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

Date of decision: 19th MARCH, 2026

IN THE MATTER OF:

\+ **O.M.P. (COMM) 404/2020 & I.A. 3167/2020, I.A. 7887/2025, I.A. 28279/2025**

MMTC LIMITED .....Petitioner

Through: Mr. Akhil Sachar, Ms. Sunanda Tulsyan, Ms. Babita Rawat, Ms. Kashish Maheshwari, Advs.

versus

M/S KNOWLEDGE INFRASTRUCTURE & ANR. .....Respondents

Through: Mr. Darpan Wadhwa, Sr. Advocate with Ms.Manali Singhal Adv and Mr Santosh Sachin Adv and Ms. Tarini Khurana Adv

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant petition is filed under Section 34 of the Arbitration & Conciliation Act, 1996, challenging an Award dated 07.11.2019 passed by the Sole Arbitrator in the arbitration proceedings between the Petitioner and the Respondents.

2. Shorn of unnecessary details, the facts leading to the filing of the instant petition are as follows:-

i. Damodar Valley Corporation required supply of non-cooking steam coal for its thermal power stations situated at Koderma, Mejia and Durgapur.

ii. Damodar Valley Corporation entered into an agreement with the Petitioner herein on 27.07.2012 for supply of non-cooking steam coal to its thermal power stations at Koderma, Mejia and

Durgapur. The scope of work under the contract included arranging vessels, stevedoring, handling, storage port clearances, arranging railway rakes etc. at the various power stations for which coal was required.

iii. The Petitioner, thereafter, issued a Notice Inviting Tender (NIT) for the procurement of imported non-cooking steam coal on 'Freight on Road (FOR) Destination Basis' to the thermal power stations of the Damodar Valley Corporation. Respondent No.1 was declared as one of the successful bidders.

iv. The Petitioner, Respondent No.1 and Respondent No.2 entered into a tripartite agreement on 01.08.2012 for the supply of 1.119 metric tonnes of imported non-cooking steam coal to the thermal power stations under the Damodar Valley Corporation.

v. As per the tripartite agreement, the Respondent No. 1 had to arrange for stevedoring, handling, clearing, storage, port clearances, arranging railway rakes, loading, transporting and delivering at the Damodar Valley Corporation Power Stations.

vi. The tripartite agreement provided that all activities such as forwarding and clearing of consignments, customs clearance etc. was in the scope of work of the Respondents. The NIT and the terms and conditions stipulated therein form a part of the tripartite agreement.

vii. It is the case of the Respondents that they have duly performed their obligations under the tripartite agreement in a timely manner. Disputes arose between the parties in the matter of payment. Since the agreement provided that the disputes were to be resolved

through arbitration, an Arbitral Tribunal, comprising of Sole Arbitrator, was constituted. The following claims were raised by the Respondents before the Arbitral Tribunal:-

Claim No.	Claim For	Amount (Rs.)	Findings of Arbitral Tribunal
1.	Contractual payment towards stevedoring, handling, clearing and forwarding charges.	2,51,85,670/-	Allowed and paid by the Respondent
2.	Payment of interest on delayed payment of DCD, fine and penalty.	40,92,89,617/-	Directions have been issued at Paragraphs 129 and 130 of the Arbitral Award which have been challenged by the Respondent.

3.	Railway Surcharges	1,64,38,456/-	Challenged By the Petitioner
4.	Detention charges of adjustment of overloaded wagons	56,93,579/-	Challenged By the Petitioner
5.	Withholding of amount towards entry tax and 'C' Form (Rs. 73,968/- and Rs. 4,63,242/- respectively).	5,37,210/-	Paid by the Petitioner
6.	Interest @ 18 % on items at Sr. No. 2,3,4 and 5.	13,75,18,598/-	Disallowed and Challenged by the Respondent
	Interest on delayed payment to Respondent No.1	28,23,434/-	Disallowed and Challenged by the Respondent
	Interest on delayed payment to Respondent No.2	51,24,515/-	Disallowed and Challenged by the Respondent

viii. The learned Arbitrator awarded a sum of Rs.2,51,85,670/- to the Respondents for contractual payment towards stevedoring, handling, clearing and forwarding charges. The learned Arbitrator awarded a sum of Rs. 1,64,38,456/- towards railway surcharge which was retained by the Petitioner and a sum of Rs. 56,93,579/- towards railway detention charges which were also retained by the

Petitioner. The Petitioner had approached this Court challenging these three amounts i.e., Claim Nos. 1, 3 and 4 which have been awarded against the Petitioner and in favour of the Respondents/Claimants.

3. It is an admitted case of the Petitioner that Claim No.1 which is towards stevedoring, handing, clearing and forwarding charges and Claim No.5 which is for withholding the amount towards entry tax stand already paid and therefore this case is restricted only to Claim No.3 and 4.

4. Claim No.3 is towards railway surcharge for the sum of Rs.1,64,38,456/- and Claim No.4 is for an amount of Rs.56,93,579/- towards detention charges of adjustment of overloaded wagons.

5. It is the case of the Petitioner that under the tripartite agreement, for the entire works performed under the agreement and the NIT, the liability towards payment to railways was on the Respondents.

6. It is the case of the Petitioner that the East Central Railways *vide* its letter dated 23.01.2014 had placed a combined demand of Rs.4,78,17,458/- raised against 165 Railway Rakes on the Petitioner for the month of April to August, 2013 towards surcharge for delay in payment for rakes loaded from Paradip Port to the thermal power station of the Damodar Valley Corporation. Out of the said amount, an amount of Rs.1,64,38,456/- is towards the surcharge demanded by the East Central Railways for 49 Rakes for the coal supplied by the Respondents. It is the case of the Petitioner that the amount has not been paid and therefore, the Petitioner is entitled to withhold the said amount as it was the duty of the Respondents to keep the Petitioner indemnify against its losses.

7. Similarly, it is the case of the Petitioner that a sum of Rs.56,93,579/-

has been withheld towards performance of contractual obligations on account of detention charges of adjustment of overloading of wagons. It is stated that demands have been received from the East Central Railways towards adjustments of overload wagons. It is the case of the Petitioner that these amounts are liable to be paid by the Respondents and since they are not being paid, the said amount has been withheld.

8. The Arbitral Tribunal has allowed the claims stating the amounts have not been claimed by the East Central Railways for five years and therefore, the said amount cannot be retained by the Petitioner till the eternity. It is these findings which are subject matter of challenge in this petition.

9. Pleadings have been completed.

10. Learned Counsel for the Petitioner draws the attention of this Court to the various clauses under the NIT and the tripartite agreement.

11. The tripartite agreement provides that the part of the NIT would be read as a part of the said agreement. Attention of this Court has been drawn at Clause 2.2 and 5.2 of the agreement, which reads as under:-

> *"**2.2 KISPL:-***
> ***KISPL shall arrange stevedoring, handling, storage port clearances, railway rakes, loading transportation and delivery at DVC's power station. All other activities for clearing and forwarding of the consignments like customs clearance, including payment of customs duty/CVD on behalf of MMTC, coordination with discharge port(s), railways and any statutory authorities, all liaison, etc. shall be obligation and also be a part of the scope of work on KISPL*** *Unloading of Coal consignment at Power Station(s) end from Railway Wagons shall be arranged by DVC.*

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5.2 HANDLING CHARGES AND OTHER REIMBURSABLE EXPENSES PAYABLE TO KISPL

MMTC shall pay to KISPL the charges for "Stevedoring, Handling, Clearing & Forwarding charges and Service Charges" per MT, which will remain firm during the currency of the Agreement and other charges like Customs duty, Railway freight (up to the Coal stack yard of DVC's Thermal Power Plants). Insurance charges, Service Tax and other statutory duties and Port charges are payable at actuals".

a) The Price, therefore, shall have two components namely fixed and actuals as under:

A. Fixed

• Stevedoring, Handling, Clearing & Forwarding charges, etc.

B. Actuals
• Customs Duty
• Railway freight (delivered at coal stock yard of DVC Thermal Power Plants)
• Insurance charges
• Port charges
• Service Tax and other statutory duties etc.

(i) The fixed component defined at 'A' above shall remain firm during the entire period of Contract/Agreement, including extension(s), if any.

(ii) KISPL has to ensure that there is no under loading of wagons. However, in case of under loading the charges on proportionate basis shall be recovered

from KISPL's dues. All other charges like Demurrage/ Dispatch, Wharfage. Overloading/Under loading charges etc. as applicable for Ports and Railways shall be to the account of KISPL. Any delay/ detention charges of Rakes at DVC's Power plants shall be to the account of MMTC/DVC. " (emphasis supplied)

12. Learned Counsel for the Petitioner, therefore, states that it is the obligation of the Respondents to pay all the charges due and payable. Learned Counsel for the Petitioner has then taken this Court to various portions of the evidence and contends that the officer of the Respondents has in his deposition acknowledged that it was the liability of the Respondents to pay these amounts. He therefore states that the Petitioner was well within its right to withhold these amounts.

13. Learned Counsel for the Petitioner contends that the Award should be set aside because the Arbitrator's findings violated the fundamental policy of Indian law and basic notions of justice. He contends that regarding Claim No.4 and 5, the learned Arbitrator has provided an unreasoned Award that failed to consider the Petitioner's submissions or the material on record. He states that the Award is contrary to the tripartite agreement between the parties and therefore, violated Section 28 of the Arbitration & Conciliation Act, 1996. He also states that the learned Arbitrator has failed to consider the liability to the Eastern Coast Railways for surcharge and detention which still persists and has not been revoked.

14. *Per contra,* learned Senior Counsel for the Respondents contends that there is no provision in the tripartite agreement which empowers the Petitioner to withhold the amounts as done by the Petitioner and in the

absence of any specific contractual agreement to withhold the amounts, the Petitioner cannot claim to have a right to withhold the said amounts. He states that there are no recovery proceedings which have been initiated by the East Central Railway against the Petitioner and therefore, the finding of the learned Arbitrator that the Petitioner cannot withhold the amount for eternity, does not require any interference.

15. Heard learned Counsel for the parties and perused the material on record.

16. It is pertinent to note that the Award was passed by the Sole Arbitrator on 02.11.2019. In the year 2015, an amendment was made to Section 34 of the Arbitration and Conciliation Act, 1996 wherein Explanation-1 and Explanation-2 were added to Section 34(2)(b). The said amendment was made with an objective of removing any doubt to the test of whether an award is in contravention with the fundamental policy of Indian law or that the challenge is against the very basic notions of morality and justice.

17. The scope and ambit of Section 34 of the Arbitration Act has been crystallized in various judgments of the Apex Court wherein it has been 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.

18. 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:*
>
> *(a) the fundamental policy of Indian law; and/or*
>
> *(b) the interest of India; and/or*
>
> *(c) justice or morality.*
>
> ***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.

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] ."*

19. In the present case, the learned Arbitrator has taken a view that the demands were made in the year 2014 and that the Award was rendered in the year 2019. Five years have passed since the demands were raised and yet, the Railways had not processed the claims raised by the Respondents, particularly Claim No. 3 and 4, thereby withholding the same. The view taken by the learned Arbitrator that the claims cannot be withheld till eternity, cannot come within the four corners of the expression '*in contravention with the fundamental policy of India law'* or '*in conflict with the most basic notions of morality and justice'*.

20. In any event, there is an indemnity given by the Respondents to the Petitioner. What is the nature of indemnity and whether that claim is enforceable or not at the relevant point of time, would be seen as and when a claim is made by the Railways. A mere apprehension that these claims can be adjusted by the Railways in other ongoing contracts with the Petitioner cannot be a valid reason to retain these amounts till eternity. The view of the Arbitrator that these claims cannot be withheld till eternity is a plausible view. Further, if such amounts are deducted then it is always open for the Petitioner to invoke the indemnity given by the Respondents by taking appropriate steps. In view of the fact that the view of the Arbitrator is a plausible view, it does not warrant any interference from this Court under Section 34 of the Arbitration Act and the same is upheld.

21. Resultantly, the present petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 19, 2026/hsk