2026:DHC:7074

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

Date of decision: 18th AUGUST, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010452102022**

\+ **O.M.P. (COMM) 478/2022**

RMS AUTOMATION SYSTEM LIMITED .....Petitioner

Through: Mr. Ashish Dholakia, Senior Advocate with Ms. Kanika Sinha, Mr. Satyam Thareja, Mr. Subhoday and Ms. Mehak Arora, Advocates

versus

TATA POWER DELHI DISTRIBUTION LIMITED .....Respondent

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Anand Kumar Shrivastava, Ms. Ishita Jain, Mr. Mudassir, Ms. Ankita Singh, Advocates.

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

**JUDGMENT**

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 ***(herein referred to as the 'A&C Act')*** for setting aside of the award dated 04.08.2022, ***(herein referred to as the impugned award)*** by way of which the Learned Arbitrator had rejected all claims of the Petitioner on the preliminary ground that they are barred by limitation.

2. Shorn of unnecessary details, facts leading to the filing of the present petition are stated as under:

a. M/s RMS Automation Systems Pvt. Ltd, *(herein referred to as the **'Petitioner')*** is a company incorporated under the Companies Act, 2013, specializing in power distribution management and energy conservation products.

b. Tata Power Delhi Distribution Limited ***(herein referred to as the 'Respondent')***, is the successor in interest to the erstwhile Delhi Vidyut Board (DVB) since 2002.

c. On 17.05.2000, DVB awarded a work contract to the Petitioner for providing L.T. Load Management Systems (LTLMS) on a lease basis for a period of 10 years and for the said purpose, a formal Lease Agreement was executed between the parties on 25.05.2000 (***herein referred to as the Agreement***).

d. As per the terms of the Agreement, the Petitioner was mandated to install and maintain 200 and 300 KVAR LTLMS panels at various locations across Delhi, quantified to a total number 500 and 400 respectively, on a lease basis to control load fluctuations. These LTLMS were brought to Delhi from Nasik and due to this inter-state movement of goods, sales tax was applicable.

e. Under the terms of the Agreement, the Petitioner was responsible for the maintenance of the 900 installed panels for a period of 10 years and the Petitioner's obligation stood completed by December 2011.

f. Disputes primarily arose between the parties out of concerns regarding unpaid invoices and the non-issuance of C-Forms under the Central Sales Tax Act, 1856. For the final phase of the contract from January 2011 to December 2011, the Petitioner raised invoices totalling approximately INR 97 lakhs. It is stated that the Respondent allegedly withheld Rs. 68,27,825, asserting that the panels were found to be faulty during inspections carried out between 2011 and late 2012. It is further stated that in addition to the above-mentioned amount, the Respondent had also failed to discharge its obligation of paying the government levies such as Sales Tax/ C-Form as per the terms of the agreement.

g. As the concerned tax authorities had refused to issue C-Forms to the Respondent, the Respondent chose to litigate for the issuance of the same, which culminated in a Sales Tax Appeal No. 16/2008, where the Respondent arrayed the Petitioner as a party.

h. In 2015, facing coercive measures from tax authorities, the Petitioner approached the MSME Facilitation Council, Nashik. While the Sales Tax Appeal was pending for adjudication, the Respondent moved an application seeking directions to refrain the Petitioner from approaching any other forum such as the MSME Council for relief, arguing that the matter was sub-judice before the High Court.

i. On 11.03.2016, the High Court decided the appeal in favour of the Respondent and directed the relevant tax authorities to issue the C-Forms within a period of two weeks. It is stated that on 09.08.2016, following the judgment of the High Court, the Respondent furnished the C-forms to the Petitioner covering the 4th quarter of 2010-11 and the 1st, 2nd, and 3rd quarters of 2011-12 against the pending invoices for the period of January 2011 to December 2011.

j. That even after the issuance of C-Forms by the Respondent against the complete amount, it is the case of the Petitioner that the Respondent failed to disburse the outstanding amount of Rs. 68,27,825/-

k. On 23.07.2018, The Petitioner formally invoked the arbitration clause i.e. Clause 14.2 of the Agreement and sent a notice to the Respondent for the same. It is stated that on 19.11.2018, the Respondent replied to the notice, alleging for the first time that the installed panels were faulty and did not meet efficiency standards.

l. As per the terms of the Agreement, the Petitioner approached the Institute of Engineers for the appointment of an arbitrator and Mr. RR Garg was appointed as the Sole Arbitrator to adjudicate upon the disputes that have arisen between the parties. While a preliminary hearing was scheduled before the arbitrator, the Respondent objected to Mr. Garg's appointment. Following several failed attempts at an amicable resolution, the Petitioner again sought an appointment through the Institute of Engineers, which the Respondent again challenged, questioning the Institute's authority to adjudicate the disputes between the parties.

m. Subsequently on 07.10.2021, the Petitioner filed Arbitration Petition No. 1015/2021 under Section 11 of the A&C Act before the High Court of Delhi and on 25.10.2021, the High Court allowed the petition and appointed Sh. O.P. Gupta (Dist. & Sessions Judge, Retd.) as the Sole Arbitrator to adjudicate upon the disputes that have arisen between the parties.

n. It is stated that the parties filed their pleadings before the Arbitral Tribunal, and on 27.06.2022, despite the Petitioner's objection that limitation was a mixed question of fact and law, the Arbitrator framed a sole preliminary issue regarding whether the claims of the Petitioner were within the period of limitation.

o. On 04.08.2022, The Arbitrator passed the Impugned Award rejecting all the claims of the Petitioner on the ground that they are barred by limitation.

3. Hence, the present Petition has been filed by the Petitioner challenging the impugned award passed by the Sole Arbitrator.

## SUBMISSIONS OF THE PARTIES

4. It is submitted by the Learned Counsel for the Petitioner that the issue of limitation is a mixed question of fact and law, and the Learned Arbitrator could not have framed a preliminary issue on this aspect. It is their case that the same could have been determined only after an opportunity was granted to the Petitioner to lead evidence.

5. In addition to this, it is submitted by the learned counsel for the Petitioner that the Learned Arbitrator has proceeded to frame the preliminary issue on limitation on a misconceived notion that the documents of the Respondent have been admitted by the Petitioner. In fact, it is stated by the Petitioner that the said documents have been specifically denied by the Petitioner, and hence the impugned award has been passed in complete violation of principles of natural justice.

6. On the aspect of limitation, another primary contention of the Petitioner is that the Learned Arbitrator has ignored documents placed on record with the Statement of Claims and the Rejoinder, which clearly reflect the extension of limitation on account of admission of liability on the part of the Respondents. In light of this, the impugned award has been passed by the Learned Arbitrator is complete ignorance of Section 18 and 19 of the Limitation Act, 1963.

7. It is further submitted that there was a continuous ongoing jural relationship between the Petitioner and the Respondent in the nature of a creditor-debtor, and the Respondent has repeatedly admitted its liability before various forums, including this Court and the MSME Council. Before the MSME Facilitation Council, it is stated that the Respondent admitted liability under the Agreement in its reply dated 11.06.2015 and 30.09.2015 In the ST Appeal No. 16/2008, the Respondent stated it would suffer irreparable loss and injury and financial hardship if C-forms were not issued, which the Petitioner views as an admission of liability towards them. The Petitioner further asserts that the issuance of C-forms in August 2016 constituted an acknowledgement of the transaction and the principal amount due to the Petitioner because the invoices were composite (rentals + CST) and the tax/C-form component was part of the total consideration. Therefore, an admission regarding C-Forms was an admission of the entire transaction. According to the Petitioner, the reliance by the Learned Arbitrator on the judgements of Zion Steel v. Subtleweigh Electric (India) Pvt Ltd., **2014 SCC OnLine Cal 2044** and Taipack Ltd. v. Ram Kishore Nagar Mal, **2007 SCC OnLine Del 804** is misplaced as those dealt with extension of limitation merely on C-Forms, whereas the Petitioner's case was built on repeated, clear admissions of liability before various forums.

8. *Per contra*, it is the case of the Respondent that issues of maintainability such as jurisdiction or bar on law should be decided as a preliminary issue, especially when facts are admitted by the parties. It is also submitted that it is the discretion of the Court/tribunal to decide if an issue needs to be adjudicated as a preliminary issue or not. Hence, according to the Respondent, the Arbitrator has rightly relied on the judgements of Nusli

Neville Wadia v. Ivory Properties, **(2020) 6 SCC 557** and Bharat Sanchar Nigam Ltd. and Ors. v. Nortel Networks India Pvt. Ltd., **2021 5 SCC 738** to decide the issue of Limitation as a preliminary issue

9. It is the case of the Respondent that contrary to the stand of the Petitioner, according to whom payments were withheld due to non-issuance of C-forms, the payments were actually held due to non-compliance with the terms of the Agreement by the Petitioner. According to the Respondent, it had carried out inspection of the panels and it was not satisfied with the working conditions of the same qua the delivery of its mandated capacity. The same was communicated by the Respondent to the Petitioner vide its communications dated 16.05.2011, 30.07.2011, 01.08.2011, 21.09.2011, 31.10.2011, 01.05.2012, 10.05.2012. According to the Respondent, the last communication between the parties regarding withholding of payment was on 03.04.2012

10. It is submitted by the Respondent that with respect to the issue of non-payment of invoices raised by the Petitioner from 01.12.2010 to 30.11.2011, the last disputed bill was raised by the Petitioner on 08.12.2011. In addition to this, the last communication between the parties regarding deficient panels was on 10.05.2012, and after this date, there was absolute silence between the parties with respect to disputed bills, withholding of payment or rectification of panels. Considering these aspects, according to the Respondent, if the cause of action is considered to have arisen on 10.05.2012, the claims are barred by Limitation.

11. Secondly, as per the Respondent, the issue of release of C-Forms does not amount to admission of liability. It is submitted that the C-Form is issued by the State tax commission in order to give tax concessions when there is

an interstate sale. The purchaser is given the C-Form for seller to avail concessional rates of taxation in the seller's own home state. According to the Respondent, it is the case of the Petitioner that as C-Form was issued to them for the entire amount for the FY 2011-12, the entire lease rental amount would also be disbursed to them despite the Claimant not complying with the terms of the Agreement.

12. According to the Respondent, it is settled law that question of C-Form does not amount to acknowledgement of any liability and at best it only shows existence of a jural relationship at some point of time between seller and purchaser. By stretch of imagination, it does not acknowledge the existence, in praesenti of a debtor-creditor relationship or the existence of a liability on the date of the making/execution of the C-Form. Furthermore, all the other payments for several financial years before FY 2011-12 were made by the Respondent despite C-Forms not being issued to the Respondent. It is thus contended that the Learned Arbitrator has rightly held that the release of C-Forms does not amount to acknowledgment of any liability.

13. It is the Respondent's case that the proceedings before MSME Facilitation Council, Nashik was only with respect to C-Forms and did not concern with the disputed amount. On the other hand, the Petitioner withdrew its petition before the MSME Council on receipt of the C-forms stating that the dispute between the parties stood amicably settled.

14. It is submitted that the Petitioner did not invoke the arbitration clause until 23.07.2018 more than six years after the cause of action arose and hence it makes the claims of the Petitioner deadwood.

15. Heard the Counsels for the parties and pursued the material on record

**ANALYSIS**

16. Before this Court proceeds to analyse the merits in the present petition, it is pertinent to revisit the scope of interference by this Court under Section 34 of the A&C Act to an award passed by an Arbitral Tribunal.

17. In Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills, **2024 SCC OnLine SC 2632** following relevant observations have been made:-

> *"**9.** The object of the Act is to provide for a speedy and inexpensive alternative mode of settlement of dispute with the minimum of intervention of the courts. Section 5 of the Act is implicit in this regard and prohibits interference by the judicial authority with the arbitration proceedings except where so provided in Part-I of the Act. The judicial interference, if any, is provided inter-alia only by means of Sections 34 and 37 of the Act respectively.*
>
> ***10.** Section 34 of the Act provides for getting an arbitral award set aside by moving an application in accordance with sub-Section (2) and sub-Section (3) of Section 34 of the Act which inter-alia provide for the grounds on which an arbitral award is liable to be set aside. One of the main grounds for interference or setting aside an award is where the arbitral award is in conflict with the public policy of India i.e. if the award is induced or affected by fraud or corruption or is in contravention with the fundamental policy of Indian law or it is in conflict with most basic notions of morality and justice. A plain reading of Section 34 reveals that the scope of interference by the court with the arbitral award under Section 34 is very limited and the court is not supposed to travel beyond the aforesaid scope to find out if the award is good or bad.*
>
> ***11.** Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or*

*refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.*

*12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.*

***13.** In paragraph 11 of Bharat Coking Coal Ltd. v. L.K. Ahuja, (2001) 4 SCC 86 it has been observed as under:*
*"**11.** There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."*

18. Reference is also made to the judgment of the Apex Court in <u>OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P)</u>

Ltd., **(2025) 2 SCC 417**, wherein the parameters of Section 34 have been discussed elaborately:-

> *"51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:*
>
> *(a) the fundamental policy of Indian law; and/or*
>
> *(b) the interest of India; and/or*
>
> *(c) justice or morality.*
>
> *52. In the judicial pronouncements that followed Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , already discussed above, the domain of what could be considered contrary to the "public policy of India"/"fundamental policy of Indian law" expanded, resulting in much greater interference with arbitral awards than what the lawmakers intended. This led to the 2015 Amendment in the 1996 Act.*
>
> *53. In Ssangyong Engg. [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , this Court dealt with the effect of the 2015 Amendment. While doing so, it took note of a supplementary report of February 2015 of the Law Commission of India made in the context of the proposed 2015 Amendments. The said supplementary*

*report has been extracted in para 30 of that judgment. The key features of it are summarised below:*

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

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

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

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

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

*"34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] understanding of this expression. This would necessarily mean that Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be the grounds of challenge of an award, as is contained in para 30 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] .*

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

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

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

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

*41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 ofAssociate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.*

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

*(emphasis supplied)*

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

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

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

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

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

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

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

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

***Justice***

*58. Justice is the virtue by which the society/court/Tribunal gives a man his due, opposed to injury or wrong. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering justice with mercy, the court must be very conscious, that it has to do justice in exact conformity with some obligatory law, for the reason that human actions are found to be just or unjust on the basis of whether the same are in conformity with, or in opposition to, the law [Union of*

*India v. Ajeet Singh, (2013) 4 SCC 186, para 26 : (2013) 2 SCC (Cri) 347 : (2013) 2 SCC (L&S) 321] . Therefore, in "judicial sense", justice is nothing more nor less than exact conformity to some obligatory law; and all human actions are either just or unjust as they are in conformity with, or in opposition to, the law [P. Ramanatha Aiyar's Advanced Law Lexicon, 6th Edn., Vol. III, p. 2621.] .*

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

*"23. The words "justice" and "injustice", in our view, are sometimes loosely used and have different meanings to different persons particularly to those arrayed on opposite sides. "One man's justice is another's injustice" [Ralph Waldo Emerson : Essays (1803-82), First Series, 1841, "Circles"]. Justice Cardozo said:'The web is entangled and obscure, shot through with a multitude of shades and colors, the skeins irregular and broken. Many hues that seem to be simple, are found, when analysed, to be a complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards or even to describe*

*them have never wholly succeeded.' (Selected Writings of Cardozo, pp. 223-224, Falcon Publications, 1947)."*

*(emphasis in original)*

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

*61. In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , which dealt with post the 2015 Amendment scenario, it was observed that an argument to set aside an award on the ground of being in conflict with "most basic notions of justice", can be raised only in very exceptional circumstances, that is, when the conscience of the court is shocked by infraction of some fundamental principle of justice. Notably, in that case the majority award created a new contract for the parties by applying a unilateral circular, and by substituting a workable formula under the agreement by another, dehors the agreement. This, in the view of the Court, breached the fundamental principles of justice, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered with the other party [*

*See Ssangyong Engg. case, (2019) 15 SCC 131, para 76 : (2020) 2 SCC (Civ) 213] . However, a note of caution was expressed in the judgment by observing that this ground is available only in very exceptional circumstances and under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the court because that would be an entry into the merits of the dispute.*

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

*(a) the fundamental policy of Indian law;*

*(b) the interest of India;*

*(c) justice or morality; and/or is*

*(d) patently illegal.*

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

*****

***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 Section34, 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 1996Act.*

***68.*** *In Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019)15 SCC 131 this Court specifically dealt with the 2015Amendment which inserted sub-section (2-A) in Section 34 of the1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not* *subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to "public policy" or "public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality [See Ssangyong Engg. &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 Ssangyong Engg. & 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 Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] . 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 [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] 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 Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , 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 Ssangyong Engg. case, (2019) 15 SCC 131, para 41 : (2020) 2 SCC (Civ) 213] .*

*72. The tests laid down in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] to determine perversity were followed in Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] and later approved by a three-Judge Bench of this Court in Patel Engg. Ltd. v.*

*North Eastern Electric Power Corpn. Ltd. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149]*

*73. In a recent three-Judge Bench decision of this Court in DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd. [DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357 : (2024) 3 SCC (Civ) 112 : 2024 INSC 292] , 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."*

19. The primary grounds that have been raised by the Learned Senior Counsel for the Petitioner, are namely, that the Learned Arbitrator was misconceived in framing the issue of limitation as a preliminary issue, as the same was a mixed question of fact and law, determination of the same would have required a thorough appreciation of evidence, documentary and oral by the Learned Arbitrator. Further, the Learned Arbitrator has wrongly held that the issuance of C-forms does not amount to admission of liability and has

failed to consider the ongoing jural relationship between the parties from 2012 to 2018. According to the Petitioner, all these aspects were relevant for extending the period of limitation to invoke Arbitration.

20. This Court will now proceed to assess the findings of the Learned Arbitrator keeping in mind the parameters of Section 34 of the A&C Act.

21. The learned Arbitrator has mainly relied on two judicial precedents to decide on the issue of limitation as a preliminary issue, namely, <u>Bharat Sanchar Nigam Ltd and Ors.</u> (supra) and <u>Nush Neville Wadia</u> (Supra).

22. Relying on the aforesaid judgements, the Learned Arbitrator concluded that when facts are admitted, an issue can be decided as a preliminary issue, and such jurisdiction is granted upon the tribunal if the preliminary issue so framed is confined to a question of law.

23. The specific contention of the Petitioner is that as the issue of limitation is a mixed question of fact and law, the Learned Arbitrator could not have framed a preliminary issue on this aspect, and same could only be decided once the Petitioner had led evidence. It is further denied that the Petitioner had admitted the documents on the basis of which, this preliminary issue has been framed by the Learned Arbitrator.

24. Before this Court proceeds further, it is pertinent to refer to the Order dated 27.06.2022 passed by the Arbitral Tribunal. The same is reproduced as under:

> *"Respondent has already sent affidavit of Admission/Denial of documents. Claimant admits to have received copy thereof.*
>
> *Respondent has also sent proposed issues. While going through the pleadings of the parties, it is revealed that dispute relates to non-payment of part of*

*the money out of invoices raised for the period January 2011 to December 2011 whereas the Claimant invoked arbitration on 23.07.2018. The Respondent has taken specific objection in reply to Statement of Claim that the claim is barred by limitation. I feel that issue of limitation is purely legal and goes to the roots of the case. So I proposed to frame a preliminary issue of limitation, in the first instance.*

*The counsel for Claimant submitted that objection of limitation was raised by Respondent before Hon'ble High Court in proceedings under Section 11 Arbitration Act, the Hon'ble High Court observed that it was unable to accept that the claims made by Claimant were ex-facie barred by limitation. So according to him the said plea is not to be gone through by this Tribunal again. I am unable to agree. In the succeeding line in Para 17 of order dated 11.10.2021 passed by Honble High Court in petition under Section 11 Arbitration Act goes on to observed that the plea of limitation is contentious issue and given the standards of examination under Section 11, it is not necessary for court to address said issue. The same falls within the jurisdiction of Arbitral Tribunal.*

*The counsel for Claimant also submitted that the issue of limitation is a mixed question of law and fact. According to him it is necessary to record evidence. He says that all the issues may be framed together. According to him there are emails sent by Respondent which has the effect of acknowledgment and extension of limitation* ***. I think that is the Claimant is relying upon Certificate-C for the purpose of extension of limitation. The Respondent has not disputed issuance of Certificate-C. What is to be seen is the effect of issuance of Certificate-Co The same does not require any evidence and is purely legal. It is clarified that in case some email comes across during arguments and***

***the same is disputed by Respondent, necessary recourse to evidence may be adopted.***

*Order 14 Rule 2 Sub-Rule 2 (b) CPC lays down that if the courts think fit, it may postponed the settlement of further issues until after the bar to the suit created by any law is determined, The said provision came up for interpretation before our own Hon'ble High Court in Mohammad Yasin versus Abdul Kalam 1987 Rajdhani Law Reporter 262. At page 265 of the report it is observed that description given to the court under Sub-Rule 2 of order 14 Rule 2 is firstly whether to frame a preliminary issue or not, secondly to postpone the settlement of other issues.*

*In view of the above I frame the following preliminary issue and postpone the settlement of other issues.*

*1. Whether the claim is within limitation?*

*Adjourned to 15.07.2022 at 04:30 PM for arguments on above issue, physically in Chamber number 804, Lawyers Chamber, Saket Court Complex, New Delhi.''*

(emphasis supplied)

25. A perusal of the aforesaid order passed by the learned Arbitrator indicates that the issue of limitation was framed as a preliminary issue and treated as a pure question of law. The basis for adopting such an approach appears to be the specific case of the Petitioner that the cause of action stood revived from the date of issuance of the C-Forms by the Respondent, which, according to the Petitioner, constituted an admission of liability. Since the date of issuance of the C-Forms was not disputed by the Respondent, the

learned Arbitrator was essentially required to determine, at the threshold, whether the issuance of the C-Forms could, in law, be construed as an acknowledgment or admission of liability and, if so, whether such issuance had the effect of extending or enlarging the period of limitation. It is in this respect the Learned Arbitrator had proceeded to frame it as a preliminary issue based on the principles of Order 14 Rule 2 Sub-Rule 2(b) of the CPC, as per which, even a mixed question of fact and law, can be proceeded to be decided as a preliminary issue, if the same can disposed of purely as a question of law.

26. Learned counsel for the Petitioner had placed reliance on the judgement of the Apex Court in Urban Infrastructure Real Estate Fund v. Neelkanth Realty (P) Ltd., **(2026) 4 SCC 166** to substantiate its argument concerning the nature of a plea of limitation. According to the Petitioner, the question of limitation cannot be decided as an abstract principle of law divorced from the facts of the case. It is also their case that what should be the starting point of limitation is itself a question of fact or at best a mixed question of fact and law.

27. This court has perused the judgement relied upon by the learned counsel for the Petitioner. The above judgement on which the Learned Senior Counsel seeks to place reliance on needs to be read in its entirety. Relevant principles arising out of the aforesaid judgement are reproduced below**:**

> *"**117**. The aforesaid discussion on the position of law prevailing in India may be summarised as follows:*
>
> *117.1. The plea of demurrer is an act of objecting or taking exception or a protest. It is a pleading made by*

*one party which "assumes" the truth of the matter as alleged by the opposite party, but sets up that it is insufficient in law to sustain the claim, or that there is some other defect in the pleadings which constitutes a legal reason as to why the suit must not be allowed to proceed further. In other words, that even assuming those facts as pleaded are true, the court does not have jurisdiction as a matter of law. The party raising the plea challenges legal sufficiency of a complaint/plaint/action rather than its factual accuracy.*

***117.2**. To put it simply, a decision on demurrer has to be determined ex facie the plaint.*

***117.3**. The decision of this Court in Man Roland [Man Roland Druckimachinen AG v. Multicolour Offset Ltd., (2004) 7 SCC 447 : (2004) 121 Comp Cas 169] brought to the fore an important perspective — that only certain objections are capable of being decided by way of demurrer. Only those objections which do not involve questions of facts nor the adducing of any further evidence, could be decided by way of demurrer.*

***117.4**. The rule that when a mixed question of law and fact is decided on the basis of a demurrer, the issue would not be permanently foreclosed was also inherent in the decision of this Court in Indian Mineral & Chemicals Co. [Indian Mineral & Chemicals Co. v. Deutsche Bank, (2004) 12 SCC 376 : (2005) 123 Comp Cas 4]*

***117.5**. This Court in Ramesh B. Desai [Ramesh B. Desai v. Bipin Vadilal Mehta, (2006) 5 SCC 638 : (2006) 132 Comp Cas 479] , was directly concerned with the issue of limitation being decided by way of demurrer and it directed attention to the mandate* *under Order 14 Rule 2 which provides that only if the court is of the opinion that the case or any part thereof may be disposed of on a pure issue of law alone, it may try that issue first. This issue of law can very well be whether the suit is barred by limitation or not, but, provided that such a question of limitation is purely an issue of law.*

***117.6***. *The parallel between an issue of limitation raised by way of demurrer and an application for rejection of plaint under Order 7 Rule 11(d)CPC was drawn for the first time in Ramesh B. Desai [Ramesh B. Desai v. Bipin Vadilal Mehta, (2006) 5 SCC 638 : (2006) 132 Comp Cas 479] . Disputed questions cannot, as a matter of rule, be decided while considering an application filed under Order 7 Rule 11(d). What has to be decided is whether on the face of it, the averments made in the plaint, without any doubt or dispute, show that the suit is or is not barred by limitation or any other law in force.*

***117.7***. *This Court in Ramesh B. Desai [Ramesh B. Desai v. Bipin Vadilal Mehta, (2006) 5 SCC 638 : (2006) 132 Comp Cas 479] went on to discuss the nature of a plea of limitation. It was stated that: (SCC p. 652, para 19)*

> *"19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts, as in every case, the starting point of limitation has to be ascertained, which is entirely a question of fact."*

*Therefore, it was reiterated that, more often than not, a plea of limitation would be a mixed question of law and fact. Therefore, there may arise situations wherein it cannot be decided whether the suit could be dismissed as barred by limitation or not without the aid* *of proper pleadings, the framing of an issue of limitation and the taking of evidence. In other words, it cannot be decided ex facie the plaint.*

***117.8**. Therefore, it is inherent in the nature of a decision as regards the rejection of a plaint that, if the court deems it fit to not reject the plaint at the threshold upon an examination of the averments in the plaint, the ground that the suit is still barred by any law can be taken by the defendant in the course of the suit proceedings, after leading evidence.*

***117.9**. This is because the defendant is not given an opportunity to put forward his defence as regards the issue that the suit is barred by any law, on record, during the Order 7 Rule 11(d) stage. Even if he does, the court would not look into the defendant's written statements or any evidence which he may want to adduce. Therefore, a decision which goes against him, at the preliminary stage, without giving him an opportunity to properly defend it, must not be to his detriment. Since a plea of demurrer is akin to an application made under Order 7 Rule 11(d), the same principles must apply.*

***117.10**. It cannot be said that at the stage of rejection of plaint, the defendant-respondent chooses to waive his right to plead and instead, adopts the course of only testing the sufficiency of the plaint in law. At this stage, there is no choice between either pleading or demurring and the defendant-respondent cannot be taken to have elected to demur instead of pleading. This is simply because, there exists no burden of proof on him, at that stage, to plead. He can simply pause or wait for the plaintiff to prove the sufficiency of his claim in law, without affecting his right to plead or lead evidence in the future.*

*__117.11__. In Kanhaya Lal [Kanhaya Lal v. National Bank of India Ltd., 1913 SCC OnLine PC 4] , the Privy Council clarified that, while the decision on the objection or the plea raised by way of demurrer would be given assuming that the averments of the plaint are true, the defendant, would simultaneously reserve the right to show that these allegations are either wholly or partially false in the further stages of the action, should his objection be overruled. However, insofar as the decision on the objection which is raised as a preliminary point is concerned, everything stated in the plaint would be taken as true. In other words, the Privy Council had unequivocally and clearly stated that a decision on a mixed point of law and fact, taken by way of demurrer, would not be foreclosed in a situation where the party taking such a plea is unsuccessful.*

*__117.12.__ The Calcutta High Court in Angelo Bros. [Angelo Bros. Ltd. v. Bennett, Coleman and Co. Ltd., (2017) 203 Comp Cas 180 : 2017 SCC OnLine Cal 7682] also buttressed that when a defendant-respondent raises a plea by way of demurrer, it cannot be said that it constitutes an admission of the facts in the suit or the application, whose dismissal is sought for, for all times to come. In other words, the assumption made while seeking a decision on a preliminary point cannot be said to have the consequence of such an applicant forfeiting his right to contest the case later. Such an assertion cannot be made by adverting to the principles contained in Order 8 because a decision herein is sought for on a point of maintainability and not on the merits of the matter."*

28. That being said, the learned arbitrator has relied on the judgement of the Apex Court in <u>Nusli Neville Wadia</u> (Supra) to derive its authority to

frame the issue of limitation as a preliminary issue. Relevant observations made in the Award are reproduced hereunder:

> *"43. In the case law submitted by counsel for Claimant along with application to place on record additional documents and submissions in written, filed on 28.07.2022, the counsel for Claimant relied upon decision in Nusli Neville Wadia versus Ivory Properties and Ors., AIR 2019 SC 5125. I have carefully gone through said judgment. Though that judgment is on interpretation of Section 9A inserted in CPC by Maharashtra Amendment Act, 1977. Similar SubSection 9A was introduced in CPC by CPC Maharashtra (Amendment) Act, 1970 which stood repealed by way of amendment of CPC by Central Government in 1976. That section deals with deciding of issue of jurisdiction as preliminary issue. The word jurisdiction' has been defmed there under. The said judgment also deals with scope of Order 14 Rule 2 CPC before amendment of 1976 and after amendment of 1976. The position pertaining to scope of preliminary issue before amendment and after amendment have been exhaustively discussed from para 52 onwards of the judgment. In fact, this judgment is encyclopedia of law relating to scope of preliminary issue.*
>
> *44. In para 55 of the aforesaid judgment reference has been made to decision of Hon'ble Supreme Court in Abdul Rahman versus Prasoni (2003) 1 sec 488, where it was held that when facts are admitted, suit can be disposed off on preliminary issue and no particular procedure need be followed by the Court. It went to lay down that when facts are admitted, ordinarily the issue should be decided as preliminary issue.*
>
> *45. In para 62 of the judgment, it has been observed that it cannot be laid down as proposition of Jaw under*

*Order 7 Rule 11 (d) that plaint cannot be rejected as barred by limitation. It can be said that it is permissible to do so mainly in a case where the plaint averment itself indicate the case of action to the barred by limitation and no further evidence is required to adjudicate the issue.*

*46. In para 76 of the judgment towards end it has been observed that it is open to decide preliminary issue if it is purely a question of Jaw. I have already held above that in the present case the Claimant has cleverly drafted the Statement of Claim in which nothing has been mentioned about accrual of cause of action or starting point of limitation or extension of limitation by acknowledgment.''*

29. It is undoubtedly correct that the question of limitation frequently involves a mixed question of law and fact. While the applicability of the law of limitation depends on disputed foundational facts such as the date on which the cause of action arose, acknowledgment of liability, exclusion of time etc., however the aforesaid proposition cannot be elevated into an inflexible rule that every plea of limitation must invariably await completion of trial. Whether limitation can be determined at the threshold or not would depend upon the facts and circumstances of each case.

30. In the present case, a perusal of the Order dated 27.06.2022 leaves little room for doubt that the sole arbitrator has consciously examined whether the issue of limitation would, in the facts of the present case, require adjudication on disputed facts. After recording that the date of issuance of C-forms was not in dispute, it subsequently turned upon a singular legal question, namely whether the issuance of C-Forms would, in law, constitute an acknowledgement, or otherwise extend the period of limitation.

Proceeding on this premise, the Learned Arbitrator invoked the underlying principles embodied in Order XIV Rule 2(2)(b) of the CPC and proceeded to frame the issue of limitation as a preliminary issue.

31. Although the CPC does not strictly govern arbitral proceeding, it is always the discretion of the arbitrator to draw guidance from its underlying principles. In fact, Section 19 of the A&C Act bestows sufficient autonomy and discretion upon the Tribunal to conduct and regulate proceedings as per its own procedure.

32. The reliance placed by the Petitioner on Urban Infrastructure Real Estate Fund (*supra*), cannot be read as laying down an absolute proposition that a plea of limitation is incapable of being decided as a preliminary issue in every case irrespective of the admitted factual position.

33. Equally apposite is the reliance placed by the learned Arbitrator upon Nusli Neville Wadia (*supra*). The Apex Court has recognized that where an issue relates to a statutory bar and the relevant foundational facts are not in dispute, such issue may legitimately be decided as a preliminary issue. The emphasis, therefore, is not merely upon the nomenclature of the issue but upon whether determination thereof necessitates adjudication of disputed facts. The learned Arbitrator applied precisely this principle while framing the issue of limitation as a preliminary issue.

34. Further reliance on the judgement of BSNL (Supra) is also not misplaced wherein it has been specifically held that the issue of limitation can be framed as a preliminary issue. The Apex Court has observed as under:

> *"**43.** Applying the "tribunal v. claim" test, a plea of statutory time bar goes towards admissibility as it*

*attacks the claim. It makes no difference whether the applicable statute of limitations is classified as substantive (extinguishing the claim) or procedural (barring the remedy) in the private international law sense.*

***44.** The issue of limitation which concerns the "admissibility" of the claim, must be decided by the Arbitral Tribunal either as a preliminary issue, or at the final stage after evidence is led by the parties."*

35. Significantly, the grievance urged before this Court is not that the arbitrator lacked jurisdiction in the first place to adjudicate the issue of limitation. Rather, the challenge is directed against the stage at which the issue was decided. Such a challenge pertains squarely with the procedure adopted by the Arbitrator. Once the arbitrator has exercised discretion vested in it under Section 19 of the A&C Act, after recording cogent reasons, this Court exercising jurisdiction under Section 34 cannot substitute its own procedural preference merely because another course may also have been possible which could led to a different outcome. In any case, the learned Arbitrator has backed him stance with numerous judicial precedents and reached a plausible view.

36. It is stated that the jurisdiction of this Court under Section 34 is merely supervisory and not appellate in nature. Interference would arise only when the procedure adopted is contrary to the agreement of the parties, provisions of the A&C Act, principles of natural justice or so arbitrary so as to shock the conscience of the Court. In the opinion of this Court, no such circumstance has arisen in the present case. This Court cannot undertake a fresh evaluation of material merely because an alternative view is possible.

37. In NTPC Ltd. v. Deconar Services (P) Ltd., **(2021) 19 SCC 694**, the Apex Court has observed as under:

> "***12***. *Further, it is also a settled proposition that where the arbitrator has taken a possible view, although a different view may be possible on the same evidence, the court would not interfere with the award. This Court in Arosan Enterprises Ltd. v. Union of India [Arosan Enterprises Ltd. v. Union of India, (1999) 9 SCC 449] , held as follows : (SCC p. 475, paras 36-37)*
>
> > *"36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.*
> >
> > *37. The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the*

> *award or the reasoning contained therein cannot be examined."*
>
> ***13**. From the above pronouncements, and from a catena of other judgments of this Court, it is clear that for the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the court [see State of U.P. v. Allied Constructions [State of U.P. v. Allied Constructions, (2003) 7 SCC 396] ; Ravindra Kumar Gupta & Co. v. Union of India [Ravindra Kumar Gupta & Co. v. Union of India, (2010) 1 SCC 409 : (2010) 1 SCC (Civ) 130] and Oswal Woollen Mills Limited v. Oswal Agro Mills Ltd. [Oswal Woollen Mills Limited v. Oswal Agro Mills Ltd., (2018) 16 SCC 219 : (2019) 1 SCC (Civ) 426] ]."*

38. This Court, is therefore satisfied that the Learned Arbitrator acted within its bounds of procedural autonomy to determine the issue of limitation as a preliminary issue, which was without doubt preceded by a conscious examination of the whether disputed facts survived for adjudication of the said issue.

39. Now, the only question which remains to be considered is whether the issuance of C-Forms amounts to acknowledgement of liability or not.

40. According to the Petitioner, the subsequent correspondence exchanged between the parties, including invoices, letters of communication concerning issuance of C-forms would demonstrate a continuous jural relationship between the parties. An alternative case of the Petitioner is that

the Respondent has made admissions with respect to its liability before other legal forums.

41. The dates on which the communications were exchanged which amounts to admissions as per the Petitioner are reproduced hereunder:

| | |
|---|---|
| Jan'2011 to Dec'2011 | Invoices raised by the Petitioner herein for payment of INR 68,27,825/-. The invoices are composite invoices including the CST component. |
| 03.04.2012 | The Respondent vides its email dated 03.04.2012, categorically reaffirmed that the payments would be made once the process of verification etc. is complete. |
| 10.5.2012 | Several communications between the parties including email dated 10.05.2012 written by the Respondent to the Petitioner herein clearly indicating that the process of verification of panels is ongoing. |
| 20.09.2012 | E-mail by the Respondent regarding making appropriate arrangement for making payment to the Petitioner herein against the outstanding amounts. **(Please refer page 1135)** |
| Oct'2012 | Internal noting of the Respondent that the bills are in the process of verification **(Please refer page 1383, 1384, 1385, 1386)** |
| 12.03.2015 | Letter issued by the Petitioner herein asking for C-forms including those of the year 2011-2012. **(Please refer page 462)** |
| 19.03.2015 | Respondent's reply to the Petitioner herein's letter clearly admitting the contents of the letter and categorically admitting their liability to provide the Petitioner herein with the pending C-forms including those of the year 2011-2012. **(Please refer page 824)** |
| 06.06.2015 | Reply by TPDDL to Legal Notice issued by the Petitioner herein wherein, it again admitted its liability to furnish C Form including those of the year 2011-2012. **(Please refer page 730)** |
| 17.11.2015 | The Respondent categorically submitted before the Hon'ble High Court that issues are sub-judice and prayed for restraining the Petitioner herein herein from institution multiple proceedings. **(Please refer page 397-401)** |
| 27.11.2015 | The Respondents again categorically admitted that the disputes between the parties are subjudice before the Hon'ble High Court. **(Please refer page 846)** |

42. A perusal of the Impugned Award indicates that the Sole Arbitrator has accounted for these communications especially the communication

dated 06.10.2012 and has come to a conclusion that mere exchange of letters or settlement talks between the parties cannot be the basis of extending the period of limitation. Hence, the same cannot be resorted to for establishing continuous jural relationship between the parties. In Fact, the Apex Court in BSNL (Supra) has made the following relevant observations:-

> *"**51.** The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [S.S. Rathore v. State of M.P., (1989) 4 SCC 582 : 1990 SCC (L&S) 50; Union of India v. Har Dayal, (2010) 1 SCC 394; CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd., (2020) 5 SCC 185] or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that:"where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it." There must be a clear notice invoking arbitration setting out the "particular dispute" [ Section 21 of the Arbitration and Conciliation Act, 1996.] (including claims/amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail."*

43. A Significant contention of the Petitioner is that the issuance of C-Forms amounts to admission of liability, and since the same were issued to the Petitioner in 2016, the period of limitation is to be reckoned from that day onwards. In this light, the Petitioner is entitled to the benefits under Section 18 and 19 of the Limitation Act, 1963.

44. This Court has considered the aforesaid submission. In fact, the impugned award deals with this issue elaboratively. A perusal of the award

demonstrates that this contention of the Petitioner was not dismissed cursorily, but the arbitrator has undertaken an examination of the settled position governing the evidentiary value of C-forms. In doing so, reliance has been placed on a catena of judgements, like Zion Steel Ltd. (Supra) and Taipack Ltd.(Supra) which was also relied upon by the Respondent to submit that mere issuance of C-forms does not amount to admission of liability for purpose of determining contractual dues between the parties. The Arbitrator has observed that C-Forms are statutory declarations under the provisions of the Central Sales Tax Act to enable a purchasing dealer to avail concessional rates of tax. It is a intrinsically connected with compliance under the fiscal statue, however, in absence of any independent acknowledgement or admission, the C-Form, cannot be elevated to the status of an acknowledgement of liability.

45. This Court has perused the catena of judgements relied on by the Learned Arbitrator and is of the view that C-form does not, *ipso facto*, constitute an acknowledgment of liability, but it is equally not correct to suggest that it is incapable of having any evidentiary relevance whatsoever.

46. This distinction assumes particular significance in the present proceedings. The learned Arbitrator was not called upon merely to determine whether C-Forms had been issued by the Respondent. The issue before the learned Arbitrator was whether, having regard to the nature and contents of those C-forms and the other material placed on record, they constituted an admission of the specific contractual liability asserted by the Petitioner. The learned Arbitrator has dealt with this contention at length and has considered the judicial authorities relied upon by both sides. The finding is, therefore, not one rendered mechanically or upon a cursory rejection of

the Petitioner's case. A perusal of the impugned Award demonstrates that the learned Arbitrator has specifically considered the evidentiary character of the C-forms and has proceeded on the basis its issuance establishes a transaction at some point, but does not, without more, establish the subsistence of a liability.

47. This Court has examined the reasoning adopted by the sole arbitrator, and finds no infirmity warranting interference under Section 34 of the A&C Act. The view taken by the Arbitrator is founded upon sound legal principles backed by judicial precedents. Merely because the Petitioner seeks to attribute a different legal consequence to the issuance of C-forms backed by its own distinct set of judicial precedents cannot be a ground for this Court to substitute its own interpretation for that adopted by the Arbitrator, particularly when the interpretation is both plausible and legally sustainable. In fact, this Court has independently perused the judgements relied upon by the Sole arbitrator and is satisfied with its reasoning that the issuance of the same does not ipso facto determine the liabilities of the contracting parties.

48. The subsequent decision of this Court in Rattan India Power Ltd. v. BHEL, **(2025) 1 HCC (Del) 306** is particularly relevant in this regard. The Court held that while a C-Form does not by itself constitute an acknowledgment of liability, it may nevertheless be relied upon along with other circumstances for determining whether an implied admission exists. Significantly, while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, this Court declined to interfere with the Tribunal's conclusion where the C-forms constituted only one of the factors which had been weighed by the Tribunal in arriving at its finding. In the present case, as no surrounding circumstances apart from the issuance of

C- Forms could be established by the Petitioner, the Learned Arbitrator has rightly held that mere issuance of C-Forms would not amount to admission of liability.

49. Appreciation of pleadings, assessment of evidence, including interpretation of documents, lie within the domain of the arbitral tribunal. It is for the tribunal to assess the weight to be given to any piece of evidence, and to adjudicate upon the sufficiency of evidence. Interference with the factual findings of an arbitral tribunal is justified only if it is based on no evidence at all, or if material evidence has not been adverted to, or the conclusions arrived at are manifestly unreasonable and arbitrary, in the sense that no reasonable tribunal could have reached the same conclusion. As the Court does not exercise appellate jurisdiction, it will not set aside an award, even if it perceives that a different view was possible, on a reading of the pleadings, appreciation of the evidence, or even in understanding of the relevant legal position.

50. With respect to the plea of Section 18 and 19 of the Limitation Act, 1963, a perusal of the Impugned Award indicates that it has been observed by the Learned Arbitrator that as the plea for extension of limitation under Section 18 and 19 of the Limitation Act, 1963 has not been raised by the Petitioner in its Statement of Claim, the benefit of the same cannot be extended to the Petitioner by pleading the same at a later stage in its rejoinder.

51. Relevant observations made by the Arbitrator on this aspect is reproduced hereunder:

> *"40. The Counsel for Respondent went on to urge that Section 5 to 20 of the Limitation Act provides different*

*situations in which limitation is extended. The Claimant has to plead specifically one of those section as to under which the limitation is extendable, in his case. He submitted that now the Claimant is trying to seek extension of limitation on the basis of acknowledgment which is covered under Section 18 Limitation Act, 1963, by way of para 4 of Rejoinder in which it has referred to issue of Form-e amounting to acknowledgment. But the Claimant has not pleaded the same in Statement of Claim and so it cannot rely upon the same now.*

*41. In support of his submissions he relied upon para 38 of decision of Hon'ble Supreme Court in Bharat Sanchar Nigam Ltd. and Ors. versus Nortel Networks India Pvt. Ltd. AIR 2021 SC 2849. It was observed in the said para that unless, there is pleaded case specifically adverting to the applicable section, and how it extends the limitations from the date on which the cause of action originally arose, there can be no basis to save the time of limitation.*

*42. The counsel for Claimant could not satisfactorily answer the above objection. She urged that since Respondent is referring to documents viz invoice, email, it becomes a mixed question of fact and law. Hence, the same should not be decided as a preliminary issue. Rather the same should be taken up along with other issues at final stage after recording evidence.''*

52. While observing so, the arbitrator has also taken a view that the Petitioner had cleverly drafted its Statement of Claim devoid of any averments with respect to an accrual of any cause of action, starting point of limitation or extension of limitation by acknowledgment of liability.

53. This Court has perused the aspect of Section 18 and 19 of the Limitation Act, 1963. These provisions, without doubt, do not operate automatically. In fact, they are mixed questions of fact and law. That being said, the applicability of the aforesaid provisions depends upon the factual stratum such as date, nature and contents of the alleged acknowledgement. It has been observed by the Learned Arbitrator that the plea of Section 18 and 19 was only taken up at a later stage in the rejoinder, and not before that. It is not alien to legal practice that while a rejoinder is intended to traverse new facts pleaded in the statement of defence, the same cannot be used to introduce an entirely new cause of action. Additional pleadings raised in the rejoinder cannot form a part of the Statement of Claim. At best, the Petitioner could have sought for an amendment of its statement of claim which it failed to do.

54. In light of the procedural autonomy bestowed upon an Arbitral Tribunal under section 19 of the A&C Act and in light of the scope of section 19 as discussed in the preceding paragraphs, this court is of the view that no interference is warranted on this aspect in light of the settled position of law.

55. Insofar as the Petitioner's submission regarding alleged admissions made by the Respondent before other fora is concerned, the Petitioner has referred to the application filed by the Respondent in the Sales Tax Appeal No. 16 of 2008, wherein according to the Petitioner, there is a clear admission of liability. Per contra, it is the case of the Respondent that once the C-forms were supplied to the Petitioner, the disputes between the parties stood resolved. For this purpose, the learned Counsel for the Respondent has brought before the knowledge of this Court a communication dated

16.11.2016, wherein it was the case of the Respondent that through this communication, the Petitioner has explicitly admitted that there is nothing left in the matter. The same has also been considered by the Arbitrator. For the sake of reference, the relevant communication is reproduced hereunder:

> *"SUBJECT: - PETITION NO. 54/2015 FILED BY RMS AUTOMATION SYSTEMS LIMITED*
>
> *REF.:- Letter dated 12th May, 2016 submitted by RMS Automation Systems Ltd. to the Hon'ble Micro and Small Enterprises Facilitation Council, Nashik Division*
>
> *Dear Sir,*
>
> *1. We, RMS Automation Systems Limited (hereinafter referred to as "RMS"), write to your good offices in furtherance of our earlier correspondence dated 12th May, 2016 (letter Enclosed) and in furtherance of proceedings dated 12th May, 2016 in our Petition No. 54/2015.*
>
> *2. On 12th May, 2016, we had submitted to your good offices (by way of letter and oral submissions) that once we obtain the C-Forms, the dispute in the Petition would be resolved amicably and we would accordingly withdraw the Petition.*
>
> *3. We are pleased to inform you that, on account of this Hon'ble Council's indulgence in our Petition, TPDDL (Tata Power Delhi Distribution Limited) has provided us the C-Forms relevant to the dispute in the Petition.*
>
> *4. With the receipt of these C-Forms from TPDDL, the dispute, in Petition No. 54/2015, between RMS and TPDDL stands resolved amicably and nothing further remains to be done in the matter.*

*5. Now that our dispute is resolved, we state that we wish to withdraw the Petition filed by us in Petition No. 54/2015. Accordingly we request that your good offices may kindly order that the Petition in Petition No. 54/2015 has been withdrawn because the dispute has been resolved amicably, and nothing further remains in the matter. We also request that no further proceedings be held in the matter as the same are no longer necessary.*

*6. Being SSI unit, we are thankful to you for your kind consideration and constant support till date."*

56. The Petitioner, before this Court, essentially seeks a different inference to be drawn from the same material.

57. Where the same evidentiary material is capable of being interpreted in more than one manner, the mere fact that the Petitioner seeks to persuade this Court to adopt an interpretation different from that adopted by the learned Arbitrator cannot, by itself, furnish a ground for interference under Section 34 of the A&C Act. The Court, while exercising jurisdiction under Section 34, is not called upon to determine whether the view adopted by the Arbitral Tribunal is the only possible view. The inquiry is whether the view adopted is a plausible and legally permissible view on the material available before the Tribunal.

58. When this Court pointed a specific question and asked the learned Counsel for the Petitioner as to whether the Petitioner sought for the due amount from the Respondent before the MSME Council, when it was always open for the Petitioner to raise the same, the answer was in the negative. It appears that nothing prevented the Petitioner from raising the

claim before the MSME Council along with the issue of C-Form. Further, nothing has been produced in the reply before the MSME Council or during the proceedings before this Court that would show that there is a mutual understanding between the parties that only on the issuance of C-Forms would the question of release of due payments by the Respondent would arise. In light of the fact that there is no material on record that would show any form of acknowledgement of liability by the Respondent, the plea of Section 18 of the Limitation Act, 1963 goes for a toss. In the opinion of this Court, C-Form is only for ascertaining the tax liability of any seller in a interstate transaction. The fact that C-Form has or has not been issued does not amount to an acknowledgment that any amount is due and payable. There is no bar that without the issuance of C-Form, a seller cannot, in the alternative, demand the due amount payable to it under the terms of the contract. In the opinion of this Court, the entire case of the Petitioner that till the issue C-Form was not resolved, the Petitioner could not have raised its claim of due amount is bereft of any merit and is rightly rejected by the Arbitral Tribunal.

59. The mere existence of the C-Forms cannot, in the circumstances of the present case, supply this missing link. As noticed hereinabove, the issuance of C-forms may establish the underlying commercial transaction and may have evidentiary relevance in determining the dealings between the parties. However, the same does not, without more, establish that a particular sum remained outstanding or that the Respondent had unequivocally acknowledged its liability to pay such amount.

60. This Court is particularly conscious that the power under Section 34 is supervisory and not appellate in nature. The Court cannot substitute its own

evaluation of the evidence for that of the Arbitral Tribunal merely because the Court may, on an independent examination of the record, be inclined to attach a different degree of weight to a particular document. Interference is warranted only where the conclusion of the Arbitral Tribunal is such that it cannot reasonably be sustained on the material before it or where the Tribunal has reached to a conclusion without any evidence.

61. In light of the principles set out above with respect to the scope of interference of this Court under Section 34 of the A&C Act along with the analysis done subsequently on merits, this court is of the opinion that no grounds have been made out warranting interference by this Court.

62. Accordingly, the present petition is dismissed, with pending applications, if any.

**SUBRAMONIUM PRASAD, J**

**AUGUST 18, 2026**
VG