired during the period between 15.03.2020 and 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

22. In the present case, the Tribunal has rightly concluded that the Limitation of three years for MG payments for the entire trench from September 2015 to December 2018 is barred by Limitation. Limitation for the above entire period expired on 31.12.2021. Now as per the Apex Court's directive, all persons were entitled to a buffer period of 90 days from 01.03.2022 in case the period of limitation expired between 15.03.2020 and 28.02.2022. Computing the period of 90 days from 01.03.2022, the notice under Section 21 of the Act should ideally have been sent on or before 30.05.2022, but it was only sent on 27.08.2022 which is beyond the period of limitation. Hence, the decision of the Tribunal rejecting the claims of the Petitioner on the ground that the claims are barred by limitation does not warrant any interference.



23. Now, the only issue that has to be decided is whether the Petitioner is entitled to the benefit of exclusion of the time when it was pursuing proceedings before the NCLT and NCLAT.

24. The condition precedents for availing the benefit under Section 14 of the Limitation Act have been discussed in a catena of judgements. The Apex Court in HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad, 2024 SCC OnLine SC 3190, observed as under:-

“80. Section 2 of the Limitation Act provides certain definitions. Some of them which are pertinent to the present discussion are reproduced hereinbelow:

“In this Act, unless the context otherwise requires,--

(a) “applicant” includes—

(i) a petitioner;

(ii) any person from or through whom an applicant derives his right to apply;

(iii) any person whose estate is represented by the applicant as executor, administrator or other representative;

xxx xxx xxx

(b) “application” includes a petition;

xxx xxx xxx

(h) “good faith” - nothing shall be deemed to be done in good faith which is not done with due care and attention;

xxx xxx xxx

(j) “period of limitation” means the period of limitation prescribed for any suit, appeal or



application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act;

XXX XXX XXX

(l) “suit” does not include an appeal or an application;

81. *Section 2(l) as reproduced above clearly provides for a distinction between a ‘suit’ and an ‘application’ under the Limitation Act. Thus, the clear intention of the legislature was that they are not to be considered as the same for the purpose of Limitation Act.*

82. *In Section 11(6) of the Act, 1996, the words ‘the appointment shall be made, on an application of the party’ are used, thereby signifying that a Section 11 petition is in the nature of an ‘application’ and cannot be considered to be a ‘suit’ for the purposes of the Limitation Act. Even otherwise, ‘application’ under the Limitation Act includes a ‘petition’, thereby leaving no room for any doubt that a Section 11(6) petition is to be treated as an application.*

83. *As a petition under Section 11(6) of the Act, 1996 is not a suit, hence it would not be governed by sub-section (1) of Section 14 of the Limitation Act. Instead, it would be governed by sub-section (2) of Section 14 of the Limitation Act. Some of the conditions required to be fulfilled for seeking the benefit of exclusion under Section 14(2) are materially different from those required under Section 14(1) and are as follows:*

- i.** *Both the earlier and the subsequent proceeding must be civil proceedings;*
- ii.** *Both the earlier and subsequent proceedings must be between the same parties;*



iii. The earlier and subsequent proceeding must be for the same relief;

iv. The earlier proceeding must have failed owing to a defect of jurisdiction of the earlier court or any other cause of a like nature;

v. The earlier proceedings must have been prosecuted in good faith and with due-diligence; and

vi. Both the earlier and the subsequent proceedings are before a court.” (emphasis supplied)

25. In view of the above, the Tribunal has rightly declined the benefit of the aforesaid section to the Petitioner on the ground that the NCLAT dismissed its claim on merits and not on the question of jurisdiction.

26. In M.P Steel Corporation v. Commissioner of Central Excise, (2015) 7 SCC 58, the Apex Court has observed as under:-

“49. The language of Section 14, construed in the light of the object for which the provision has been made, lends itself to such an interpretation. The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bona fide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what



turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant-appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under Explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day i.e. after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety-first day till the final appeal is ultimately dismissed. This example also goes to show that the expression “the time during which the plaintiff has been prosecuting with due diligence another civil proceeding” needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice.”



27. It is apposite to state that an application under Section 9 of the IBC and an application under Section 11(6) of the Act are sought for parallel reliefs and hence fails to meet the parameters set out in the HPCL Bio-Fuels Ltd (supra).

28. This Court now proceeds to see whether the order of the Tribunal is hit by the parameters laid down under Section 34 of the Arbitration & Conciliation Act. The Apex Court in OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417 has explained 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. While explaining the term “in contravention with the Fundamental Policy of Indian Law”, the Apex Court in OPG Power Generation (P) Ltd. (supra) has observed as under:

“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). ”

While explaining the term “in conflict with the most basic notions of morality or justice”, the Apex Court in OPG Power Generation (P) Ltd. (supra) has observed as under:

“57. In Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] this Court held that an arbitral award is in conflict with the public policy of India if it is, inter alia, contrary to “justice and morality”. Explanation 1, inserted by the 2015 Amendment, makes it clear that an award is in conflict with the public policy of India, inter alia, if it conflicts with the “most basic notions of morality or justice”.



58. Justice is the virtue by which the society/court/Tribunal gives a man his due, opposed to injury or wrong. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering justice with mercy, the court must be very conscious, that it has to do justice in exact conformity with some obligatory law, for the reason that human actions are found to be just or unjust on the basis of whether the same are in conformity with, or in opposition to, the law [Union of India v. Ajeet Singh, (2013) 4 SCC 186, para 26 : (2013) 2 SCC (Cri) 347 : (2013) 2 SCC (L&S) 321] . Therefore, in “judicial sense”, justice is nothing more nor less than exact conformity to some obligatory law; and all human actions are either just or unjust as they are in conformity with, or in opposition to, the law [P. Ramanatha Aiyar's Advanced Law Lexicon, 6th Edn., Vol. III, p. 2621.] .

59. But, importantly, the term “legal justice” is not used in Explanation 1, therefore simple conformity or non-conformity with the law is not the test to determine whether an award is in conflict with the public policy of India in terms of Explanation 1. The test is that it must conflict with the most basic notions of justice. For lack of any objective criteria, it is difficult to enumerate the “most basic notions of justice”. More so, justice to one may be injustice to another. This difficulty has been acknowledged by many renowned jurists, as is reflected in the observations of this Court in State (NCT of Delhi) v. Gurdip Singh Uban [State (NCT of Delhi) v. Gurdip Singh Uban, (2000) 7 SCC 296] , extracted below : (SCC p. 310, para 23)

“23. The words “justice” and “injustice”, in our view, are sometimes loosely used and have different meanings to different persons particularly to those arrayed on opposite sides. “One man's justice is



another's injustice" [Ralph Waldo Emerson : Essays (1803-82), First Series, 1841, "Circles"]. Justice Cardozo said: 'The web is entangled and obscure, shot through with a multitude of shades and colors, the skeins irregular and broken. Many hues that seem to be simple, are found, when analysed, to be a complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards or even to describe them have never wholly succeeded.' (Selected Writings of Cardozo, pp. 223-224, Falcon Publications, 1947)."

(emphasis in original)

60. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while this Court was dealing with the concept "public policy of India", in the context of a Section 34 challenge prior to the 2015 Amendment, it was held that an award can be said to be against justice only when it shocks the conscience of the court [See Associate Builders case, (2015) 3 SCC 49, para 36 : (2015) 2 SCC (Civ) 204] . The Court illustrated by stating that where an arbitral award, without recording reasons, awards an amount much more than what the claim is restricted to, it would certainly shock the conscience of the court and render the award vulnerable and liable to be set aside on the ground that it is contrary to justice.

61. In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , which dealt with post the 2015 Amendment scenario, it was observed that an argument to set aside an award on the ground of being in conflict with "most basic notions of justice", can be raised only in very exceptional circumstances, that is,



when the conscience of the court is shocked by infraction of some fundamental principle of justice. Notably, in that case the majority award created a new contract for the parties by applying a unilateral circular, and by substituting a workable formula under the agreement by another, dehors the agreement. This, in the view of the Court, breached the fundamental principles of justice, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered with the other party [See Ssangyong Engg. case, (2019) 15 SCC 131, para 76 : (2020) 2 SCC (Civ) 213] . However, a note of caution was expressed in the judgment by observing that this ground is available only in very exceptional circumstances and under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the court because that would be an entry into the merits of the dispute.

62. In the light of the discussion above, in our view, when we talk about justice being done, it is about rendering, in accord with law, what is right and equitable to one who has suffered a wrong. Justice is the virtue by which the society/court/Tribunal gives a man his due, opposed to injury or wrong. Dispensation of justice in its quality may vary, dependent on person who dispenses it. A trained judicial mind may dispense justice in a manner different from what a person of ordinary prudence would do. This is so, because a trained judicial mind is likely to figure out even minor infractions of law/norms which may escape the attention of a person with ordinary prudence. Therefore, the placement of words “most basic notions” before “of justice” in Explanation 1 has its significance. Notably, at the time when the 2015 Amendment was brought, the existing law with regard



to grounds for setting aside an arbitral award, as interpreted by this Court, was that an arbitral award would be in conflict with public policy of India, if it is contrary to:

- (a) the fundamental policy of Indian law;
- (b) the interest of India;
- (c) justice or morality; and/or is
- (d) patently illegal.

63. As we have already noticed, the object of inserting Explanations 1 and 2 in place of earlier explanation to Section 34(2)(b)(ii) was to limit the scope of interference with an arbitral award, therefore the amendment consciously qualified the term “justice” with “most basic notions” of it. In such circumstances, giving a broad dimension to this category [In conflict with most basic notions of morality or justice.] would be deviating from the legislative intent. In our view, therefore, considering that the concept of justice is open-textured, and notions of justice could evolve with changing needs of the society, it would not be prudent to cull out “the most basic notions of justice”. Suffice it to observe, they [Most basic notions of justice.] ought to be such elementary principles of justice that their violation could be figured out by a prudent member of the public who may, or may not, be judicially trained, which means, that their violation would shock the conscience of a legally trained mind. In other words, this ground would be available to set aside an arbitral award, if the award conflicts with such elementary/fundamental principles of justice that it shocks the conscience of the Court.

64. The other ground is of morality. On the question of morality, in *Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC*



(Civ) 204] , this Court, after referring to the provisions of Section 23 of the Contract Act, 1872; earlier decision of this Court in *Gherulal Parakh v. Mahadeodas Maiya*, 1959 SCC OnLine SC 4 : AIR 1959 SC 781] ; and Indian Contract Act by Pollock and Mulla, held that judicial precedents have confined morality to sexual morality. And if “morality” were to go beyond sexual morality, it would cover such agreements as are not illegal but would not be enforced given the prevailing mores of the day. The Court also clarified that interference on this ground would be only if something shocks the Court's conscience [See *Associate Builders case*, (2015) 3 SCC 49, para 39 : (2015) 2 SCC (Civ) 204] .”

While explaining the term “patent illegality”, the Apex Court in OPG Power Generation (P) Ltd. (supra) has observed as under:

“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 reappraisal of evidence.

66. In *Saw Pipes [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 [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , 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 : (2022) 2 SCC (Civ) 776] .

*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) [“**28. Rules applicable to substance of dispute.**—(1) Where the place of arbitration is situated in India—(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;***(2)*** (3) While deciding and making an award, the Arbitral Tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.”(As substituted by Act 3 of 2016 w.e.f. 23-10-2015)Prior to substitution by Act 3 of 2016, sub-section (3) of Section 28 read as under:“**28. (3)** In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”] 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 [Ssangyong Engg. & Construction Co. Ltd. v. NHAI]*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] 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. case*, (2019) 15 SCC 131, para 37 : (2020) 2 SCC (Civ) 213] . Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See *Ssangyong Engg. case*, (2019) 15 SCC 131, para 38 : (2020) 2 SCC (Civ) 213] .”

29. It is settled law that the Arbitral Tribunal is the master of evidence and this court does not have the jurisdiction to re-appreciate the evidence based on which the impugned award is passed. Regardless, after a perusal of the impugned award, this Court cannot say that conclusion of the Tribunal is so perverse that it would shock the conscience of this Court.

30. As none of the parameters as discussed in OPG Power Generation (P) Ltd. (supra) are attracted herein, interference under Section 34 of the Act is not warranted by this Court.



31. Resultantly, the Petition is dismissed along with pending application(s), if any.

APRIL 23, 2026

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SUBRAMONIUM PRASAD, J