2026:DHC:5315

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

Date of decision: 01st JULY, 2026

IN THE MATTER OF:

\+ **O.M.P. (COMM) 236/2026 & I.A. 13159/2026**

PUBLIC WORKS DEPARTMENT NH WING AND ANR

.....Petitioners

Through: Mr. Anirudh Sanganeria and Mr. Bikram Singh Patel, Advocates

versus

MS GVR INFRA PROJECTS LTD .....Respondent

Through: Dr. Amit George, Mr. Dhiraj Abraham Philip, Mr. Vaibhav Gandhi, Mr. Febin Mathew Varghese, Mr. Shivam Parashar and Ms. Soyarchon Khangrah, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 ["**the Act**"], has been preferred against the Arbitral Award dated 15.01.2026 passed by a three-member Arbitral Tribunal ["**Impugned Award**"], while adjudicating disputes having arisen between the Petitioners (Respondents in the arbitral proceedings) and Respondent (Claimant in the arbitral proceedings).

2. By way of the Impugned Award, the Arbitral Tribunal allowed all the claims, except Claim No. 5 and awarded a sum of Rs. 48,57,61,126/- along with an interest at the rate of 12% per annum in favor of the Respondent herein, while dismissing the counter-claims of the Petitioners.

3. A brief factual background pertinent to the adjudication of the instant Petition is given below:

i. The Ministry of Road Transport and Highways ["**MORT&H**"], Government of India, acting through the Superintending Engineer (EAP), which is the Petitioner No. 2 herein, invited bids for execution of the works of '*Rehabilitation and Upgradation to 2 lane/2 lane with paved shoulder configuration and strengthening of Nuapada – Bangomunda Section from (Km 90.0 to Km 158.0 of NH-217 in the State of Odisha under Phase 1 of National Highways Inter Connectivity Improvement Project (NHIIP)*', on an item rate basis ["**the Project**"].

ii. The Respondent submitted its bid on 03.10.2013, which came to be accepted by MORT&H *vide* the Letter of Acceptance dated 14.02.2014. Subsequently, a detailed Agreement dated 21.03.2014 was executed between MORT&H and the Respondent, whereby the Respondent was required to executed the work of Rs. 135,78,78,887/- within a period of 730 days from the date of commencement, i.e., 13.06.2014 ["**the Contract**"].

iii. The scheduled completion date of the Project as per the Contract was 11.06.2016.

iv. Additionally, M/s EptisaServicios de Ingenieria S.L. in cooperation with the Eptisa India Private Limited was appointed as the Engineer for the Project ["**Engineer**"].

v. Clause 20 of the Contract set out the procedure to be followed by the parties for '*Claims, Disputes and Arbitration*', according to which the disputes, if any, remaining unresolved after having

undergone the mechanisms of the Dispute Board as well as amicable settlement, were to be settled through arbitration under Clause 20.6, which is being reproduced below:

> "***20.6 Arbitration:***
>
> *Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub - Clause 20.5 above and in respect of which the DB 's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:*
>
> *(a) if the contract is with foreigncontractors,*
>
> *(i) for contracts financed by all participating Banks except under sub-paragraph (a) (2) below: international arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data , and conducted under the rules of arbitration of such institution ; or , if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data , with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.*

(b) if the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.
The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause.

1.4 [Law and Language]
The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Anydecision of the DB shall be admissiblein evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works."

vi. In June 2018, a sub-contractor being M/s LEKCON Infrastructure (P) Limited was appointed *vide* a Tripartite Agreement dated 15.06.2018, entered into between the MORT&H, the Respondent as well as the Sub-Contractor.

vii. Material on record reveals that the Respondent was admitted into Corporate Insolvency Resolution Process ["**CIRP**"] on 15.10.2018. The Resolution Plan was finally approved on 09.04.2021.

viii. It is stated that thereafter, the execution of the Project encountered certain difficulties, ultimately leading to continuation of works much beyond the scheduled completion date. This was despite the grant of extensions of time ["**EOTs**"] by the MORT&H up to 31.03.2022 without imposition of Liquidated Damages ["**LD**"], thereby permitting the Respondent continuing working beyond the scheduled completion date.

ix. The Contract was prematurely closed w.e.f. 31.05.2022 after which final bill submitted by the Respondent on 03.06.2022 was certified by the Engineer. However, subsequently, the MORT&H imposed LD on the Respondent on 30.06.2022 and thereafter on 12.08.2022, that the MORT&H conveyed its decision to the Respondent about foreclosing the Contract. Subsequently on 06.09.2022, the MORT&H recovered the LD by invoking the Performance Bank Guarantee submitted by the Respondent.

x. The Respondent invoked arbitration under Clause 20.6 of the Contract *vide* Letter dated 18.03.2023 addressed to the Superintending Engineer, MORT&H. In its reply letter sent on 29.03.2023, the MORT&H required to the Respondent to approach the Chief Engineer (NH), PWD Odisha for grievance redressal. Accordingly, the Respondent issued an arbitration notice *vide* Letter dated 26.04.2023 addressed to the Chief Engineer

(NH), PWD Odisha, and thereafter, the Arbitral Tribunal came to be constituted as per Clause 20.6 of the Contract.

xi. Before the Arbitral Tribunal, the Respondent filed the following nine (9) claims along with its Statement of Claims:

Claim No.	Description of Claims	Claim Amount Rs.	Updated Claim Amount Till 30.11.2025	
			Principle	Interest
1	Claim for Refund of amounts towards Encashed Performance Bank Guarantees towards Illegal & wrong Levy of Liquidated Damages	14,93,66,678	14,93,66,678	11,78,64,335
2	Claim for additional expenses / losses incurred on account of Overheads & Establishment Expenses in the extended period contract from 12.06.2016 to 15.06.2018	13,63,53,679	13,63,53,679	18,31,69,687

3	Claim for additional expenses / losses incurred Losses incurred on account of Hire charges/usage charges for Plant & Machinery in the extended period 12.06.2016 to 15.06.2018	6,81,76,827	6,81,76,827	9,15,84,827
4	Claim for Losses incurred by way of Bank Guarantees Commission charges and loss of marginal money on account of Extension of Bank Guarantees beyond stipulated period of Contract	1,05,68,311	1,05,68,311	1,41,96,861
5	Claim for Loss of Profit @ 10% on the balance value of work due to Illegal & Wrongful pre closure of contract	13,63,53679	13,63,53,679	18,31,69,687
6	Claim for Losses incurred on account of Routine Maintenance as per Clause 1.1.5.9 Contract Agreement.	10,86,30,311	10,86,30,311	14,59,27,710
7	Claim for payment of GST on the awarded amounts due to introduction of GST Law @ 18% on works Contract	To be quantified	Declaratory Award	Declaratory Award
8	Claim for Interest at the rate of 18% per annum on the above amounts	To be quantified	As calculated in interest column	
9	Cost of Arbitration as per Award	50,00,000	1,15,53,178	
	Grand Total	**61,44,49,485**	**62,10,02,663**	73,59,13,107

xii. On the other hand, the Petitioners preferred the following counter-claims:

Summary of Counter Claims		
Sl. No.	**Description**	**Amount (s) in Re**
1.	Compensation towards additional financial burden on the Respondent due to continuance of CSC & its team for the prolonged period.	6,22,72,154/-
2.	Compensation towards additional utilization of Govt. machineries during the extended period .	12,49,18,200/-
3.	Compensation towards delay in social benefit to the road users and public at large.	7,01,00,000/-
4.	Cost of the Arbitration Proceeding	To be determined by the Hon'ble Tribunal U/s 31-A of Arbitration & Conciliation Act, 1996
5.	Interest of Counter Claim	7,99,55,569/-

4. As per the Arbitral Tribunal, the fundamental issue to be decided was the responsibility of delay caused in execution of the Project and the claims of both the parties arising from the prolongation of the contract period. Apart from holding that the foreclosure of the Contract on 31.05.2022 was wrongful, the Arbitral Tribunal also observed that the imposition of LD by the Petitioners was illegal, as the delay caused in completion of works was entirely attributable to the Petitioners. In light of this conclusion, the Arbitral Tribunal rejected the counter-claims of the Petitioners, observing them to be based on the issue of delay in completion of works, which was found against the Petitioners. Against these observations, the Petitioners have now

approached this Court under Section 34 of the Act, praying that the Impugned Award be set aside.

5. Learned Counsel for the Petitioner has submitted as under:

i. The limitation calculated by the Arbitral Tribunal is erroneous, as the CIRP proceedings initiated against the Respondent do not debar it from claiming compensation/money due from the Petitioners during the proceedings under IBC. Rather, the pendency of proceedings entitled the Respondent to recover whatever money due and payable by the Petitioners, keeping in mind the purpose of IBC being that to sustain a company.

ii. The Arbitral Tribunal erred in holding that the contract period was extended up to 31.12.2022, as in the last meeting between the parties, it was decided that the EOT can only be granted till 31.05.2022.

iii. The Arbitral Tribunal's observation that foreclosure of the Contract on 31.05.2022 was illegal, is an erroneous one, as the Sub-Contractor had abandoned the Project Site on 19.04.2022 and thereafter, both the Respondent and Sub-Contractor requested for closure of the Contract, expressing their inability to proceed with the works.

iv. While adjudication of Claim No. 1, the Arbitral Tribunal wrongfully held the imposition of LD by the Petitioners was illegal. On this issue, it is submitted that on various occasions, the Respondent had admitted to abandoning the Project Site and stopping the works. Moreover, the Petitioners had to face consequences of the shoddy work executed by the Respondent, as

well as infractions such as non-payment of wages, fines for illegal mining, etc., which ultimately led to the delay in execution of the Project. Because the Arbitral Tribunal overlooked these aspects which were produced by the Petitioners in the form of evidence, allowing of Claim No. 1 suffers from illegality, having not appreciated the relevant evidence.

v. Allowing of Claim No. 2 by the Arbitral Tribunal was also erroneous, as no proof of expenses/losses having incurred on account of overheads and establishment charges in the extended period was provided by the Respondent. As such, the Impugned Award is in violation of the judgment of the Apex Court in Battliboi Environmental Engineers v. HPCL, **2023 SCC OnLine SC 1208**, which lays down a much more stringent criteria for determination of quantum of damages for overheads and loss of profit.

vi. Pertinently, while allowing Claim No. 2, the Arbitral Tribunal overlooked a Letter dated 02.05.2018, in which the Respondent had requested extension of time up to 31.03.2019, without imposition of any penalty or compensation by either party. In this regard, the Impugned Award is in violation of the observations of the Apex Court in M/s C.C. Constructions v. Ircon International,**2025 INSC 138,** holding that when extensions are accepted by contractors under a clause which debars compensation, act as an estoppel against the contractor from claiming the same compensation in arbitral proceedings.

vii. It is submitted that allowing Claim No. 4 towards losses on account of bank guarantee commissions and extension of bank guarantee by the Arbitral Tribunal resulted in unjust enrichment of the Respondent, for the reason that this claim was interlinked with Claim No. 2 and once Claim No. 2 was allowed, Claim No. 4 became redundant. In this regard, reliance is placed on the MORT&H Data Book, according to which bank charges include overheads and as such, Claim No. 2 was subsumed within Claim No. 4.

viii. The Arbitral Tribunal committed a gross error in allowing the amount under Claim No. 6 to the Respondent, as in doing so, it ignored Technical Specification Clause 3001 and Clause 1.1.5.9 of the Contract, which clearly provide that routine maintenance of roads was an obligation of the Respondent, to be done at its own cost during the construction period. Rather, the Arbitral Tribunal further overlooked that the Respondent failed to duly maintain the roads, giving rise to public disturbances as well as legal disputes.

ix. It is submitted that since Claims 1, 2, 3, 4 and 6 were erroneously allowed, grant of any amounts by the Arbitral Tribunal under Claim No. 7 towards Goods and Services Tax ["**GST**"], under Claim No. 8 towards interest and under Claim No. 9 towards cost of arbitration cannot be sustained.

6. *Per contra,* learned Counsel for the Respondent, while supporting the observations of the Arbitral Tribunal, submits that it is only after duly considering all the evidence produced by the parties in light of the provisions of the Contract that the claims were allowed in favor of the

Respondent. As such, he states that all the grounds now raised by the Petitioners require re-appreciation of evidence by this Court and examining whether the interpretation of the contractual provisions by the Arbitral Tribunal was correct or not, an exercise which is impermissible under Section 34 of the Act.

7. This Court has heard the arguments advanced on behalf of the parties and perused the material on record.

8. Before dealing with the rival contentions, this Court shall remind itself of the contours within which the instant Petition under Section 34 of the Act shall be adjudicated upon.

9. This Court recalls the following observations of the Apex Court in OPG Power Generation (P) Ltd. v. Enexio PowerCooling Solutions (India) (P) Ltd., **(2025) 2 SCC 417:**

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

Public policy

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

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

will not attract the bar of public policy, and something more than contravention of law is required.

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

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40. *In ONGC Ltd. v. Western Geco International Ltd., 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 Saw Pipes, 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, 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 Western Geco, 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.

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:*

"34. Application for setting aside arbitral award.—(1)

* * *

(2) An arbitral award may be set aside by the court only if—

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(b) the court finds that—

***

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.—Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81."

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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.

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, 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 Saw Pipes, 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, this Court held that an award would be patently illegal, if it is contrary to:*
(a) substantive provisions of law of India;
(b) provisions of the 1996 Act; and
(c) terms of the contract [See also three-Judge Bench decision of this Court in State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275 : (2022) 2 SCC (Civ) 776] .

The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a) 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. case, (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. case, (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. case, (2019) 15 SCC 131, para 41].

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 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, 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.*

xxx

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. 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 1].*

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]."*

10. The grounds raised by the Petitioners herein revolve primarily around the Arbitral Tribunal's adjudication of the issue of delay in execution of the Project and the ultimate attributability of such delay to the Petitioners. The other grievances of the Petitioners flowing from this primary issue, are that the Arbitral Tribunal erred in holding the imposition of LD on the Respondent and foreclosure of the Contract as illegal.

11. A reading of the Impugned Award indicates that before dealing with the individual claims and counter-claims of the contesing parties, the Arbitral Tribunal undertook to make preliminary observations on the issue of delay and imposition of LD, for which purpose, the Arbitral Tribunal divided the entire contract period, including the EOTs, into two categories:

a) Period from 13.06.2014 to 15.06.2018, i.e., till the execution of the Tripartite Agreement (covering the extended period from 12.06.2016 to 15.06.2018); and

b) Extended period from 15.06.2018 to 31.05.2022, i.e., the date on which the Contracted was foreclosed by the Employer/MORT&H.

12. A further perusal of the Impugned Award shows that the first document taken into consideration by the Arbitral Tribunal was a Letter dated 14.05.2016 sent by the Respondent, seeking an extension of time by 441 days till 26.08.2017, for completion of the works. It is noted by the Arbitral Tribunal that the said Letter was accompanied with an annexure that set out the reasons for the Respondent's request for such extension. In the interest of comprehensiveness, this Court deems it fit to extract Annexure to the Letter dated 14.05.2016, which influenced the Arbitral Tribunal's conclusion. Annexure to the Letter dated 14.05.2016 is extracted below:

Sl. No.	Para No.	Cause of delay/events	Affected Length in KM	Total Delay in No. of days
i)	3.7	Delay due to Discrepancy in the TBM values issued by the Employer	68	135
ii)	4.11	Delay due to Invalid Plan & Profile design drawings issued with the Contract Agreement and Delay caused by approvals & issuance of revised Plan & Profile drawings	68	380
iii)	5.7	Delay in approval of working cross sections	22	120
iv)	6.8	Delay due to inconsistent decision on provision of PCC / RCC Toe wall		142
v)	7.7	Delay in handing over of encumbrance free land by clearing of encroachments shifting of electrical / waterline utilities and additional land acquisition	9.80	57
vi)	9.2	Delay in obtaining running permission from the State Govt. Authorities	68	211
vii)	8.1	Delay due to unusual rains in the working season i.e., in March & April	24	4

13. Upon a perusal of the Letter dated 14.05.2016 as well as the accompanying annexure, the Arbitral Tribunal noted that the contents of the correspondence highlighted delays, which were fundamental and governing in nature and unless addressed, would hamper the progress of works at the Project Site. For instance, the Arbitral Tribunal noted that the discrepancies in the TBM values, of which responsibility was cast on the Employer/MORT&H as per Clause 4.7 of the Contract, affected the Project

significantly and the resulting delay in resolution thereof was thus, completely attributable to the Petitioners. In this context, this Court shall make a quick perusal of the relevant portions of the Letter dated 14.05.2016, as extracted in the Impugned Award:

> **3. DISCREPANCY IN TBM'S ESTABLISHED DURING DPR:**
>
> *3.3 It is well understood that without the fixation of the TBM's the work cannot move ahead even a single inch. In accordance with Clause No.109 of MORTH specifications, the Engineer shall provide the required setting out data to the Contractor so that the Contractor can comply with his obligations under clause 109.6 & 109.7. It was also explicitly mentioned that in case of any design modifications the Engineer should issue detail instructions to the Contractor. After lot of deliberations, the CSC on 01-11-2014 had concluded to distribute the errors in between the adjacent TBM's and to establish the TBM as per the prevailing site conditions thereby ignoring the TBM values given by the Employer. According to the directions of the Consultants the Contractor vide letter No.GVR/NH-217/Eptisa/2014/68 dated 02-12-2014, letter No.GVR/NH-217/Eptisa/2014/72 dated 05-12-2014 and letter No.GVR/NH-217/Eptisa/2015/112 dated 04-02-2015 submitted the TBM's list duly approved by the Consultants.*
>
> ...
>
> *3.6 The clause No.4.7 of Contract Agreement also clearly state that* ***"The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used".***
>
> *3.7 As mentioned in the above Para's the Contractor for no fault of his actions has lost a precious project period of 135 days due to the erroneous data provided by the Employer and the entire time lost because of an action attributable to the Employer is to be completely compensated to the Contractor. The details of the correspondence exchanged regarding the above issue is enclosed in Annexure-I for your kind review and reference.*

14. A *prima facie* examination of the above portion of the Letter dated 14.05.2016 and the resulting conclusion of the Arbitral Tribunal do not warrant any interference by this Court, as it is evident that the Arbitral

Tribunal came to the conclusion after considering the correspondence as well as the relevant clause of the Contract, which made it clear that the responsibility was cast on the Employer/MORT&H for the errors in the specified or notified items of reference. The Arbitral Tribunal was indeed correct in not attributing the delay in this aspect to the Respondent, as it was only responsible for 'using reasonable efforts to verify the accuracy of the specified or notified items of reference, after the Employer/MORT&H discharges the duty cast on it. This observation also assumes significance for the reason that this delay in resolution of discrepancy occurred before the works even commenced, and as such, the progress was derailed from the very beginning, responsibility of which has rightly been accrued to the Employer/MORT&H.

15. On this very issue of delay, the Respondent also claimed that there was substantial delay on part of the Employer/MORT&H in handing over of encumbrance free land to enable commencement of works at the Project Site. Material on record indicates that this handing-over was to be carried out in a three-phase manner, first of which was to be done on the date of commencement, i.e., on 13.06.2014. To examine this issue, the Arbitral Tribunal noted the Respondent's Letter dated 05.07.2014, in conjunction with the Engineer's Letter dated 30.07.2014, which painted a picture showing clearly that the Project Site was not encumbrance-free even on 28.07.2014, i.e., more than a month after the date of commencement, a fact which was first highlighted by the Respondent on 05.07.2014, noted by the parties in a joint inspection of the Project Site on 28.07.2014 and admitted by the Engineer on 30.07.2014. As such, the straightforward and obvious conclusion of the Arbitral Tribunal that the Employer/MORT&H was

responsible for the delay in handing over of an encumbrance-free site, does not warrant interference by this Court.

16. A further reading of the Impugned Award highlights the actions taken by the Engineer, who was authorized to decide of EOT requests as per Clause 3.5 of the Contract read with Clause 20.1 of the General Conditions of Contract ["**GCC**"]. The Arbitral Tribunal noted that after the Respondent's request for extension of time *vide* the Letter dated 14.05.2016, the Engineer ultimately came to grant such extension after a lapse of almost three (3) months, only on 24.08.2016. More pertinently, the Arbitral Tribunal noted that in this Letter dated 24.08.2016, the Engineer observed that each of the causes of delay were beyond the Respondent's control. Despite of this, the Employer/MORT&H only granted provisional EOTs in a phased manner, *sans* any reference to the assessment of the Engineer of the site conditions – especially when there is no clause for granting a provisional EOT in the Contract. As such, the Arbitral Tribunal's conclusion that the EOT provisions were rendered inoperative by the Employer/MORT&H, in the opinion of this Court, appears to be a fair and reasonable one.

17. In conjunction with the above finding, the Arbitral Tribunal also found that the continuous grant of EOT till 31.03.2022, disentitled the Employer/MORT&H from imposing LD thereafter. To arrive at this conclusion, the Arbitral Tribunal noted that even after the Respondent expressed difficulty in continuing the works especially since it was undergoing liquidation in the prevailing COVID-19 restrictions, the Employer/MORT&H directed the Respondent to continue working, only to foreclose the Contract on 31.05.2022. This direction was given by the Employer/MORT&H despite the execution of the Tripartite Agreement on

15.06.2018 and the Respondent's proposal to allow the sub-contractor to complete the Project and more importantly, even after the Employer/MORT&H issued a notice of termination on 18.01.2021, which was eventually not pressed.

18. Ultimately, Arbitral Tribunal also noted that after the foreclosure of the Contract on 31.05.2022, the Employer/MORT&H released the payment of Rs. 4,09,77,068/- against the final bill submitted by the Sub-Contractor on 03.06.2022 and released the bank guarantee submitted by the Sub-Contractor. No responsibility of the Respondent was mentioned by the Employer/MORT&H till this date. Only thereafter on 30.06.2022 did the Employer/MORT&H impose on the Respondent, which the Arbitral Tribunal held to be illegal, considering all the previous factual background.

19. Apart from noting the correspondences and the relevant contractual provisions, the Arbitral Tribunal was also guided by the following observations of a Coordinate Bench of this Court in NDMC v. IJM Corpn., **2022 SCC OnLine Del 1208**:

> "***20.*** *In the present case, requests for the extension were made and granted, though petitioner reserved their right to levy to recover liquidated damages in accordance with provisions of Clause 2 of the agreement.*
>
> ***21.*** *The contention of learned Senior Counsel for the petitioner that the extensions were only provisional and Petitioner could reassess the delay is not sustainable.*
>
> ***22.*** *Once a request is received and extension of time is granted, the engineer in charge/the competent authority cannot after the extended period is over turn around and reassess the extension to the detriment of*

> *the contractor. If extension is granted, say for a period of three months, the engineer in charge after expiry of three months cannot turn around and say that the extension should have, in fact, been for a period of two months.*
>
> ***23.*** *Though it may be open to the competent authority/engineer in-charge to, in the first instance, grant an extension for a shorter period than requested and thereafter extend it further but he cannot having once granted it, curtail it retrospectively.*
>
> ***24.*** *Clause 5.4 stipulates that the decision on the extension of time has to be communicated within a period of three months, which presupposes that an estimation or calculation would have to be made by the competent authority within the period of three months and a conscious decision taken and communicated. The competent authority cannot mechanically grant an extension in the first instance and then after the period is over, reduce the same retrospectively.*"

20. In the opinion of this Court, the Arbitral Tribunal arrived at an obvious conclusion, which is incidentally also in line with Section 55 of the Indian Contracts Act, 1872, which when applied to the facts of the present case, would rightly bar the Employer/MORT&H from claiming any compensation or damages from the Respondent after accepting the delayed performance of the Sub-Contractor.

21. The last preliminary issue dealt with by the Arbitral Tribunal was that of limitation, wherein the Employer/MORT&H contended that Claims No. 2 to 7 of the Respondent were beyond limitation in view of the Respondent claiming interest from 15.06.2018 till the date of filing of the Statement of Claims on 07.05.2024. The Respondent's stand on this was that the

limitation period could not have begun till the final bill was processed and it was made aware of its entitlement, placing reliance on Clauses 14.11 and 14.14 of the Contract. The Respondent also submitted before the Arbitral Tribunal that the invocation of arbitration was done by it on 18.03.2023, which was within three (3) years from the date of acknowledgement of closure and non-finalization of the final bill by the Employer/MORT&H.

22. Considering the above submissions of the parties on the issue of limitation, the Arbitral Tribunal gave its findings against the Petitioners, observing that since the premature closure of Contract from 31.05.2022 was communicated to the Respondent only on 12.08.2022, the commencement of arbitral proceedings on 18.03.2023 was well within limitation.

23. On the above issue of limitation, the Arbitral tribunal also noted that since the Respondent was admitted into CIRP on 15.10.2018 and the Resolution Plan came to be approved on 20.07.2020. Subsequently, the Arbitral Tribunal also took note of an Order dated 09.04.2021 passed by the National Company Law Tribunal, Chennai, approving the Resolution Plan in a revised format and directing the period of 19.07.2020 till 09.04.2021 to be excluded from the timeline of implementing the Resolution Plan, meaning thereby that the Resolution Plan got approved only on 09.04.2021. A natural corollary of this, as correctly noted by the Arbitral Tribunal, comes from the effect of Section 60(6) of the Insolvency and Bankruptcy Code, 2016, which would exclude the period during which moratorium was in place for computing the period of limitation for any suit or any application by or against a Corporate Debtor. The Arbitral Tribunal also correctly applied the judgment of the Apex Court in Cognizance for Extension of Limitation, In re, **(2022) 3 SCC 117**, by excluding the period till 28.02.2022 and opined

that the Respondent was entitled to the balance period of limitation with effect from 01.03.2022, more so in light of the fact that period for invoking the arbitration clauses did not even commence on 15.03.2020, since the Respondent was undergoing CIRP. Thus, the Arbitral Tribunal's conclusion that the limitation period for invocation of arbitration in respect of Claims No. 2 to 7 did not expire is a correct one, in the considered view of this Court.

24. Lastly, before adjudicating upon the individual claims, the Arbitral Tribunal also dismissed the contention of the Employer/MORT&H, that the claims of the Respondent did not survive after the approval of Resolution Plan on 09.04.2021. Relying on the judgment of the Apex Court in Ghanshyam Mishra v. Edelweiss Asset Reconstruction Company Ltd., **(2021) 9 SCC 957**, the Arbitral Tribunal concluded that since the Employer/MORT&H failed to raise its claims against the Respondent before the Resolution Professional, all the counter-claims now raised stand extinguished. This observation also does not warrant any interference by this Court, being based strictly on a settled position of law and in view of the fact that there was evidence enough to show that the Employer/MORT&H was aware of the CIRP proceedings ongoing against the Respondent.

25. Moving forward to Claim No. 1, under which the Respondent sought refund of amounts towards encashed Performance Bank Guarantees against the levy of LD by the Employer/MORT&H. The Arbitral Tribunal, relying on its earlier observations of holding the Employer/MORT&H's decision of imposing LD and subsequent encashment of BG as legally untenable and against the principles of natural justice, allowed this Claim and granted an amount of Rs. 21,23,26,922/- in favor of the Respondent. Since this Court,

in the preceding paragraphs has already given its assent to the preliminary observations of the Arbitral Tribunal, it finds no reason to interfere with the findings on Claim No. 1.

26. Under Claim No. 2, the Respondent sought compensation for additional expenses/losses incurred by it on account of overhead and establishment cost incurred during the extended period up to 15.06.2018. The Arbitral Tribunal observed that while any contractor accounts for overhead costs and establishment chargers during the original contract period, in the present case, the Respondent remained at the Project Site for an additional period of 735 days due to the Employer/MORT&H's failure to perform its reciprocal obligations in a timely manner. The Arbitral Tribunal also took note of Clause 1.1.43 of the Contract, which defines 'Cost', and includes 'overhead and similar charges' but excludes profits, read in conjunction with Sections 73, 53, 54 and 55 of the Indian Contract Act, 1872. Most importantly, the Arbitral Tribunal also considered the MORT&H Data Book Norms, which provide for complying 10% towards overhead charges in a road construction contract. As such, the Arbitral Tribunal viewed that since MORT&H was itself a party to the arbitral proceedings, Claim No. 2 ought to be allowed to the extent of Rs. 13,52,83,930/- along with interest, after subtracting those months in which the Respondent had abandoned the Project Site and performed no work. In the opinion of this Court, this conclusion appears to be a reasonable one, as again having been based on the preliminary findings of the Arbitral Tribunal, with which this Court agrees. As such, findings in the Impugned Award pertaining to Claim No. 2 deserve to be upheld.

27. Under Claim No. 3, the Respondent claimed for additional expenses/losses incurred on account of hire charges/usage charges for plant and machinery due to prolongation of the Contract. This Claim, again based on the preliminary findings on delay being attributable to the Employer/MORT&H and of these expenses being within the ambit of 'cost' within Clause 1.1.43 of the Contract came to be allowed by the Arbitral Tribunal to the extent of Rs. 6,76,41,953/- along with future interest. Again, this Court finds no reason to interfere with this conclusion of the Arbitral Tribunal, being a reasonable and plausible one based on the relevant clauses of the Contract as well as the relevant correspondences exchanged between the parties.

28. Claim No. 4 was towards cost incurred by the Respondent for keeping the BG alive during the extended period of the Contract. Observing the undisputed position that the Respondent had submitted 3 BGs, which were kept alive beyond the stipulated date of completion of the Contract till their invocation by the Employer/MORT&H, the Arbitral Tribunal awarded a sum of Rs. 20,69,802/- along with interest to the Respondent, excluding any amount for the period in which no works were executed by the Respondent (i.e., from 01.02.2018 to 15.06.2018). This conclusion, being based on an undisputed factual position arising from the material on record placed before the Arbitral Tribunal, does not warrant any interference by this Court.

29. Since Claim No. 5 was rejected by the Arbitral Tribunal and as such remains unchallenged by the Petitioners herein, this Court does not deem it appropriate to delve into the findings of the Arbitral Tribunal on Claim No. 5.

30. Moving ahead to Claim No. 6, under which the Respondent claimed compensation for losses incurred on account of Routine Maintenance as per Clause 1.1.5.9 of the Contract. The Arbitral Tribunal observed at the outset that Employer/MORT&H did not dispute that the work of routine maintenance was carried out by the Respondent. That being the position, the Arbitral Tribunal concluded that merely because the same was an obligation cast on the Respondent under Technical Specification Clause 3001 and Clause 1.1.5.9 of the Contract, will not disentitle the Respondent from the costs incurred in doing so during the extended periods. For this reason, the Arbitral Tribunal awarded an amount of Rs. 4,41,73,321/- to the Respondent, which again appears to be a reasonable finding, being based on the admission of the Employer/MORT&H that maintenance work was performed by the Respondent and on the preliminary observation of the Arbitral Tribunal that the extension of period of the Contract was entirely due to the Employer/MORT&H for causing delays and hindrances.

31. Under Claim No. 8, the Respondent had claimed payment of GST on the awarded amounts due to the introduction of GST regime w.e.f. 01.07.2017. The Respondent's case before the Arbitral Tribunal was that this claim has raised only because the Respondent was made to work beyond the original date of completion, i.e., 11.06.2016 and as such, the Respondent would be entitled to amounts in light of change in legislation, as per Clause 13.7 of the GCC. In the opinion of this Court, the Arbitral Tribunal has correctly observed that the amounts payable to the Respondent would attract GST liability, which was also attracted by the Respondent itself during the extended period of contract. The Arbitral Tribunal has thus, rightly held the

Petitioners liable for reimbursing the Respondent for the GST paid by the Respondent on the amounts under the arbitration.

32. Naturally, since this Court has refused to interfere with any of the findings of the Arbitral Tribunal, no interference is warranted to the award of amounts by the Arbitral Tribunal under Claim No. 9.

33. A careful and comprehensive perusal of the Impugned Award demonstrates that the Arbitral Tribunal has examined the pleadings, documentary material, correspondence exchanged between the parties, and the evidence led in support of their respective claims and assertions. The Impugned Award reflects due consideration of the relevant facts and surrounding circumstances germane to the disputes.

34. The Impugned Award reflects a plausible and reasoned interpretation of the contract and an evaluation of evidence within the jurisdiction of the Arbitral Tribunal. It is well settled that a court exercising limited supervisory jurisdiction under Section 34 cannot re-appreciate evidence or substitute its own interpretation of contractual clauses where the view taken by the Arbitral Tribunal is a possible and reasonable one.

35. Viewed in its entirety, the Impugned Award reflects a reasoned and structured adjudication of the disputes by the Arbitral Tribunal within the confines of the contractual terms agreed upon by the parties, the material placed on record, and the jurisdiction vested in the Arbitral Tribunal. The Impugned Award demonstrates due application of mind to the pleadings, evidence, and relevant contractual provisions.

36. In view of the foregoing discussion, this Court is of the considered opinion that the Petitioners have failed to establish any ground under Section

34(2) or Section 34(2A) of the Act warranting interference with the Impugned Award.

37. Accordingly, the present Petition, along with pending application(s), if any, stands dismissed.

SUBRAMONIUM PRASAD, J

JULY 01, 2026
AP