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

Date of decision: 24rd MARCH, 2026

IN THE MATTER OF:

\+ **O.M.P. (COMM) 348/2020**

RAMASETHU INFRASTRUCTURE .....Petitioner

Through: Mr. Gireesh Kumar and Ms. Sneha Mathew, Advocates,

versus

INDIAN RAILWAY WALFARE ORGANISATION .....Respondent

Through: Mr. Sulaiman Mohd Khan, Ms. Taiba Khan, Mr. Gopeshwer Singh Chandel, Mr. Abdul Bari Khan, Ms. Aditi Chaudhary and Mr. Chandra Bose, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The Petitioner seeks to challenge the Award dated 23.12.2014 passed by the Arbitral Tribunal while adjudicating the disputes between the parties under a contract for construction of 140 dwelling units comprising of 20 units of Type A (Type I) (only ground floor), 68 units Type-B (Type II) (only ground floor), 30 units Type C (Type III) (G-FF) and 22 units Type – D (Type IV) (G-FF) Terrace, stair room in Ambattum village near T.I. Cycle factory, Chennai – 600053, including all Civil, internal electrical, plumbing, sewerage, roads, pavements, drains, U/G water tank, sub-station, Boundary wall and gate etc. (*hereinafter referred to as* "**tender work**") at quoted rates or total cost of Rs.16,72,35,219/- on the terms and conditions given in the

tender documents as filled in by the Petitioner (formerly known as M/s APR Projects Private Limited).

2. The facts in brief leading to the filing of the present Petition are as under:

a) The Petitioner herein is a private limited company under the Indian Companies Act, 1956 engaged in the business of development of infrastructure and other allied activities. The Petitioner company was formerly known as M/s APR Projects Private Limited.

b) It is stated that on 29.07.2011, the Respondent herein issued a tender notice for the tender work. Pursuant thereto, on 01.08.2011, the Respondent invited bids for the tender work. The project cost was estimated at Rs.14,50,00,000/- as of 01.08.2011 and the last date for submission of bids was 20.09.2011.

c) It is stated that the Petitioner was the successful bidder of the tender invited by the Respondent for the tender work. The Petitioner quoted Rs.16,72,35,219/- as bid amount and the same was accepted by the Respondent.

d) Thereafter, the Respondent *vide* Letter dated 27.12.2011, accepted the bid of the Petitioner and informed the Petitioner that the completion period of the project is 24 months and also informed that the Earnest Money Deposit ("**EMD**") of Rs.5,00,000/- paid by the Petitioner had been retained and converted into security deposit. Further, the balance amount shall be recovered by the Respondent in terms of Clause 6.2.17 of the tender document.

e) It is stated that the Respondent further requested the Petitioner to submit a bank guarantee for an amount of Rs.83,62,000/- as

performance guarantee before signing the agreement. The same was submitted by the Petitioner on 12.01.2012. Thus, the total amount deposited by the Petitioner with the Respondent totalled to Rs.88,62,000/- (including EMD).

f) It is stated that except the Letter of Intent dated 27.12.2011, no formal agreement was entered into between the parties. Further, in the Letter of Intent, it was stated that the contract document shall be prepared by the General Manager (SZ) IRWO, Chennai and the Petitioner shall be required to sign the document on hearing from him. Thereafter, the Petitioner mobilized administrative staffs in the month of January, 2012 and officially started commencing the tender work at the project site from 24.02.2012.

g) It is stated that immediately after the commencement of the tender work, the local residents started raising objections and obstructing the work at the project site. The Petitioner sent communications dated 05.03.2012 and 05.04.2012 respectively to the Respondent expressing their inability to continue the work due to the hostile attitude of the local public and non-availability of the encumbrance free site. Whereas, the Respondent after taking into account the communications of the Petitioner, met with the District Collector, and was advised that the construction could restart. The same was informed by the Respondent to the Petitioner. In view of this statement, the Petitioner on 07.04.2012 started the earthwork for the foundation of Type ‘D’ units after mobilisation.

h) Material on record indicates that the Ambattur Zone Residents Welfare Association filed W.P.(C) 12929/2012 in the High Court of

Madras challenging the project. The High Court of Madras issued an order directing *status quo* because of which the work came to a standstill.

i) Thereafter, the Petitioner wrote a letter to the Respondent requesting for termination of the contract and also sought for return of the bank guarantees given by the Petitioner which is part of the tender conditions. A further communication was made by the Petitioner to the Respondent stating that they are winding up their establishment at the site.

j) The Respondent did not agree to the said requests and informed the Petitioner that the contract is still alive and asked the Petitioner to remain at site.

k) The Petitioner thereafter invoked the *force majeure* clause in the contract and requested the closure of the contract *vide* communication dated 28.06.2012.

l) Material on record indicates that the Respondent presented a draft contract agreement extending the time period which was not accepted by the Petitioner.

m) The High Court of Madras dismissed the writ petition and vacated the *status quo* order on 03.12.2012. Material on record indicates that the Respondent directed the Petitioner to re-start the project. The Respondent further directed the Petitioner to sign a fresh agreement. The Petitioner was not willing to re-start the work fearing backlash from the local people.

n) Thereafter on 26.12.2012, the Respondent sent a 7 days' notice to the Petitioner to commence work stating that if the Petitioner fails to

commence the work within 7 days, the Respondent would be compelled to rescind the contract and forfeit the performance guarantee and the EMD.

o) Since the Petitioner did not commence the work, the Respondent issued another notice dated 09.01.2013 wherein the Respondent directed the Petitioner to start work in 48 hours in terms of Clause 6.8.3 of the tender document stating that on expiry of 48 hours, the contract would be deemed to be rescinded if the Petitioner does not commence work within 48 hours and the performance guarantee would also be encashed and the EMD given would stand forfeited. This letter was replied to by the Petitioner on 12.01.2013.

p) The contract with the Petitioner was formally terminated by the Respondent and the Petitioner's bank guarantee was invoked. The Respondent awarded the balance work to a new agency.

q) The Respondent appointed the Arbitral Tribunal to adjudicate the disputes between the parties. It is pertinent to mention that since the Arbitral Tribunal has been constituted prior to 2015, the Petitioner has not raised the issue of unilateral appointment of the Arbitrator.

r) The pleadings were completed and the Award has been passed by the Arbitral Tribunal on 23.12.2014. Before the Arbitral Tribunal, the Petitioner had raised the issue of *force majeure* which was dealt by the Arbitral Tribunal in its Award. The claims of the Petitioner were rejected.

s) The counter claims of the Respondent had also been rejected. The Petitioner has approached this Court by filing the instant petition challenging the Award dated 23.12.2014.

3. At the outset it is pertinent to mention that the only issue raised before this Court is as to whether the action of the Petitioner in discontinuing the work and demanding foreclosure of the work and applications was justified or not.

4. The said issue has been dealt with by the Arbitral Tribunal in Paragraph 5 of the Award. The Tribunal after considering the clauses of the contract and hearing the arguments of both sides came to a conclusion that the disturbances at the site cannot be termed as "hostilities" and acts of "public enmity" as provided in Clause 6.2.25 and do not qualify under Clause 6.2.25 as the condition of *force majeure*. It has also been held by the Arbitral Tribunal that the stand of the Respondent rejecting the claim of the Petitioner for foreclosing the contract is justified. The Arbitral Tribunal was of the opinion that the refusal of the Petitioner to start the work is clearly abandonment of work and after waiting for sufficient time, the Respondent proceeded for determination of the contract under Clause 6.8 of the tender conditions. The challenge by the Petitioner in the present petition is primarily on this finding of the Arbitral Tribunal. It is stated that no other arguments had been advanced in the Court.

5. Learned Counsel for the Petitioner strenuously contends that the condition on the site was such that it was impossible for the Petitioner to continue with the work. The local residents were very hostile with the Petitioner for the work being conducted and it was impossible to perform the contract. He also strenuously contends that the Arbitral Tribunal has interpreted the *force majeure* clause in a narrow manner which is absolutely perverse and the same cannot be accepted. He therefore states that the award deserves to be set aside.

6. *Per contra*, learned Counsel for the Respondent, supports the findings of the Arbitral Tribunal.

7. Heard the learned Counsels for the parties and perused the material on record.

8. Clause 6.2.25 of the tender document deals with the *force majeure* clause and reads as under:-

> *"**6.2.25 Force Majeure Clause***
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> *i) If at any time during the continuance of this contract the performance in whole or part by either party of any obligation under this contract shall be prevented or delayed by reasons of any **war, hostility, acts of Public enemy, Civil commotion, sabotage, serious losses or damage by fire, explosion, epidemic, strike, lock-out or acts of God (hereinafter referred to as 'Event')** provided notice of the happening of any such event is given by either party to the other within 10 days from the date of occurrence thereof, neither party shall by reasons of such events be entitled to terminate this contract, nor shall either party have any claim for damages against the other in respect of such non performance or delay in performance, **and works under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist and decision of the engineer as to whether the works have been so resumed or not shall be final and conclusive;** provided further that if the performance, in whole or in part of any obligation under this contract is prevented or delayed by reasons of any such event for a period exceeding 90 days, either party may at its option terminate the contract by giving notice to other party.*
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> *ii) In case of such event for which the Contractor has*

*given timely written notice thereof to the Engineer, Engineer shall make a fair and reasonable extension of time for completion of the contract works. The Contractor shall nevertheless constantly use his endeavour to prevent delays and shall do all that may reasonably be required to the satisfaction of the Engineer.*

*iii) The contractor's right to an extension of time limit for completion of the work in the above mentioned cases is subject to the following procedures.*

*a) That within 10 days after the occurrence of case of FORCE MAJEURE but before the expiry of the stipulated date of completion, he informs the Engineer and IRWO in writing that he considers himself entitled to an extension of the time limit.*

*b) That, he produces evidence of the date of occurrence and the duration of the FORCE MAJEURE in an adequate manner by means of documents drawn up by reasonable authorities.*

*c) That, he proves that the said conditions have actually interfered with the carrying out of the contract.*

*d) That, he proves that the delay incurred is not due to his own action or lack of action.*

*In the cases mentioned above for delays in completion of the works, such failures or delays shall in no way affect or vitiate the contract or alter the character thereof or entitle the contractor to damage or compensation thereof but the contractor shall apply for extension of time at least 45 days before the completion of the contract period and IRWO shall grant such extension or extension of the completion*

*dates as shall appear to the Engineer reasonable in the circumstances and his decision in the matter will be final and binding on the contractor.*

*e) In all other cases, IRWO may grant extension of time with levy of compensation against legitimate of damages as per clause 6.2.25 (a) and (b) and without escalation (i.e. original quoted rates will be paid.)"*
(emphasis supplied)

9. The Arbitral Tribunal has gone into the definition of *force majeure* by referring to various dictionary meanings. The Tribunal has concluded as under:-

*"**5.3.4 Event of "Hostility" and "Public Enmity**-The term hostility is defined in Black's law dictionary as state of enmity between individuals or nations. An act or series of acts displaying antagonism, hostile act or state acts of war. The AT is of the opinion that there was no enmity between the Respondents and the R.W.A. as such. The action of nuisance, threats and disruption of work by R.W.A was not by enmity but motivated simply to scare away the contractor so that no construction could take place on the plot and they continue to use the plot as playground. Even in this the R.W.A did not succeed as the work continued as per Claimant's own admission (Para 5.2.4 above). Hence the event of Hostility is not attracted. Similarly the R.W.A, being a private body, cannot be termed as "Public Enemy". Thus the AT is of the view that the Force Majeure clause is not attracted.*

*5.3.5 Notwithstanding the conclusion that the Force Majeure clause is not attracted, even if it is assumed that the event of Hostility did exist, it lasted only for 40 days i.e. from 22-03-2012 to 05-05-2012. After 05-05-2012 the work was stayed as per the order of H.C. The Claimant's argument of the period of 90 days has*

*been arrived at by adding 40 days of hostility and 50 days (from 05-05-2012 to 25-06-2012) of the Stay order and asked for termination of the contract. For the 50 days period from 05-05-2012 to 25-06-2012 there was neither any hostility nor the period under stay order from the Court is covered as an event under Force Majeure clause.*

*5.3.6 Thus the request of termination of the contract by the Claimant was rightly rejected by the Respondent.*

*5.3.7 The stay by the High Court was vacated on 03-12-2012 and the Respondent advised the Claimant to restart the work. The claimant advised the Respondent, vide its letter dated 24-12-2012, that after examining the matter in detail they have apprehension that the miscreants are planning to attack again for stoppage of work. Hence they regret to inform that they are not in a position to carry out work (Para 5.2.13). The Respondent, treating the refusal to restart work as amounting to abandoning the work by the Claimant, proceeded to determine / terminate the Contract as per Clause 6.8 of the Tender conditions and forfeited the security deposit of Rs. 5 Lakh and P.B.G of Rs. 83.62 Lakh by encashing the same.*

*5.3.8 The AT is of the view that the apprehension of the Claimant was a mere presumption which had no basis, nor based on any evidence or hard facts and the Respondent was within its right to terminate the contract and forfeit the security deposit & encash the Performance Guarantee.*

*5.3.9 In regard to discharge of reciprocal obligation, we uphold the contention of the Respondent that the*

*ownership of land by them was never disputed and that has also been confirmed by the High Court of Chennai when they dismissed the writ petition filed by the RWA. The land was handed over to the Claimant free of all encumbrances for starting the work and when the disturbance took place the Respondent was fully involved in getting it removed with the help Executive & Judicial authorities.*

*53.10 Thus the Claims of the Claimant are rejected and the award is Nil."*

10. It is now well settled that the interpretation of a contract lies predominantly in the domain of the Arbitral Tribunal.

11. The Apex Court in National Highways Authority of India v. ITD Cementation India Limited, **2015 (14) SCC 21,** has held that the interpretation of the terms of the contract is the jurisdiction of the Arbitrator. The relevant portion of the said Judgment reads as under:-

*"**21**. Since it was argued that the Arbitral Tribunal disregarded the material terms of the contract while making its assessment and failed to consider the impact of sub-clauses 70.1 to 70.3(B) and exclusion in Clause 70.8, the law on the point needs to be briefly adverted to. In McDermott International v. Burn Standard Co. Ltd. [(2006) 11 SCC 181] this Court held as under: (SCC pp. 225-26, paras 112-13)*

*"112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract**. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement** and they cannot be said to have misdirected themselves*

*in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. [See Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission [(2003) 8 SCC 593] and D.D. Sharma v. Union of India [(2004) 5 SCC 325] .]*

*113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award."*

*xxx*

***23**. In Sumitomo Heavy Industries Ltd. v. ONGC Ltd. [(2010) 11 SCC 296 : (2010) 4 SCC (Civ) 459] , the Court held: (SCC p. 313, para 43)*

*"43. … The umpire has considered the fact situation and placed a construction on the clauses of the agreement which according to him was the correct one**. One may at the highest say that one would have preferred another construction of Clause 17.3 but that cannot make the award in any way perverse. Nor can one substitute one's own view in such a situation, in place of the one taken by the umpire, which would amount to sitting in appeal.** As held by this Court in Kwality Mfg. Corpn. v. Central Warehousing Corpn. [(2009) 5 SCC 142 : (2009) 2 SCC (Civ) 406] the Court while considering challenge to arbitral award does not sit in appeal over the findings and*

*decision of the arbitrator, which is what the High Court has practically done in this matter.* ***The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the agreement. If he does so, the decision of the umpire has to be accepted as final and binding.****"*

*xxx*

***25****. It is thus well settled that construction of the terms of a contract is primarily for an arbitrator to decide. He is entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the contract. The Court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair-minded or reasonable person could do."* (emphasis supplied)

12. Similarly, the Apex Court in National Highways Authority of India v. Hindustan Construction Company Limited**, 2024 (6) SCC 809,** has held as under:-

*"****16****. Now, we turn to the issue of whether the claim for the construction of embankment forms part of the activity of clearing and grubbing and was not payable as embankment work. We may note here that two expert members of the Arbitral Tribunal held in favour of the respondent on this point, whereas the third member dissented. There cannot be any dispute that as far as the construction of the terms of a contract is concerned, it is for the Arbitral Tribunal to adjudicate upon. If, after considering the material on record, the Arbitral Tribunal takes a particular view on the interpretation of the contract, the Court under*

*Section 34 does not sit in appeal over the findings of the arbitrator."*

13. Applying the said law to the facts of this case, it cannot be said that the interpretation given by the Arbitral Tribunal is so perverse that it shocks the conscience of the Court. The Arbitral Tribunal has applied literal construction of the contract which is permissible. The Arbitral Tribunal has also gone with the facts of the case to hold that the conditions were not such which would come within the definition of *force majeure.* It was also held on the facts that the work was not kept in abeyance beyond 90 days.

14. The parameters of Section 34 of the Arbitration & Conciliation Act have been laid down succinctly by the Apex Court in several judgments. The Apex Court has time and again held that an Award can be challenged only if it is in violation of the principles of natural justice; or it disregards orders of superior courts in India or the binding effect of the judgment of a superior court; or it is violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law. The Award can only be challenged if it is in contravention with the fundamental policy of Indian law; or in conflict with the '*most basic notions of morality*'; or in violation of principles of natural justice. Similarly, in order to bring a challenge under the concept '*most basic notions of morality and justice'*, the Award must have been rendered without following elementary principles of justice and that violation would be such that it will shock the conscience of a legally trained mind. Awards are never set aside just because a different or better view is possible.

15. The Apex Court in DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., **(2024) 6 SCC 357**, has brought out various grounds for interference in the award which reads as under:

> *"34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by "patent illegality" appearing on the face of the award.*
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> *35. In Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:*
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> *(i) based on no evidence;*

*(ii) based on irrelevant material; or*

*(iii) ignores vital evidence.*

*36. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned.*

*37. A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] observed : (SCC pp. 75 & 81, paras 31 & 42)*

> *"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*
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> *(i) a finding is based on no evidence, or*
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> *(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.*

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*42.1. … 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside." (emphasis supplied)*

*38. In Ssangyong Engg. & Construction Co. Ltd. v. NHAI [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , a two-Judge Bench of this Court endorsed the position in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , on the scope for interference with domestic awards, even after the 2015 Amendment : (Ssangyong Engg. & Construction Co. case [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , SCC p. 171, paras 40-41)*

*"40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the*

*arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).*

*41. … Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse." (emphasis supplied)*

*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. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149.] 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 his jurisdiction or violating a fundamental principle of natural justice.*

*40. A judgment setting aside or refusing to set aside an arbitral award under Section 34 is appealable in the exercise of the jurisdiction of the court under Section 37 of the Arbitration Act. It has been clarified by this Court, in a line of precedent, that the jurisdiction under Section 37 of the Arbitration Act is akin to the jurisdiction of the Court under Section 34 and restricted to the same grounds of challenge as Section 34. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14 : (2019) 2 SCC (Civ) 293; Konkan Railway Corpn. Ltd. v. Chenab Bridge Project Undertaking, (2023) 9 SCC 85, para 18 : (2023) 4 SCC (Civ) 458 : 2023 INSC 742, para 14.]*

*41. In the statutory scheme of the Arbitration Act, a recourse to Section 37 is the only appellate remedy available against a decision under Section 34. The Constitution, however, provides the parties with a remedy under Article 136 against a decision rendered in appeal under Section 37. This is the discretionary and exceptional jurisdiction of this Court to grant special leave to appeal. In fact, Section 37(3) of the Arbitration Act expressly clarifies that no second appeal shall lie from an order passed under Section 37, but nothing in the section takes away the constitutional right under Article 136. Therefore, in a sense, there is a third stage at which this Court tests the exercise of jurisdiction by the courts acting under Section 34 and Section 37 of the Arbitration Act.*"

16. In its latest Judgment, the Apex Court in OPG Power Generation Limited v. Enexio Power Cooling Solutions India Private Limited & Anr., **2025 (2) SCC 417**, after taking into account the law on the aforesaid policy

has succinctly laid down as to what is the meaning of the expression '*in contravention with the fundamental policy of India law'* and '*in conflict with the most basic notions of morality and justice'*. The Apex Court in the said Judgment has observed as under:-

> *"**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 [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:*
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> *(a) the fundamental policy of Indian law; and/or*
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> *(b) the interest of India; and/or*
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> *(c) justice or morality.*
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> ***52.** In the judicial pronouncements that followed Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , already discussed above, the domain of what could be considered contrary to the "public policy of India"/"fundamental policy of Indian law" expanded, resulting in much greater interference with arbitral awards than what the lawmakers intended. This led to the 2015 Amendment in the 1996 Act.*
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> ***53.** In Ssangyong Engg. [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , this Court dealt with the effect of the 2015 Amendment. While doing so, it took note of a supplementary report of February 2015 of the Law Commission of India made in the context of the proposed 2015 Amendments. The said supplementary report has been extracted in para 30 of that judgment.*

*The key features of it are summarised below:*

*(a) Mere violation of law of India would not be a violation of public policy in cases of international commercial arbitrations held in India.*

*(b) The proposed 2015 Amendments in the 1996 Act [i.e. in Sections 34(2)(b)(ii) and 48(2)(b) including insertion of sub-section (2-A) in Section 34] were on the assumption that the terms, such as, "fundamental policy of Indian law" or conflict with "most basic notions of morality or justice" would not be widely construed.*

*(c) The power to review an award on merits is contrary to the object of the Act and international practice.*

*(d) The judgment in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] would expand the court's power, contrary to international practice. Hence, a clarification needs to be incorporated to ensure that the term "fundamental policy of Indian law" is narrowly construed. The applicability of Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] principles to public policy will open the floodgates. Hence, Explanation 2 to Section 34(2)(b)(ii) has been proposed.*

***54.*** *After taking note of the supplementary report, the Statement of Objects and Reasons of the 2015 Amendment Act, and the amended provisions of Sections 28, 34 and 48, this Court held : (Ssangyong Engg. case [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , SCC pp. 169-71 & 194, paras 34, 37-41 & 69)*

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

*of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] understanding of this expression. This would necessarily mean that Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be the grounds of challenge of an award, as is contained in para 30 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] .*

*35.-36.****

*37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015 to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter, but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to*

*setting aside an award on the ground of patent illegality.*

*38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.*

*39. To elucidate, para 42.1 ofAssociate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.*

*40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with the matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).*

*41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 ofAssociate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while*

*no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.*

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*69. We therefore hold, following the aforesaid authorities, that in the guise of misinterpretation of the contract, and consequent "errors of jurisdiction", it is not possible to state that the arbitral award would be beyond the scope of submission to arbitration if otherwise the aforesaid misinterpretation (which would include going beyond the terms of the contract), could be said to have been fairly comprehended as "disputes" within the arbitration agreement or which were referred to the decision of the arbitrators as understood by the authorities above. If an arbitrator is alleged to have wandered outside the contract and dealt with matters not allotted to him, this would be a jurisdictional error which could be corrected on the ground of "patent illegality", which, as we have seen, would not apply to international commercial arbitrations that are decided under Part II of the 1996 Act. To bring in by the backdoor grounds relatable to Section 28(3) of the 1996 Act to be matters beyond the scope of submission to arbitration under Section 34(2)(a)(iv) would not be permissible as this ground must be construed narrowly and so construed, must refer only to*

*matters which are beyond the arbitration agreement or beyond the reference to the Arbitral Tribunal."*
*(emphasis supplied)*

***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).*

***Most basic notions of morality and justice***

***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".*

***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.*

***Morality***

***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 [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] ."*

17. The learned Arbitrator has interpreted the *force majeure* clause and has come to the conclusion that the present event on which reliance is placed by the Petitioner will not fall within the four corners of *force majeure* clause. This Court is in agreement with the view taken by the learned Arbitrator. Even otherwise, as repeatedly held by the Apex Court, the interpretation of a contract, predominantly, is in the domain of the Arbitrator. An award cannot be set aside just because another view is possible or sometimes is even more preferable.

18. In the opinion of this Court, the challenge does not fall within the parameters of Section 34 of the Arbitration & Conciliation Act. The fact that another conclusion is possible will not persuade this Court to substitute its own conclusion to the one arrived at by the Arbitral Tribunal unless it is said to be so perverse that it shocks the conscience of the Court.

19. With these observations, the petition is dismissed along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**MARCH 24, 2026**
hsk/JR