2026:DHC:2716

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

% ***Judgment reserved on: 16.02.2026***
Judgment pronounced on: 01.04.2026

\+ O.M.P. 110/2009

SUJIT KUMAR JAISWAL .....Petitioner
Through: Ms. Hemlata Rawat, Advocate.

versus

THE MANAGING DIRECTOR DALMIA RESEARCH INTERNATIONAL PVT. LTD .....Respondent
Through: Mr. Subhranshu Padhi, Mr. Aman Varma, Ms. Riya Wasade, Ms. Minal Mishra and Ms. Vandana Bedi, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], seeking to set aside the **Arbitral Award dated 11.08.2008**[2] delivered by the learned sole Arbitrator in arbitral proceedings titled *"Shri Sujit Kumar Jaiswal vs. M/s Dalmia Resorts International Pvt. Ltd. & Ors."*. By the Impugned Award, the learned Arbitrator dismissed the claims of the Petitioner with costs in favor of the Respondent.

[1]Act
[2]Impugned Award

BRIEF FACTS:

2. The Petitioner herein is Sujit Kumar Jaiswal, proprietor of Alark Orient Tibet Teppich Exports, having its place of business in the District of Sant Ravi Das Nagar, Uttar Pradesh.

3. The Respondent herein, *i.e.*, Dalmia Resorts International Pvt. Ltd., through its Managing Director, is a company incorporated under the Companies Act, 1956, having its registered office in New Delhi.

4. The Petitioner's case is that, pursuant to negotiations held with Mr. Anuroadh Srivastava, who was serving as the Area Sales Representative for the Kanpur region of the Respondent, the Petitioner entered into an **Agreement dated 31.07.1996**[3] with the Respondent. Under the terms of the said Agreement, the Respondent undertook to extend to the Petitioner a facility involving self-renting and the allotment of vacation ownership units in resorts operated by the Respondent, including, *inter alia*, Dalmia Resorts at Mussoorie and Goa, along with other locations across India. In consideration of the same, the Petitioner agreed to make payment of specified amounts, upon which the Petitioner was to receive assured rental returns from the allotted units, to be disbursed by the Respondent through cheques or bank drafts.

5. As per the Petitioner, the said Agreement further contemplated a buy-back facility, whereby the Respondent undertook the repurchase of the premises allotted as vacation ownership after a period of two years at a discount of 10 percent of the prevailing market rates, if certain stipulated conditions were not fulfilled by the Respondent.

[3]Agreement

6. It is also the case of the Petitioner that the Agreement envisaged an additional incentive, *namely*, that upon booking 52 weeks of ownership, the Petitioner would be entitled to a bonus period of seven weeks, over and above the ownership rights contemplated under the Agreement.

7. Pursuant to the aforesaid Agreement, the Petitioner is stated to have issued seven cheques in favour of the Respondent, aggregating to a total sum of Rs. 24,77,000/-. It is further the case of the Petitioner that, in accordance with the terms and understanding governing the transaction, the said cheques were to be subsequently substituted with bank drafts.

8. According to the Petitioner, despite having made the aforesaid payments, no benefits of vacation ownership were ever extended to him in terms of the Agreement. However, three of the cheques issued by the Petitioner, each amounting to Rs. 3,56,550/-, were encashed by the Respondent.

9. Consequently, the Petitioner, aggrieved by the aforestated conduct, breach of the Agreement and unresponsiveness of the official(s) of the Respondent for allotment of vacation ownership units, visited the General Manager (Finance) of the Respondent, wherein the Petitioner was told that the Area Sales Representative had no powers to enter into any Agreement as entered into by the Petitioner.

10. By this stage, as the Petitioner contends, he had already paid a total sum of Rs. 17,63,900/- to the Respondent company. In view of the above development, the Petitioner requested the said General Manager to adjust the amounts already paid and to allot to him 21

deluxe apartments at Mussoorie and 11 executive apartments at Goa during the peak season. Pursuant thereto, the Petitioner paid an additional amount of Rs. 33,100/-.

11. It is the Petitioner's case that even after making this additional payment and after the earlier payments were adjusted, no vacation ownership units were allotted to him, contrary to the assurances allegedly extended by the Respondent.

12. Thereafter, as the Petitioner states, he addressed several communications to the Respondent, requesting allotment of the agreed vacation ownership units, and in the alternative, sought a refund of the amounts paid along with interest at the rate of 24% per annum.

13. It is stated that, eventually, after various communications, the Petitioner received two letters, dated 22.04.1998 and 30.04.1998 respectively, by way of which the Respondent intimated their inability to provide the vacation ownership units to the Petitioner.

14. Consequently, the Petitioner is stated to have issued a legal notice dated 07.08.1998, followed by a reminder letter dated 16.10.1998, calling upon the Respondent to refund the amounts deposited by him along with interest and other charges. However, these communications allegedly remained unacknowledged by the Respondent.

15. Thereafter, the Petitioner is stated to have issued another legal notice dated 31.08.1999, demanding refund of Rs. 17,97,000/- along with interest at the rate of 24% per annum. The said notice was replied to by the Respondent *vide* letter dated 24.09.1999, though according to the Petitioner, the response did not address the substantive grievances raised by him.

16. Aggrieved by the said conduct, the Petitioner filed a Company Petition bearing No. 46/2000 before this Court seeking winding up of the Respondent-Company. However, the said Petition was disposed of *vide* the Order dated 23.08.2004, by appointing an arbitrator for adjudication of the disputes between the parties.

17. Before the learned Arbitrator, the Petitioner raised the following claims:

Refund of the principal amount paid to the Respondent	Rs. 17,97,000/-
Loss of rental income calculated on the basis of the Goa and Mussoorie units	Rs. 49,92,590/-
Cumulative interest calculated on the said rental income till 15.11.2006	Rs.1,24,36,156/-
Litigation expenses incurred before earlier counsel	Rs. 9,20,000/-
Arbitrator's fees	Rs. 50,000/-
Legal fees paid to present counsel	Rs. 20,000/-
Miscellaneous litigation expenses	Rs. 1,00,000/-
Compensation for mental agony and harassment	Rs. 18,00,000/-

18. After pleadings, the learned Arbitrator framed 11 issues to adjudicate upon the disputes between the parties, which are reproduced herein under for ready reference:

> "…….
> i. Whether the respondent has not allotted the units of Dalmia Resorts to the Claimant despite the Claimant having paid Rs.17,97,000/- as initial amount - OPP
> ii. Whether the claimant has been deprived of the facilities and benefits for which he was entitled from Dalmia Resorts International as per the agreement - OPP
> iii. Whether the claimant and respondents have executed any

purchase agreement or not - OPP

iv. Whether the claimant is guilty of any misrepresentation? OPD
v. Whether the respondent is guilty of non-fulfilment of terms of "Vacation Owner's Agreement" - OPP
vi. Whether the claimant is entitled for the alleged refund of the amount-OPP
vii. Whether the alleged agreement dated 31.07.1996 is binding on the Respondent-OPP
viii. Whether the claimant is entitled for any amounts claimed for alleged loss suffered and mental torture?-OPP
ix. Whether the respondent has not been fair and has been malicious in realising the money from the claimant?-OPP
x. Whether claimant should be compensated as claimed-OPP
xi. Whether the claimants claim is barred by limitation-OPD."

19. After weighing the evidence, especially the rival versions of alledged Agreements of both the parties, and hearing the parties, the learned Arbitrator passed the Impugned Arbitral Award, dismissing the claims of the Petitioner with costs in favor of the Respondent.

20. It is the case of the Petitioner that the learned Arbitrator, while deciding upon the issues as framed by him, did not accord any sound reasoning to the conclusions arrived at by him, therefore rendering the award liable to be set aside on the grounds of being contrary to law and public policy.

21. In the aforesaid factual backdrop, the learned counsel appearing for the parties advanced their respective submissions assailing as well as defending the Impugned Award. The principal challenge raised by the Petitioner is that the learned Arbitrator failed to properly appreciate the material evidence placed on record and proceeded to reject the Agreement relied upon by the Petitioner without furnishing cogent reasons, while simultaneously accepting the Respondent's version of the Agreement as the governing contractual document

between the parties. It is in this context that the rival contentions of the parties are required to be examined.

CONTENTIONS ON BEHALF OF THE PETITIONER:

22. Learned counsel appearing on behalf of the Petitioner would, at the outset, submit that although several grounds have been urged in the pleadings assailing the Impugned Award, the Petitioner confines the present challenge primarily to the ground that the Impugned Award suffers from perversity in appreciation of evidence, rendering it unsustainable in law and liable to be set aside under Section 34 of the Act.

23. Learned counsel for the Petitioner would contend that the learned Arbitrator failed to consider and appreciate one of the most material documents placed on record by the Petitioner, *namely*, the Agreement dated 31.07.1996, which formed the very foundation of the Petitioner's claim. It would be submitted that the learned Arbitrator discarded the said Agreement without undertaking any meaningful evaluation of the document or the surrounding circumstances and without assigning cogent reasons for rejecting the same.

24. Learned counsel for the Petitioner, in this regard, would draw the attention of this Court to Paragraph No. 18 of the Impugned Award, wherein the learned Arbitrator has considered the rival versions of the Vacation Ownership Agreement relied upon by the parties. Upon such consideration, the learned Arbitrator rejected the Agreement relied upon by the Petitioner and accepted the Agreement filed by the Respondent, to be the operative and binding Agreement,

governing the relationship between the parties. The relevant paragraph, being Paragraph No. 18 of the Impugned Award, is reproduced herein below:

> "**18.** I have carefully considered the averments of the parties on this aspect of the matter. The document Annexure A-4 filed by the Claimant is supposed to run into 2 pages, but the second page of this document has not been filed by the Claimant although it is specifically written at the end of the page 1 that the document is continued on page 2. Further the Vacation Ownership agreement filed by the Respondent as Exhibit RW 1/1 to Exhibit RW 1/4 is a comprehensive document and bears the signatures of the Claimant at all material places. In clause 7 G, it is of Ex. RW 1/1 it is stated that the Vacation Owner agrees that all his rights and liabilities connected with the Vacation Ownership are all contained in this Agreement and that this Agreement supersedes of all earlier agreements, understandings, representation, arrangements, correspondence etc., between the parties and that the Vacation Owner further represents that he has neither relied upon any other/additional information nor has relied upon any other/further representation/promises made by the employee(s)/agent(s) of the Respondent with respect to the Vacation Ownership and/or the rights and liabilities of the Vacation Owner. It is further clarified that no Respondent's employee/agent is authorized to make any representation/promises beyond what is stated in that Agreement. In the event of this provision in this Vacation Ownership Agreement it is difficult to proceed on the basis of the alleged agreement Annexure A-4 filed by the Claimant and any Claim based on annexure A-4 is liable to be rejected."

25. Learned counsel would submit that the reasoning adopted by the learned Arbitrator, in rejecting the Agreement relied upon by the Petitioner, is wholly inadequate and unsustainable. It would be urged that the learned Arbitrator, instead of undertaking a reasoned examination of the rival documents placed before him, summarily discarded the Petitioner's Agreement and proceeded to accept the Respondent's Agreement to be the binding contractual document between the parties, thereby discarding material evidence which is perversity and, in turn, against the fundamental policy of India.

26. It would further be contended that the learned Arbitrator appears to have placed reliance solely on Clause 7(G) of the Agreement relied upon by the Respondent, which stipulates that the said Agreement supersedes all prior Agreements, understandings, representations or arrangements between the parties.

27. Learned counsel for the Petitioner would submit that the reliance placed on the said clause by the learned Arbitrator is fundamentally flawed. The very question which arose for determination before the learned Arbitrator was as to which of the two competing Agreements constituted the binding contractual arrangement between the parties. By relying upon a clause contained in the Respondent's version of the Agreement to reject the Petitioner's Agreement, the learned Arbitrator effectively presumed the correctness and validity of the Respondent's Agreement, without independently determining whether the same was indeed the governing agreement between the parties.

28. It would therefore be contended by the learned counsel for the Petitioner that the rejection of the Petitioner's Agreement, solely on the basis of a clause contained in the Respondent's versions of Agreement itself, demonstrates a non-application of mind and renders the conclusion of the learned Arbitrator perverse and legally unsustainable.

29. Learned counsel for the Petitioner would further submit that the arbitral proceedings themselves were conducted in a manner which deprived the Petitioner of a fair opportunity to establish his case. In this regard, reliance is placed on the Order dated 25.10.2007, passed by the learned Arbitrator during the course of the arbitral proceedings.

30. It would be contended that by the said Order, three Applications filed by the Petitioner were taken up for consideration by the learned Arbitrator. One of the said Applications sought production of certain documents from the Respondent, including the purchase agreement, allotment advice and offer documents, while the other Application sought production of three individuals, who were allegedly in the employment of the Respondent and, who were stated to be material witnesses in the matter.

31. Learned counsel for the Petitoner would submit that the learned Arbitrator dismissed the aforesaid Applications in a summary manner *vide* Order dated 25.10.2007 and without assigning any cogent or intelligible reasoning. The relevant portion of the said Order reads as follows:

> "**2.** As regards the application of the claimant asking the respondent to produce the following 3 documents is concerned the same is also frivolous as all these documents are supposed to be with the claimant also
> a) Purchase agreement
> b) Allotment advice
> c) Offer documents
> **3.** The 3rd application of the claimant for requiring respondent to produce the 3 persons as witnesses allegedly in the employment of the respondent company. The respondent states that they are no longer in the employment of the company and as such they are not in a position produce them. This application is also therefore, dismissed."

32. Learned counsel for the Petitioner would, in this backdrop, submit that the rejection of the aforesaid Applications effectively prevented the Petitioner from producing relevant documentary evidence and the witness testimony necessary for substantiating the Agreement relied upon by him. It would therefore be urged that the learned Arbitrator curtailed the Petitioner's opportunity to place

material evidence on record and establish the authenticity and enforceability of the Agreement relied upon by him.

33. Learned counsel for the Petitioner would further submit that during the arbitral proceedings, the opportunity for cross-examination was dispensed with by consent of both the parties. Consequently, none of the rival Agreements, relied upon by the parties, were proved through oral testimony or by examination of any witness. In such circumstances, both documents were required to be assessed by the learned Arbitrator only on the basis of the material available on record and the surrounding circumstances.

34. In this light, learned counsel would submit that despite standing on identical evidentiary footing, the learned Arbitrator proceeded to accept the Agreement relied upon by the Respondent, while rejecting the Agreement relied upon by the Petitioner. In this light, it would be contended that such selective acceptance of one document and rejection of the other, without any supporting evidence or adequate reasoning, amounts to a manifestly arbitrary exercise of adjudicatory discretion, thereby rendering the conclusions, reached at by the learned Arbitrator in the Impugned Award, perverse and unsustainable in law.

35. Learned counsel for the Petitioner would therefore submit that the cumulative effect of the aforesaid circumstances clearly demonstrates that the learned Arbitrator ignored material evidence, rejected the Petitioner's Agreement without proper reasoning, and relied upon the Respondent's Agreement without subjecting the same to a meaningful evidentiary scrutiny.

36. Learned counsel for the Petitioner, while concluding his arguments, would submit that the Impugned Award suffers from perversity and violation of principles of natural justice, which is against the fundamental policy of India, and thus goes to the very root of the arbitral proceedings. In light of the foregoing grounds, it would therefore be urged that the Impugned Award is liable to be set aside under Section 34 of the Act.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

37. ***Per contra***, the learned counsel appearing on behalf of the Respondent would submit that the challenge mounted by the Petitioner is wholly misconceived and falls far short of the narrow parameters of interference contemplated under Section 34 of the Act. It would be contended that the Impugned Award represents a reasoned determination, rendered upon appreciation of the material placed before the learned Arbitrator, and does not suffer from any perversity, illegality or infirmity warranting interference by this Court.

38. Learned counsel for the Respondent would submit that the principal grievance of the Petitioner pertains to the finding recorded by the learned Arbitrator regarding the Vacation Ownership Agreement. However, it would be contended that the learned Arbitrator, after examining both the documents placed before him, has returned a well-reasoned finding that the document relied upon by the Petitioner could not be accepted as the binding agreement governing the relationship between the parties, as the signatory to the said Agreement was not authorised to enter into any such Agreement.

39. Learned counsel for the Respondent would further submit that the Agreement produced by the Petitioner, appended to the Statement of Claims as Annexure A-4, was admittedly incomplete inasmuch as the second page of the document was never produced before the learned Arbitrator, despite the first page itself clearly recording that the Agreement continued on the subsequent page. In contrast, the Respondent had placed on record the Vacation Ownership Agreement (marked as Ex. RW-1/1 to Ex. RW-1/4 of the arbitral proceedings), which was a comprehensive and complete document duly bearing the signatures of the Petitioner at all material places. Learned counsel would therefore contend that the learned Arbitrator was fully justified in placing reliance upon a complete and duly executed Agreement produced by the Respondent rather than an incomplete document relied upon by the Petitioner.

40. Learned counsel would further submit that the said Vacation Ownership Agreement expressly contained Clause 7(G), which unequivocally stipulated that the Agreement constituted the entire understanding between the parties and superseded all prior Agreements, negotiations, representations or arrangements. The clause further clarified that the vacation owner had not relied upon any representation made by any employee or agent of the Respondent beyond what was recorded in the Agreement itself. In view of this express contractual stipulation, it would be contended that the learned Arbitrator rightly rejected any claim founded upon the alleged Agreement produced and relied by the Petitioner.

41. Learned counsel for the Respondent would further submit that the contention of the Petitioner that the learned Arbitrator did not

provide reasons for rejecting the Petitioner's version of the Agreement is factually incorrect. It would be submitted that the Impugned Award clearly records the reasons which weighed with the learned Arbitrator, including the incomplete nature of the document produced by the Petitioner and the existence of a duly executed and comprehensive Agreement placed on record by the Respondent.

42. It would further be submitted that the learned Arbitrator, while exercising his adjudicatory discretion, is the final authority on the appreciation of evidence and interpretation of documents placed before him. According to the Respondent, once the learned Arbitrator examined the rival documents and arrived at a plausible conclusion regarding the binding agreement between the parties, the same cannot be interfered with merely because the Petitioner seeks to advance a different interpretation of the evidence on record.

43. With regard to the grievance raised by the Petitioner concerning the Order dated 25.10.2007, whereby certain Applications filed by the Petitioner were dismissed, learned counsel for the Respondent would submit that the said Applications were rightly rejected by the learned Arbitrator as they were unnecessary and devoid of merit. It would be submitted that the documents sought to be produced were not exclusively within the possession of the Respondent and could equally have been produced by the Petitioner himself.

44. Learned counsel would therefore contend that the Petitioner's attempt to portray the arbitral proceedings as being unfair or in violation of the principles of natural justice is wholly unfounded. According to the Respondent, the arbitral proceedings were conducted

strictly in accordance with law and both parties were afforded adequate and reasonable opportunity to present their respective cases.

45. Learned counsel for the Respondent would, while concluding his submissions, submit that the Petitioner is essentially inviting this Court to re-appreciate the evidence and re-assess the findings of fact recorded by the learned Arbitrator, which is impermissible in proceedings under Section 34 of the Act. It would be urged that the conclusions reached at by the learned Arbitrator represent a plausible view based on the material available on record and cannot be characterised as perverse merely because the Petitioner may hold a different interpretation of the evidence.

46. In light of the foregoing submissions, learned counsel for the Respondent would submit that the Impugned Award does not suffer from any perversity or illegality going to the root of the matter and therefore does not warrant interference under Section 34 of the Act. The present Petition, it would be submitted, is devoid of merit and liable to be dismissed.

ANALYSIS:

47. This Court has heard the learned counsel appearing for both parties and, with their able assistance, perused the material available on record.

48. At the outset, it is apposite to note that this Court is conscious of the limited scope of its jurisdiction while examining an objection Petition under Section 34 of the Act. The contours of judicial intervention in such proceedings have been authoritatively delineated

and settled by a consistent and evolving line of precedents of the Hon'ble Supreme Court.

49. In this regard, a three-Judge Bench of the Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[4], after an exhaustive consideration of a catena of earlier decisions, while dealing with the grounds of conflict with the public policy of India, perversity and patent illegality, the grounds which have also been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

> *"**Relevant legal principles governing a challenge to an arbitral award***
> **30.** Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) is concerned, it has two sub-clauses, namely, (*i*) and (*ii*). Sub-clause (*i*) of clause (*b*) is not relevant to the controversy in hand. Sub-clause (*ii*) of clause (*b*) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.
> ***Public policy***
> **31.** "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.
> *****
> **35.** In ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, a three-Judge Bench of this Court observed that the doctrine of public policy is somewhat open—textured and flexible. By citing earlier decisions, it was observed that there are two conflicting positions which are referred to as the "narrow view" and the "broad view". According to the narrow view, courts

[4] (2025) 2 SCC 417

cannot create new heads of public policy whereas the broad view countenances judicial law making in these areas. In the field of private international law, it was pointed out, courts refuse to apply a rule of foreign law or recognise a foreign judgment or a foreign arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked or enforced. However, it was clarified, a distinction is to be drawn while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. It was observed that the application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. It was held that contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required.

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

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

> (*a*) that in every determination that affects the rights of a citizen or leads to any civil consequences, the court or authority or quasi-judicial body must adopt a judicial approach, that is, it must act bona fide and deal with the subject in a fair, reasonable and objective manner and not actuated by any extraneous consideration;
>
> (*b*) that while determining the rights and obligations of parties the court or Tribunal or authority must act in accordance with the principles of natural justice and must apply its mind to the attendant facts and circumstances while taking a view one way or the other; and
>
> (*c*) that its decision must not be perverse or so irrational that no reasonable person would have arrived at the same.

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

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

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

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

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

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

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

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

The 2015 Amendment in Sections 34 and 48

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

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

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly

substituted/added Explanations would apply [***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

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

47. The 2015 Amendment by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

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

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

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

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

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

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

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

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

(*c*) "patent illegality" have been construed.

In contravention with the fundamental policy of Indian law

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

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

(*b*) the interest of India; and/or

(*c*) justice or morality.

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

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

(*a*) violation of the principles of natural justice;

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

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

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

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Patent illegality

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

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

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

(*a*) substantive provisions of law of India;

(*b*) provisions of the 1996 Act; and

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

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

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

Perversity as a ground of challenge

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

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

> (*i*) a finding is based on no evidence; or
>
> (*ii*) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
>
> (*iii*) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

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

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

72. The tests laid down in ***Associate Builders* v. *DDA*, (2015) 3 SCC 49** to determine perversity were followed in ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** and later approved by a three-Judge Bench of this Court in ***Patel Engg. Ltd.* v. *North Eastern Electric Power Corpn. Ltd.*, (2020) 7 SCC 167**.

73. In a recent three-Judge Bench decision of this Court in ***DMRC Ltd.* v. *Delhi Airport Metro Express (P) Ltd.*, (2024) 6 SCC 357**,

the ground of patent illegality/perversity was delineated in the following terms: (SCC p. 376, para 39)

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

Scope of interference with an arbitral award

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

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

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

84. An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be

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

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

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

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

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

(*a*) it must be reasonable and equitable;

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

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

(*d*) it must be capable of clear expression;

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

(emphasis supplied)

50. In view of the above extract, it stands clearly established that an arbitral award which proceeds on findings unsupported by evidence, or which ignores vital evidence placed before the arbitral tribunal, is liable to be set aside and that a finding rendered without considering material evidence on record would amount to perversity and would attract judicial interference under Section 34 of the Act.

51. In the present case, the central controversy before the learned Arbitrator concerned the authenticity and binding nature of the Vacation Ownership Agreement dated 31.07.1996, relied upon by the Petitioner. The Petitioner's claim was founded upon the said Agreement, whereas the Respondent relied upon a different version of the Vacation Ownership Agreement.

52. A perusal of Paragraph No. 18 of the Impugned Award would reveal that the learned Arbitrator rejected the Agreement relied upon by the Petitioner primarily on the ground that the said document produced by the Petitioner was incomplete, inasmuch as the second page of the document had not been produced, and further proceeded to accept the Agreement produced by the Respondent as to be the operative contractual document governing the relationship between the parties.

53. In the considered view of this Court, such reasoning does not withstand scrutiny. The rejection of the Petitioner's Agreement was undertaken without any meaningful examination of the circumstances surrounding its execution or the role of the individuals through whom the transaction was allegedly concluded.

54. The Petitioner's case before the learned Arbitrator was that the Agreement was entered into pursuant to negotiations with the Area Sales Representative, who also produced a letter of authority before the Petitioner to prove his *bona fide* authority to enter into the said Agreement. Further, the Respondent, in their Statement of Defence, before the learned Arbitrator, never denied the existence or execution of the said Agreement, rather it merely denied its operation and effect on the ground that their employee, with whom the Petitioner entered into the Agreement, on behalf of the Respondent, was not 'authorised' to enter into such an Agreement.

55. In this context, the '*Doctrine of Indoor Management'* also assumes relevance. The said doctrine protects third parties dealing with a company in good faith by entitling them to presume that the internal requirements of the company have been duly complied with. Therefore, where an individual represents himself as an authorised representative of a company and enters into a transaction on its behalf, a third party dealing with such individual cannot ordinarily be expected to inquire into the internal authorisation of the company. Consequently, the Respondent cannot avoid the consequences of the Agreement merely by asserting that its employee lacked internal authority to enter into the same.

56. The record of the arbitral proceedings indicates that the Petitioner had, in fact, made an Application seeking the summoning of certain individuals allegedly in employement of the Respondent and involved in the transaction in question. These individuals, including Mr. Anuroadh Srivastava, an employee of the Respondent during the relevant time, who, according to the Respondent, lacked the authority

to execute the Agreement relied upon, were stated to be signatories to the said Agreement. However, the learned Arbitrator declined this request, primarily on the ground that the said individuals were no longer in the employment of the Respondent.

57. In the opinion of this Court, the mere fact that such individuals were no longer in the employment of the Respondent could not have constituted a valid ground for refusing their examination, particularly when their testimony had a direct bearing on the authenticity of the disputed Agreement.

58. The adjudication of the dispute before the learned Arbitrator primarily hinged upon the question of the authenticity and validity of the Agreement and the authority of the representative through whom the transaction was concluded. The refusal to facilitate the examination of such witnesses, who are central to the dispute, effectively deprived the Petitioner of the opportunity to establish the circumstances under which the Agreement came to be executed.

59. It is a settled and fundamental principle of Arbitration law that notwithstanding the procedural flexibility accorded to an arbitral tribunal, such flexibility cannot be exercised in a manner that compromises the core tenets of fairness and justice. The conduct of arbitral proceedings must, at all times, remain aligned with the basic principles of natural justice, which constitute the bedrock of any adjudicatory process. These principles, *inter alia*, require that no party be condemned unheard and that the decision-making process be fair, transparent, and free from arbitrariness.

60. In this context, it is apposite to refer to Section 18 of the Act, which statutorily embodies these foundational requirements. The

provision mandates that the parties shall be treated with equality and that each party shall be afforded a full and fair opportunity to present its case. This obligation is not merely procedural in nature but goes to the very root of the legitimacy of the arbitral process. Any deviation from these principles, whether by denial of adequate opportunity or unequal treatment, would vitiate the proceedings and render the resultant award vulnerable to challenge. Section 18 of the Act is reproduced herein under for ready reference:

> "**Section 18**. **Equal treatment of parties. -**
> The parties shall be treated with equality and each party shall be given a full opportunity to present his case."

61. In the present case, the refusal of the learned Arbitrator to permit the examination of the individuals who were directly party to the said disputed Agreement, entered on behalf of the Respondent, effectively curtailed the Petitioner's ability to substantiate the circumstances in which the Agreement relied upon by him came to be executed. Such a course of action is inconsistent with the statutory mandate embodied in Section 18 of the Act and consequently undermines the fairness of the arbitral process.

62. Further, at this juncture, this Court deems it apposite to advert to Section 34(2)(a)(iii) of the Act. The relevant portion of Section 34 of the Act is reproduced herein under:

> **"Section 34. Application for setting aside arbitral award**. -
> (*1*) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (*2*) and sub-section (*3*).
> (*2*) An arbitral award may be set aside by the Court only if—
> (*a*) the party making the application establishes on the basis of the record of the arbitral tribunal that —
> (*i*) a party was under some incapacity, or

(*ii*) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(*iii*) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

….."

(emphasis supplied)

63. A perusal of the same makes it apparent that even after having a circumscribed scope, an arbitral award may be set aside if the party making the application under Section 34 establishes that it "*was otherwise unable to present his case*". The said expression has been judicially interpreted to include situations where the conduct of the arbitral proceedings effectively deprives a party of a meaningful opportunity to present material evidence in support of its case.

64. Where a party seeks production of witnesses, whose testimony bears directly upon the core issue in dispute, a summary and unintelligible rejection of such request, without any sound reasoning, would result in the party being effectively disabled from substantiating its case. Such a situation would fall squarely within the ambit of Section 34(2)(a)(iii) of the Act and would, therefore, call for the setting aside of the Arbitral Award rendered as a result of such proceedings.

65. In the present case, once the learned Arbitrator declined the Petitioner's request to summon the very individuals through whom the transaction was allegedly negotiated and concluded, the Petitioner was effectively precluded from substantiating its case regarding the authenticity, validity, and binding nature of the Agreement. The

refusal to permit the examination of such material witnesses, who were directly connected with the execution and circumstances surrounding the Agreement, resulted in a situation where a crucial evidentiary avenue was foreclosed. Consequently, the adjudication of the dispute proceeded in the absence of oral testimony that could have materially assisted in ascertaining the true nature of the transaction and the respective roles of the parties involved.

66. Further, it is an admitted position, as recorded in the Impugned Award itself, that both parties dispensed with their right to cross-examination. As a result, neither the competing rival Agreements nor their respective signatories were subjected to any form of cross-examination. In such a scenario, where the evidentiary record remained untested, the selective reliance by the learned Arbitrator on one Agreement while discarding the other, without the benefit of cross-examination and in the absence of cogent, reasoned justification, assumes serious significance. Such an approach not only undermines the evidentiary rigor expected in arbitral adjudication but also renders the findings susceptible to being characterized as perverse, arbitrary, and contrary to the fundamental policy of Indian law.

67. More significantly, the learned Arbitrator relied upon Clause 7(G) of the Agreement produced by the Respondent to conclude that all earlier representations or agreements stood superseded. This approach, however, suffers from a fundamental infirmity. The very question before the learned Arbitrator was which of the two documents constituted the binding Agreement between the parties. By relying upon a clause contained in the Respondent's Agreement to reject the Petitioner's Agreement without first independently

determining the authenticity and binding nature of the respective documents, the learned Arbitrator effectively assumed the correctness of the Respondent's document at the outset.

68. Such reasoning, in the opinion of this Court, amounts to a circular determination, where the Respondent's Agreement was treated as binding in order to reject the Petitioner's Agreement, and the Petitioner's Agreement was rejected precisely because the Respondent's Agreement purported to supersede all earlier arrangements. This cannot be regarded as a rational or legally sustainable evaluation of the dispute.

69. The arbitral proceedings further reveal that the Petitioner had indeed filed an Application seeking production of certain documents, including the purchase agreement and related documents, as well as an Application seeking the presence of certain individuals who were allegedly associated with the Respondent. These applications were dismissed by the learned Arbitrator *vide* Order dated 25.10.2007. The said Applications were also rejected in a summary manner, without any substantive reasoning.

70. The learned Arbitrator observed that the documents sought were "*supposed to be with the claimant also*" and that the witnesses sought to be examined were "*no longer in the employment of the Respondent*". However, the learned Arbitrator did not examine whether the documents sought were material for adjudication of the dispute, nor did the learned Arbitrator consider whether the production of the said witnesses was necessary for determining the authenticity of the rival Agreements relied upon by the parties.

71. An arbitral tribunal is undoubtedly vested with procedural flexibility. Nevertheless, the proceedings must be conducted in a manner consistent with the principles of natural justice, including the requirement that each party be afforded a fair and reasonable opportunity to present its case.

72. The rejection of the Petitioner's Applications, seeking production of documents and examination of witnesses, coupled with the summary rejection of the Agreement relied upon by the Petitioner, materially impaired the Petitioner's ability to substantiate his case.

73. The cumulative effect of these circumstances leads this Court to conclude that the learned Arbitrator failed to properly evaluate the material evidence placed on record and rejected the Petitioner's Agreement without adequate reasoning. The findings recorded in the Impugned Award therefore suffer from perversity in appreciation of evidence and violation of the fundamental policy of Indian law.

74. The law governing arbitral review under Section 34 of the Act strikes a delicate balance between judicial restraint and judicial correction. While courts must ordinarily defer to the autonomy of arbitral adjudication and refrain from substituting their own view on the merits of the dispute, such deference cannot extend to sustaining an award that proceeds on a fundamentally flawed evaluative process. Where the arbitral tribunal disregards material evidence, adopts a circular line of reasoning, or arrives at conclusions unsupported by the record, the resulting determination ceases to be a legitimate exercise of arbitral discretion and instead falls within the realm of perversity. In such circumstances, judicial intervention is not an intrusion into

arbitral autonomy but a necessary exercise to preserve the integrity of the adjudicatory process.

75. Tested on the touchstone of the principles laid down in line of precedents, which have been noted and summarised in ***OPG Power Generation*** *(supra)*, this Court is of the considered view that the Impugned Award cannot be sustained. The learned Arbitrator accepted one version of the Agreement and rejected the other without subjecting either document to any evidentiary scrutiny, and further relied upon a clause contained in the Respondent's Agreement to invalidate the Petitioner's Agreement, without first determining which of the two documents constituted the binding contract between the parties.

76. Such reasoning reflects a clear non-application of mind and results in findings which cannot be said to represent a plausible or rational view of the material on record. The Impugned Award therefore suffers from perversity in appreciation of evidence and violation of the fundamental policy of Indian law, thereby attracting interference under Section 34 of the Act.

77. Consequently, the refusal to permit the examination of material witnesses, when viewed in conjunction with the summary and unreasoned rejection of the Petitioner's Application seeking the examination of such witnesses, effectively resulted in a negation of the Petitioner's Agreement, which leads this Court to conclude that the Petitioner was effectively prevented from proving his case, which is against the basic notions of justice causing perversity going to the very root of the matter, and thereby rendering the Impugned Award subject to judicial interference.

DECISION:

78. In view of the foregoing discussion and the comprehensive analysis undertaken hereinabove, this Court is of the considered opinion that the Impugned Arbitral Award dated 11.08.2008 cannot be sustained in law, and is therefore set aside in exercise of the powers conferred under Section 34 of the Act.

79. Accordingly, the present Petition, along with pending Application(s), if any, is disposed of in the above terms.

80. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 1, 2026/DJ