Case Citation: (2026) ibclaw.in 4995 HC
2026:DHC:6821

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

% ***Judgment reserved on: 14.05.2026***
Judgment pronounced on: 18.08.2026

\+ O.M.P. 7/2017, I.A. 5008/2017 (Stay), I.A. 1190/2025 (U/O XIII Rule 3) & I.A. 1191/2025 (U/O VIII Rule 1A(3))

LALIT MODI .....Petitioner

Through: Mr. Inderbir Singh Alagh, Senior Advocate along with Mr. Tushar Parashar, Mr. Amit Pandey and Mr. Bhanu Pratap Singh Phore, Advocates.

versus

BDR BUILDERS AND DEVELOPERS PRIVATE LIMITED .....Respondent

Through: Mr. Prashant Mehta, Ms. Diksha Goswami, Ms. Prachi Kohli, Mr. Nitin Bajaj and Ms. Niharika Tiwari, Advocates.

\+ EX.P. 69/2017, EX.APPL.(OS) 169/2018 (U/O 21 Rule 58, 98, 101 & 104), EX.APPL.(OS) 173/2018 (Stay), EX.APPL.(OS) 796/2020 (U/O 39 Rule 2A) & EX.APPL.(OS) 76/2025 (U/O VII Rule 14)

BDR BUILDERS & DEVELOPERS PVT. LTD. .....Decree Holder

Through: Mr. Prashant Mehta, Ms. Diksha Goswami, Ms. Prachi Kohli, Mr. Nitin Bajaj and Ms. Niharika Tiwari, Advocates.

versus

SHRI LALIT MODI .....Judgement Debtor

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Through: Mr. Inderbir Singh Alagh, Senior Advocate along with Mr. Tushar Parashar, Mr. Amit Pandey and Mr. Bhanu Pratap Singh Phore, Advocates.

For Objector-Romi Garg:
Ms. Nandni Sahni, Advocate.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present **Objection Petition, being O.M.P. No. 7/2017**[1], has been filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[2], seeking the setting aside of the **Arbitral Award dated 12.01.2017**[3] passed by the learned Sole Arbitrator.

2. At the outset, it is necessary to notice the preliminary objection raised by BDR Builders and Developers Private Limited, the Respondent in the Objection Petition. According to the Respondent, the learned Arbitrator had initially rendered an **Arbitral Award dated 21.11.2016**[4], which was passed with the consent of the parties and therefore constituted a consent award. It is the Respondent's case that the Impugned Award, which has been impugned in the present proceedings, did not constitute a fresh, independent, or substantive arbitral determination. Rather, the said Award was merely an

[1] Objection Petition
[2] A&C Act
[3] Impugned Award/ Award dated 12.01.2017/ Arbitral Award dated 12.01.2017/ Engrossed Award
[4] Original Award/ Award dated 21.11.2016/ Arbitral Award dated 21.11.2016/ Arbitral Award

engrossment of the Original Award on non-judicial stamp paper for the limited purpose of facilitating its registration before the office of the learned Sub-Registrar, New Delhi.

3. Proceeding on the aforesaid basis, the Respondent vehemently contends that, insofar as a challenge under Section 34 of the A&C Act is concerned, the only award that could conceivably be assailed is the Original Award. It is further submitted that the said award, being a consent award, is *ex facie* not amenable to challenge under Section 34 of the A&C Act.

4. The Respondent also argues that even assuming a challenge were maintainable, such challenge could only be directed against the Original Award and not against the Impugned Award. According to the Respondent, the Impugned Award is merely a stamped reproduction of the original award and does not possess an independent legal existence so as to constitute a separate arbitral award capable of being challenged under Section 34 of the A&C Act.

5. Alongside the Objection Petition, the connected **Execution Petition, being EX.P. No. 69/2017**[5], has been instituted under Section 36 of the A&C Act seeking enforcement and execution of the Arbitral Award. Significantly, the Execution Petition seeks enforcement of both the Original Award and the Impugned Award. The nature of the relief sought is evident from Clause 3 of the Execution Petition, which reads as under:

"…..

3	Date of Decree/order of which execution is	Arbitration Award (Non Commercial) dated 21.11.2016 passed with the consent of the parties (Engrossed on Stamp Paper on 12.01.2107 by the Arbitrator) by Shri

[5] Execution Petition

	sought	Naresh Gupta (Advocate), Sole Arbitrator. Copy of the Consent Award dated 21.11.2016 and Engrossed Award dated 12.1.2017 are enclosed as Annexures A1 & A2, copy of the Board Resolution of the Decree Holder in favour of its Director to file the present execution is Annexure A-3, respectively.

…"

6. Since both the aforesaid Petitions arise out of the same arbitral proceedings and concern the validity and enforceability of the same award(s), this Court considers it appropriate to dispose of both matters by way of the present common judgment.

7. It is pertinent to note that the maintainability and ultimate fate of the Execution Petition is intrinsically dependent upon the outcome of the Objection Petition. If the challenge to the Arbitral Award succeeds, the very foundation on which the execution proceedings rest would cease to exist. Consequently, the issues arising in the Petition under Section 34 of the A&C Act necessarily require consideration and adjudication in the first instance before any question relating to enforcement can be examined.

8. For the sake of convenience, consistency, and clarity, the parties shall hereinafter be referred to in the same rank and nomenclature as assigned to them in the Objection Petition.

9. It is clarified that the Execution Petition shall remain entirely subject to the outcome of the Objection Petition. Accordingly, in the event the challenge under Section 34 of the A&C Act succeeds and the Arbitral Award is set aside, the Execution Petition would necessarily fail and shall be liable to be dismissed. Conversely, the

question of enforcement would arise only if the award survives judicial scrutiny in the present proceedings.

BRIEF FACTS:

10. Shorn of unnecessary details, the facts emerging from the arbitral record, which are germane to the adjudication of the present Petition, are set out hereinbelow:

(a) The arbitral record reflects that during the period between the years 2009 and 2012, the Respondent extended financial assistance to the Petitioner. Following the same, the parties entered into an **Agreement to Sell dated 24.06.2014**[6] in respect of the **entire freehold built-up property admeasuring approximately 858 square yards, bearing No. 32, Pashchimi Marg, Vasant Vihar, New Delhi**[7].

(b) Subsequently, disputes and differences arose between the parties in relation to the said Agreement to Sell on account of the alleged non-performance and non-compliance of the respective obligations arising thereunder.

(c) Since the Agreement to Sell contained an arbitration clause providing for resolution of disputes through arbitration, the parties, by a joint communication dated 05.10.2016, requested the learned Sole Arbitrator to enter upon the reference and adjudicate the disputes and differences which had arisen between them in relation to the Subject Property.

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[6] Agreement to Sell
[7] Subject Property

(d) Acting upon the said joint request, the learned Arbitrator entered upon the reference *vide* communication dated 05.10.2016 and thereafter proceeded to conduct the arbitral proceedings between the parties.

(e) Upon conclusion of the arbitral proceedings, the learned Arbitrator made and signed an Arbitral Award dated 21.11.2016. The said Award was also signed by the parties and, *inter alia*, directed specific performance of the Agreement to Sell in respect of the Subject Property and further directed delivery of physical possession thereof in favour of the Respondent.

(f) It is the specific case of the Respondent that the Original Award dated 21.11.2016 was in the nature of a consent award. According to the Respondent, the said Award was subsequently engrossed on judicial stamp paper by the learned Arbitrator on 12.01.2017 and was thereafter forwarded and delivered to the respective parties under cover of a forwarding letter dated 22.01.2017. The aforesaid assertions, however, are categorically disputed by the Petitioner.

(g) It is in the aforesaid factual background, along with the other facts and circumstances pleaded and contentions advanced by the Petitioner, that the present Objection Petition has been instituted under Section 34 of the A&C Act, impugning the Award engrossed on judicial stamp paper dated 12.01.2017. The Petitioner assails the Impugned Award primarily on grounds pertaining to the legality and validity of the arbitral proceedings, the procedure adopted by the learned Arbitrator before, during and after the making of the Award.

SUBMISSIONS ON BEHALF OF THE PARTIES:

11. Learned Senior Counsel appearing on behalf of the Petitioner would assail the Impugned Award principally on the grounds that the appointment of the learned Arbitrator as well as the conduct of the arbitral proceedings were not in accordance with law and that the learned Arbitrator failed to maintain the degree of independence and impartiality required of an arbitral tribunal under the A&C Act, thereby rendering the entire arbitral process fundamentally defective and the Impugned Award liable to be set aside.

12. Learned Senior Counsel would submit that the Impugned Award is actuated by malice and vitiated by fraud, inasmuch as the same is alleged to be the outcome of collusion and active connivance between the Respondent and the learned Arbitrator through a fraudulent appointment of the Arbitrator, fabricated arbitral proceedings, manipulated records and documents, and other dishonest means, all of which were allegedly employed with the object of illegally depriving the Petitioner of his valuable immovable property and causing him wrongful loss.

13. In support of the aforesaid challenge, learned Senior Counsel for the Petitioner would contend that the learned Arbitrator lacked the requisite independence and impartiality and that the circumstances surrounding his appointment, coupled with his conduct before, during and after the arbitral proceedings, raise justifiable doubts regarding his neutrality, while referring to various instances which, according to the Petitioner, establish that the learned Arbitrator maintained

longstanding professional relationships with the Respondent and its Directors both prior to accepting the reference and even after the conclusion of the arbitral proceedings, thereby striking at the very root of the arbitral process.

14. Elaborating the said contention, learned Senior Counsel would place reliance upon certain deeds drafted by the learned Arbitrator for the Respondent and its Directors during the period between 2008 and 2012 and submit that the said documents demonstrate that the learned Arbitrator had acted as the legal advisor, consultant and counsel for the Respondent over a considerable period of time, while further contending that the learned Arbitrator regularly represented and advised the Respondent and its affiliated entities, enjoyed significant professional and commercial relationships with them, exercised considerable influence in matters concerning the Respondent, derived substantial professional income from such engagements and maintained close professional as well as familial relationships with persons controlling the Respondent Company, all of which, according to the Petitioner, constitute circumstances giving rise to justifiable doubts as to his independence and impartiality.

15. In further support of the aforesaid submissions, learned Senior Counsel would place reliance upon a typed copy of an alleged reply dated 08.03.2018, stated to form part of the record of the connected Execution Petition and to have been submitted by the learned Arbitrator in response to a notice issued to him by an authority, while contending that the contents thereof constitute clear admissions regarding the learned Arbitrator's longstanding professional relationship with the Respondent and its Directors before, during and

after the arbitral proceedings, and particular emphasis is placed upon paragraphs (c), (e), (f), (h), (i), (j) and (k) thereof.

16. According to the learned Senior Counsel, the aforesaid reply contains the learned Arbitrator's acknowledgment that he had known the Respondent Company and its Directors for several years, had rendered legal opinions and drafted various documents on their behalf, had received professional fees from the Respondent, that his wife had acquired equity shares in a company after the conclusion of the arbitral proceedings, and that no disclosure under Section 12 of the A&C Act had been made on the premise that both parties were already aware of his prior association with them. For the sake of convenience, the said reply is reproduced hereunder *in toto*:

> "I am in receipt of your notice dated 2.3.2018 directing me to furnish few details and documents, I wish to submit my reply as under:-
>
> a) As per the order dated 25.4.2017, passed by the Hon'ble Delhi High Court in OMP No.7/2017 titled as Lalit Modi vs BDR Builders and Developers Pvt. Ltd., the entire arbitration records have been submitted in original in the High court. Copy of the order dated 25.4.2017 and receipt of record dated 4.5.2017 are annexed herewith.
>
> b) All the arbitration proceedings took place at my office at R-36, Ground Floor, Greater Kailash-I, New Delhi. There is no CCTV camera installed at my office. The proof of appearance of Lalit Modi is available in the arbitration record in the form of proceeding sheets.
>
> c) I know M/s BDR Builder & Developers Pvt. Ltd and its directors for past many years. During the course of my professional duties, Mr. Rajesh Gupta had sought opinion in various matters. I have also drafted few deeds for the sale and purchase of various properties for Mr. Rajesh Gupta and his company. I cannot give any specific number of deeds/advise/professional work done by me for Mr. Rajesh Gupta or his company. I do not have any such record or detail available with me.
>
> d) No transaction as described in your notice ever took place between me with BDR Group/Rajesh Gupta.
>
> e) For my professional services, I had received a sum of Rs.50,000/-on 12.1.2017 and also on 22.2.2017. These amounts

was towards my legal charges for two arbitration proceedings. Copy of the bank statement of Standard Chartered Bank reflecting the two entries is annexed.

f) No such declaration was made. I was known to both the parties. Both the parties knew that I know the order party. There was a joint request from both of them as such there was no question of giving any such declaration.

g) There was no other transaction with BDR/Rajesh Gupta except the two transactions mentioned above.

h) Yes, I had conducted one more arbitration proceedings at the joint requests, of BDR and Mrs. Nirmala Modi w/o Surender Modi regarding property No. D-20, South Ex Part-2. This arbitration was started in 15.7.2016 and award was passed on 23.12.2016. Nirmala Modi was real sister in law (Bhabhi) of Mr. Lalit Modi.

i) After conclusion of the arbitration proceedings, my wife had acquired 15% equity shares in the company known as Renu Farms Pvt Ltd. on 5.4.2017, against making an investment/payment of Rs.1.98 Crores on 3.4.2017. Copy of bank statement of Smt. Seema Gupta of Standard Chartered Bank is annexed.

j) Since both Lalit Modi and Rajesh Gupta knew that I know both of them and also the fact that I was already conducting arbitration in the matter of Nirmala Modi as such realizing and appreciating my independence and unbiased attitude in the arbitration proceedings, Lalit Modi and Rajesh Gupta both requested me for conducting arbitration between them as well. Since I was known to both the parties and both of them knew my previous associations with both of them, as such there was no reason for issuing any such declaration. I conducted the arbitration proceedings in utmost independent, fair and impartial manner without any bias or favour to any party.

k) Yes I had written the letter dated 22.1.2017 to the Sub-registrar. It was sent on the request of Mr. Rajesh Gupta. I do not have a copy of the letter. I had not written any such letter earlier.

I hope you will find the above satisfactory. I am ready and willing to provide any such other and further details and documents as your goodself may desire. I may add that Nirmala Modi has already accepted the award by giving her no objection to the execution proceedings in execution petition no.72/2017 before Hon'ble Delhi Court. Present FIR is nothing but a ploy to extort money from me by humiliating and harassing me and to settle the score with Rajesh Gupta by Mr. Romi Garg. It may be pointed out that Mr. Romi Garg had attempted to challenge the award dated 12.1.2017 before the DHC but the same was dismissed by order dated 16.1.2018 in CS OS No.14/2018. Copy enclosed.

Thanking you

Yours truly,

Sd/-
(Naresh Gupta)
Advocate 8/3/18

Sd/-
(Mr. Rishabh Agnihotri)
D/2839/16
Cell No.9999642005"

17. Relying upon the aforesaid material, learned Senior Counsel would submit that the arbitral proceedings stood vitiated from their inception since the learned Arbitrator failed to make the mandatory disclosure contemplated under Section 12(1) of the A&C Act and it was only subsequently discovered that the learned Arbitrator had been rendering legal services to the Respondent Company and its Directors, which circumstance, according to the Petitioner, itself gives rise to justifiable doubts regarding his independence and impartiality and consequently renders the arbitral proceedings *void ab initio*.

18. Learned Senior Counsel would further assail the manner in which the arbitral proceedings culminated in the passing of the Impugned Award and submit that the procedure adopted by the learned Arbitrator is wholly contrary to law and strikes at the very foundation of a fair adjudicatory process, inasmuch as although the Award bears the date 21.11.2016, it was never communicated to the Petitioner on that date and the learned Arbitrator is alleged to have thereafter made unilateral alterations and modifications in the Award, which fact, according to the Petitioner, is undisputed, before the Award was ultimately communicated to the parties.

19. It would further be submitted that once any arbitral award is made and published, the learned Arbitrator is not empowered to make

unilateral alterations therein without notice to or consent of the parties and that such a course of action is wholly contrary to the basic principles governing arbitral adjudication, while it would also be contended that the document dated 21.11.2016 cannot be regarded as a valid arbitral award since the Award was engrossed on stamp paper and communicated to the parties only after substantive changes had allegedly been incorporated therein on 12.01.2017.

20. In support of the aforesaid submission, learned Senior Counsel would draw the attention of this Court to the forwarding letter dated 22.01.2017 addressed by the learned Arbitrator to the Petitioner, wherein the learned Arbitrator stated that "*...the consent award was made and published by me on 21.11.2016. The said award has now been engrossed on non-judicial stamp paper of Rs. 5,85,000/- for the purpose of registration of the Arbitral Award dated 21.11.2016*."

21. In this reference, it would be submitted that there was never any *consensus ad idem* between the parties with respect to the Engrossed Award dated 12.01.2017 and, therefore, once substantive changes had been introduced after the purported publication of the Award dated 21.11.2016, the same could no longer be described as a consent award.

22. Learned Senior Counsel would further submit that the Impugned Award dated 12.01.2017 contains substantive alterations introduced after the alleged publication of the Award dated 21.11.2016 and that such post-award modifications, being beyond the jurisdiction of the learned Arbitrator, render the Award legally unsustainable.

23. Proceeding further and without prejudice to the aforesaid submissions, learned Senior Counsel would submit that immediately upon the making and publication of the Award dated 21.11.2016, the learned Arbitrator became *functus officio* and his mandate stood exhausted, and that, save and except the limited powers expressly preserved under the A&C Act to correct clerical or typographical errors, interpret the Award or make an additional award in the circumstances contemplated therein, the learned Arbitrator ceased to possess any jurisdiction to alter, modify or supplement the substantive contents of the Award, with the consequence that the alterations allegedly made on 12.01.2017 are wholly without jurisdiction and *non est* in the eyes of law.

24. Learned Senior Counsel would further draw the attention of this Court to the communication dated 22.01.2017 addressed by the learned Arbitrator to the Sub-Registrar, Palika Bhawan, New Delhi, whereby the learned Arbitrator informed the Sub-Registrar regarding the Award in respect of the subject property and requested that no deed, document, letter or other correspondence relating to the cancellation of the General Power of Attorney dated 10.02.2016 executed by the Petitioner in favour of Mr. Dinesh Gupta be entertained and that any such document, if received, be immediately brought to his notice.

25. It would be submitted that the aforesaid communication unmistakably demonstrates that even after the alleged conclusion of the arbitral proceedings the learned Arbitrator continued to exercise authority over matters forming part of the subject matter of the reference, while the issuance of such directions to the learned Sub-

Registrar was wholly dehors the arbitral mandate and beyond the jurisdiction conferred upon the learned Arbitrator under the A&C Act, thereby demonstrating, according to the Petitioner, a patent transgression of the jurisdictional limits governing an arbitral tribunal.

26. ***Per Contra***, learned Counsel appearing on behalf of the Respondent would submit that the Impugned Award has been validly passed in accordance with the provisions of the A&C Act and does not suffer from any infirmity warranting interference under Section 34 thereof, and consequently the present petition is liable to be dismissed.

27. Learned Counsel would submit that the Petitioner's contention that the Impugned Award is not a consent award is wholly misconceived, inasmuch as during the pendency of the arbitral proceedings both parties had jointly informed the learned Arbitrator that they had amicably resolved all their disputes and had arrived at mutually agreed terms of settlement, whereupon the learned Arbitrator reduced the said settlement into the form of an arbitral award on 21.11.2016, which award was duly signed in original by the Petitioner as well as by the Respondent Company through Shri Rajesh Gupta.

28. It would, therefore, be submitted that the Impugned Award is nothing but an award on agreed terms passed under Sections 30 and 31(3)(b) of the A&C Act and, being founded entirely upon the *consensus* of the parties, is not liable to be assailed in proceedings under Section 34 of the A&C Act.

29. Learned Counsel for the Respondent would further submit that the engrossment of the Award dated 21.11.2016 on non-judicial stamp paper on 12.01.2017 neither alters the character nor affects the validity or finality of the consent award, since such engrossment was

undertaken with the knowledge and consent of both parties solely for the purpose of registration, and therefore cannot constitute a ground for setting aside the Award.

30. It would further be submitted that the subsequent communication addressed by the learned Arbitrator to the learned Sub-Registrar was also issued with the consent and knowledge of the parties and, consequently, the same cannot be construed as affecting either the legality or the finality of the arbitral award.

31. Learned Counsel would further submit that both the Petitioner and the Respondent had, of their own volition and by mutual agreement, approached the learned Arbitrator for adjudication of their disputes and, therefore, the Petitioner cannot now be permitted to challenge either the appointment of the learned Arbitrator or the arbitral proceedings after having voluntarily participated therein.

32. It would further be submitted that the learned Arbitrator was well known to both parties and it was precisely because of such familiarity and mutual confidence that he came to be appointed as the Sole Arbitrator with the consent of both sides.

33. In response to the allegations regarding the learned Arbitrator's prior professional association with the Respondent, learned Counsel for the Respondent would draw the attention of this Court to various deeds dating back to the year 2010, which, according to him, had also been drafted by the learned Arbitrator on behalf of the Petitioner, and would submit that the learned Arbitrator had, in the ordinary course of his legal practice, rendered professional services to several individuals including both the Petitioner and the Respondent.

34. It would accordingly be contended that merely because the learned Arbitrator had drafted certain deeds or rendered professional services for the Respondent in the past cannot, by itself, give rise to any inference of bias or lack of independence.

35. Insofar as the typed copy of the alleged reply dated 08.03.2018, stated to form part of the record of the connected execution proceedings and to have been submitted by the learned Arbitrator in response to a notice issued to him by an authority, is concerned, learned Counsel for the Respondent would, at the outset, submit that the Petitioner was fully aware, even prior to the commencement of the arbitral proceedings, of the learned Arbitrator's previous acquaintance and professional association, and that it was for this very reason that both parties had jointly approached the learned Arbitrator and addressed a joint communication requesting him to adjudicate their disputes.

36. It would, therefore, be submitted that the absence of a disclosure under Section 12(1) of the A&C Act is of no legal consequence in the facts of the present case, particularly when the alleged prior associations were admittedly within the knowledge of both parties, and in any event none of the circumstances relied upon by the Petitioner falls within any of the disqualifications or grounds specified under either the Fifth Schedule or the Seventh Schedule to the A&C Act so as to render the learned Arbitrator either ineligible to act or lacking in independence.

37. Learned Counsel would further submit that, the Impugned Award being an award on agreed terms, the objections now sought to be raised by the Petitioner regarding alleged bias, lack of

independence or justifiable doubts are hopelessly belated and legally untenable, and that, without prejudice to the aforesaid submissions, the alleged reply dated 08.03.2018 cannot in any event be relied upon by the Petitioner since it does not form part of the record of the of the Objection proceedings, no original or authenticated copy thereof has been produced, and what has been placed on record is merely a typed copy whose source and authenticity remain wholly unestablished.

ANALYSIS:

38. This Court has carefully considered the rival submissions advanced on behalf of the parties and, with the able assistance of the learned Senior Counsel for the Petitioner and the learned counsel for the Respondent, has perused the Impugned Award, the entire arbitral record, and the other documents and materials placed before this Court and referred to during the course of arguments.

39. At the outset, it is apposite to note that this Court remains conscious of the limited scope of its jurisdiction while examining an objection petition under Section 34 of the A&C Act. There is a consistent and evolving line of precedents whereby the Hon'ble Supreme Court has authoritatively delineated and settled the contours of judicial intervention in such proceedings.

40. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier judgments, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[8], while dealing with the grounds of conflict with the public policy of India and patent illegality, made certain pertinent observations, which are reproduced hereunder:

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[8] (2025) 2 SCC 417

"Relevant legal principles governing a challenge to an arbitral award

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

Public policy

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

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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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The 2015 Amendment in Sections 34 and 48

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

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

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted/added Explanations would apply [***SsangyongEngg. & Construction Co. Ltd.*** **v.** ***NHAI*****, (2019) 15 SCC 131**].

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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:

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(*a*) "in contravention with the fundamental policy of Indian law";
(*b*) "in conflict with the most basic notions of morality or justice"; and
(*c*) "patent illegality" have been construed.

In contravention with the fundamental policy of Indian law

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

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

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:
(*a*) violation of the principles of natural justice;
(*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and
(*c*) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

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

*****

Patent illegality

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

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

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

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

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

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

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

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

Perversity as a ground of challenge

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

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

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

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

(*iii*) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

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

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

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

73. In a recent three-Judge Bench decision of this Court in ***DMRC Ltd.*** **v.** ***Delhi Airport Metro Express (P) Ltd.*****, (2024) 6 SCC 357**, the ground of patent illegality/perversity was delineated in the following terms: (SCC p. 376, para 39)

> "*39*. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the

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

Scope of interference with an arbitral award

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

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

41. Before examining the rival contentions advanced by the parties on the merits, this Court considers it appropriate to first deal with the preliminary objection raised on behalf of the Respondent that the Award, being an award on agreed terms or a consent award, is not amenable to challenge under Section 34 of the A&C Act.

42. Upon a careful consideration of the statutory scheme of the A&C Act, this Court is unable to accept the said contention of the Respondent. In arriving at this conclusion, this Court takes note of the scheme and interplay of Sections 30, 31 and 34 of the A&C Act, the relevant portions whereof are reproduced hereunder:

> "**30. Settlement. - (1)** It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.
> **(2)** If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
> **(3)** An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.
> **(4)** An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute."
>
> *****
>
> **31. Form and contents of arbitral award. - (1)** An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
> **(2)** For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.
> **(3)** The arbitral award shall state the reasons upon which it is based, unless-
> (a) the parties have agreed that no reasons are to be given, or
> (b) the award is an arbitral award on agreed terms under section 30.
> **(4)** The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.
> **(5)** After the arbitral award is made, a signed copy shall be delivered to each party.
> **(6)** The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.
>
> ****
>
> .."
>
> *****

"34. Application for setting aside arbitral award. - (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that-

(i) a party was under some incapacity, or

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

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

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

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

Explanation 1.- For the avoidance of any doubt, it is clarified that an 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.

Explanation 2.- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental

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policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

****

..”

43. A conjoint reading of Sections 30, 31 and 34 of the A&C Act demonstrates that the Act does not create two distinct classes of arbitral awards, *namely*, awards rendered upon adjudication and awards passed on agreed terms, insofar as the availability of the statutory remedy under Section 34 is concerned.

44. Equally, there is no provision, either express or implied, which excludes an arbitral award passed on agreed terms from the ambit of judicial scrutiny under Section 34 of the A&C Act merely because it embodies a settlement arrived at between the parties. Had the legislature intended to confer such immunity upon a consent award, it would have expressly so provided. The absence of any such exclusion is a clear indication that every arbitral award, irrespective of its nature, remains subject to the limited supervisory jurisdiction of the Court under Section 34 of the A&C Act.

45. Section 30 of the A&C Act is an enabling provision intended to encourage amicable settlement of disputes during the pendency of arbitral proceedings. It authorises the Arbitral Tribunal, upon the request of the parties, to terminate the proceedings and record the settlement in the form of an arbitral award on agreed terms, while sub-section (4) expressly provides that such an award "shall have the same

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status and effect as any other arbitral award on the substance of the dispute." Thus, the statute itself places an award on agreed terms at par with every other arbitral award.

46. Correspondingly, Section 31 of the A&C Act prescribes the form and contents of every arbitral award and, by virtue of Section 31(3), carves out only one limited distinction, *namely*, that while an arbitral award is ordinarily required to state the reasons upon which it is based, such requirement stands dispensed with in the case of an award on agreed terms under Section 30. Beyond this limited exemption from recording reasons, the A&C Act neither accords any special status to a consent award nor grants it immunity from judicial scrutiny.

47. The position becomes even clearer from Section 34 of the A&C Act, which governs recourse against an arbitral award. The provision uniformly employs the expression "*an arbitral award*" without drawing any distinction between an adjudicatory award and an award on agreed terms. Likewise, the grounds enumerated in Sections 34(2) and 34(2A) of the A&C Act are framed in general terms and relate to the legality of the arbitral process, the jurisdiction and composition of the Arbitral Tribunal, compliance with the mandatory provisions of the Act, observance of the Principles of Natural Justice, patent illegality, and conflict with the public policy of India.

48. None of these grounds is excluded merely because the award records a settlement between the parties. Consequently, every arbitral award, irrespective of whether it is founded upon adjudication or upon the consent of the parties, must satisfy the minimum statutory requirements prescribed under the A&C Act and remain capable of

being tested on the limited grounds recognised under Section 34, wherever such grounds are legitimately attracted.

49. At the same time, the fact that an award has been passed on agreed terms cannot be ignored while determining the scope of judicial examination. Since such an award substantially reflects the settlement voluntarily arrived at between the parties rather than an adjudication on the merits by the Arbitral Tribunal, the Court would ordinarily refrain from examining the correctness, fairness or adequacy of the terms of settlement.

50. Nevertheless, the Court is not denuded of its jurisdiction to examine whether the award truly represents a lawful settlement, whether the consent of the parties was validly obtained and was free from fraud, coercion, undue influence or any other vitiating circumstance, whether the mandatory provisions of the A&C Act have been complied with, and whether any of the statutory grounds contemplated under Section 34 of the A&C Act are otherwise established. If any such ground is made out, the mere description of the award as a consent award cannot, by itself, operate as an absolute bar to judicial interference.

51. Accordingly, this Court is of the considered opinion that the preliminary objection raised by the Respondent cannot be accepted. While the scope of interference with an award on agreed terms is undoubtedly narrower than that applicable to an adjudicatory award, there is no statutory embargo under the A&C Act against maintaining a petition under Section 34 merely because the award is a consent award. The distinction lies not in the maintainability of the challenge

but in the limited nature of the scrutiny to be undertaken. The preliminary objection raised by the Respondent is, therefore, rejected.

52. At this juncture, this Court now proceeds to examine the matter on merits. For that purpose, this Court considers it apposite to recapitulate the relevant arbitral proceedings commencing from the constitution of the Arbitral Tribunal until the challenge thereto in the present Petition, as the chronology of events assumes considerable significance in the adjudication of the issues involved.

53. It is an undisputed position borne out from the record that, upon disputes arising between the parties in relation to the Agreement to Sell dated 24.06.2014, both the Petitioner and the Respondent, acting through its Director, Shri Rajesh Gupta, jointly approached Shri Naresh Gupta, Advocate, on 05.10.2016 requesting him to enter upon the reference as the Sole Arbitrator in terms of Clause 13 of the Agreement to Sell.

54. The request was made by way of a joint letter signed by both parties and personally delivered to the proposed Arbitrator. The said communication unequivocally records that disputes had arisen between the parties in relation to the subject property and that both parties jointly requested Shri Naresh Gupta, Advocate, to adjudicate the disputes as the learned Sole Arbitrator, further agreeing that his decision would be final and binding upon them. For ready reference, the contents of the said letter are reproduced hereinbelow:

"By hand

Dated 05.10.2016

From:

1. Shri Lalit Modi

S/o Shri J.R. Modi,
R/o, 32, Paschimi Marg,
Vasant Vihar,
New Delhi-110075

2. M/s BDR Builders & Developers Pvt. Ltd.,
through its Director Shri Rajesh Gupta
C-43, (Lower Ground Floor),
Jangpura Extension,
New Delhi

To

Shri Naresh Gupta (Advocate),
R 36, Greater Kailash Part 1.
New Delhi-110048

Sub: Reference of disputes in terms of Agreement to Sell dated 24.06.2014, in respect of Property No. 32. Paschimi Marg, Vasant Vihar, New Delhi

Dear Sir,

That certain disputes, relating to and concerning with the said property, emanating out the said Agreement to Sell dated 24.06.2014, arose between us.

The Agreement to Sell dated 24.06.2014, provides for resolution of the disputes in terms of Clause 13 of the said Agreement, which provides the resolution through Sole Arbitrator.

We, hereby request you to act as the sole arbitrator in the matters in dispute referred to you for arbitration.

That your decision shall be final and binding upon both of us.

Yours Obliged,

Sd/-
Lalit Modi M/s BDR Builders & Developers Pvt. Ltd.,
Sd/-
Rajesh Gupta (Director)"

55. On the very same day, i.e., 05.10.2016, the learned Arbitrator accepted the reference and formally entered upon the arbitral proceedings. A written communication accepting his appointment was

issued by him, whereby the first sitting of the arbitral proceedings was fixed for 18.10.2016 at his office situated at R-36, Greater Kailash-I, New Delhi. Significantly, the said communication was not only signed by the learned Arbitrator but was also acknowledged by both parties in token of receipt thereof, thereby evidencing their acceptance of the commencement of the arbitral proceedings. The contents of the said communication are reproduced hereinbelow:

> "To
>
> Dated 05.10.2016
>
> 1. Shri Lalit Modi
> S/o Shri J.R. Modi,
> R/o, 32, Paschimi Marg,
> Vasant Vihar,
> New Delhi-110075
>
> 2. M/s BDR Builders & Developers Pvt. Ltd.,
> through its Director Shri Rajesh Gupta
> C-43, (Lower Ground Floor),
> Jangpura Extension, New Delhi
>
> Ref: **Your Letter dated 05.10.2016**
>
> Sub: Reference of disputes in terms of Agreement to Sell dated 24.06.2014, in respect of Property No. 32, Paschimi Marg, Vasant Vihar, New Delhi
>
> Dear Sirs,
>
> 1, have received your letter wherein, you both have requested me to enter upon reference as Sole Arbitrator and adjudicate the differences between you regarding Sale of Property No. 32, Paschimi Marg, Vasant Vihar, New Delhi, by Shri Lalit Modi to M/s BDR Builders & Developers Pvt. Ltd., which is subject matter of the present arbitration proceedings.
>
> As, desired by you, I hereby enter upon reference and accordingly. you both are hereby informed that I (the Sole Arbitrator) shall hold a meeting on 18.10.2016 at R-36, Greater Kailash-1, New Delhi, at 5:00 P.M., as the first hearing and you are required to attend personally or through a representative duly appointed or counsel duly authorised with all documents in your possession or power touching the disputes referred to the decision of the arbitrator

(myself). In case you do not attend at the said hearing. I (the Sole Arbitrator) shall be constrained to proceed ex-parte

Sd/-
Naresh Gupta (Advocate),
Sole Arbitrator
R-36, Greater Kailash Part-I,
New Delhi-110048

Confirmed having receipt the above Notice:

Sd/-	Sd/-
Shri Lalit Modi	M/s BDR Builders & Developers Pvt. Ltd., Rajesh Gupta (Director)"

56. Pursuant thereto, the first sitting of the arbitral proceedings was held on 18.10.2016. Both the Petitioner and Shri Rajesh Gupta, Director of the Respondent Company, appeared in person before the learned Arbitrator. During the said proceedings, preliminary directions were issued for completion of pleadings and filing of the requisite documents by the respective parties. The matter was accordingly adjourned to 28.10.2016.

57. On 28.10.2016, both parties again appeared before the learned Arbitrator. On the said date, the Respondent filed its Statement of Claim along with the supporting documents. The proceedings were thereafter adjourned to 29.10.2016.

58. On 29.10.2016, both parties once again remained present before the learned Arbitrator. On that date, the Petitioner filed his reply to the Statement of Claim. During the course of the proceedings, the Petitioner expressed the possibility of an amicable settlement between the parties. Although the Respondent initially expressed its desire that the disputes be adjudicated through arbitration, the learned Arbitrator, with a view to facilitating an amicable resolution of the disputes, adjourned the proceedings to 14.11.2016 and directed the parties to

place on record any settlement that might be arrived at before the next date of hearing. The parties were also directed to produce the original documents in support of their respective claims on the next date of hearing. Since the Order dated 29.10.2016 assumes relevance for the present controversy, the same is reproduced hereinbelow:

> "**Present:** Dated 29.10.2016
>
> Naresh Gupta (Advocate), Sole Arbitrator
>
> and
>
> Shri Rajesh Gupta (Director) for M/s BDR Builders & Developers Pvt. Ltd., (the claimant) and Shri Lalit Modi (the respondent).
>
> The claim petition filed by Shri Rajesh Gupta on behalf of the company is already on record. Reply to the claim petition is being filed today by Shri Lalit Modi, which is also taken on record, with copy supplied to the claimant.
>
> Shri Lalit Modi, (the respondent) during the course of meeting. expressed that there might be some chances of settlement amongst them and thus seeks some more time. The claimant, however, denied any such settlement and wanted to resolve the issue through arbitration itself.
>
> However, in the interest of justice and on the request of the respondent, the matter is adjourned for 14.11.2016, at the same Venue at 5:00 P.M. The parties are now directed to place on record any such settlement, if any, effected between them. If no such settlement is arrived at latest by 14.11.2016, then the matter shall be heard and decided on merits. The parties are further directed to produce all original documents in support of their respective claim(s) on the next date of hearing.
>
> Sd/-
> Naresh Gupta (Advocate),
> (Sole Arbitrator)
>
> Sd/-
> Shri Lalit Modi
>
> Sd/-
> M/s BDR Builders & Developers Pvt. Ltd.,
> Rajesh Gupta (Director)"

59. On 14.11.2016, both parties again appeared before the learned Arbitrator. During the proceedings, they jointly informed the learned Arbitrator that they had amicably resolved all disputes pertaining to the subject property. Their joint statements were duly recorded by the learned Arbitrator in the proceedings of the same date and were signed by both the parties as well as the learned Arbitrator, thereby evidencing their unequivocal consent to the terms so recorded. Since the proceedings dated 14.11.2016 constitute the very foundation of the arbitral award subsequently rendered, the entire order dated 14.11.2016 is reproduced hereinbelow:

> "**Present:** Dated: 14.11.2016
>
> Naresh Gupta (Advocate), Sole Arbitrator
>
> and
>
> Shri Rajesh Gupta (Director) for M/s BDR Builders & Developers Pvt. Ltd., (the claimant) and Shri Lalit Modi (the respondent).
>
> That both the parties (i.e. the Claimant and the Respondent), have jointly stated that they have amicably settled their disputes qua the said property, pertaining to the present arbitration proceedings and have made a statement before me accordingly. Original documents I directed to be produced on the last date of hearing are produced before me by the claimant, which is admitted and confirmed by the respondent.
>
> Shri Rajesh Gupta, the claimant, forgave its claim for expenses / compensation to the tune of Rs. 5,00,00,000/- against the respondent. As regards the payment of the balance sale consideration of Rs. 1,00,00,000/-, Rs. 12,80,000/- is stated to have been adjusted towards payment of deduction of TDS, which shall be deposited by the claimant in the account of the respondent with the Tax Authorities and the remaining Rs. 87,20,000/- is stated to have been adjusted towards payment of license fee for the grant of permissive license to the respondent to stay in the said property till 31.03.2017. Thus, claimed the adjustment of the balance sale consideration as such. Further, the claimant prayed for the passing of the decree of Specific Performance in its favour and against the respondent. The claimant today also informed and placed on record

a General Power of Attorney dated 10.02.2016, duly executed and registered by the respondent in favour of Shri Dinesh Gupta, who is one of the Director in the Claimant Company, inter-alia, authorizing the said attorney to do all acts deeds and things pertaining to the said property including sale / transfer thereof including execution/registration of the sale documents / sale deeds etc. The claimant further informed and placed on record that in order to safeguard the rights and interest of the claimant, the respondent also executed and got registered a Will dated 10.02.2016 in favour of Shri Dinesh Gupta, devising and bequeathing all his right, title and interest in the said property in favour of Shri Dinesh Gupta, absolutely and forever.

Further, the respondent agreed to such offer being made by the claimant, however, requested the permissive license to stay in the property be extended till 30.06.2017, without any further payment of any license fee/rent/other charges. During detailed discussion and mediation and knowing fully-well that the delay was not attributable. due to fault of the claimant, the respondent agreed to proposal of the claimant and further agreed to vacate and handover vacant possession of the said property to the claimant on or before 31.03.2017. The said General Power of Attorney and Will dated 10.02.2016, are also confirmed and admitted by the respondent. Thus the respondent gave his consent for the passing of the decree of Specific Performance in favour of the Claimant The respondent also assured and declared that the said General Power of Attorney and Will dated 10.02.2016, shall not be revoked or altered by the respondent at any time hereinafter.

Now the matter is adjourned for 21.11.2016, at the same Venue at 5:00 P.M. On the said date, I shall pronounce my Award in the presence of the parties.

The parties are directed to remain present on the said date.

Sd/-
Naresh Gupta (Advocate),
(Sole Arbitrator)

Sd/-	Sd/-
Shri Lalit Modi	M/s BDR Builders & Developers Pvt. Ltd., Rajesh Gupta (Director)”

60. At this stage, it becomes pertinent to note that the proceedings conducted by the learned Arbitrator up to 14.11.2016 are in complete conformity with the mandate of Section 30 of the A&C Act.

61. Section 30(1) of the A&C Act expressly recognises that it is not incompatible with an arbitration agreement for an Arbitral Tribunal to encourage settlement of disputes and, with the consent of the parties, to adopt mediation, conciliation or any other procedure during the pendency of the arbitral proceedings for facilitating such settlement. Further, Section 30(2) provides that where, during the arbitral proceedings, the parties settle the dispute, the Arbitral Tribunal shall terminate the proceedings and, if so requested by the parties and not objected to by the Tribunal, record the settlement in the form of an arbitral award on agreed terms.

62. The record demonstrates complete compliance with the aforesaid statutory mandate. It is evident that the parties voluntarily settled their disputes before the learned Arbitrator, whereupon the terms of settlement were duly recorded in the proceedings dated 14.11.2016. Thereafter, the learned Arbitrator proceeded to embody the settlement in the form of an arbitral award.

63. Accordingly, on 21.11.2016, the learned Arbitrator rendered an arbitral award incorporating the agreed terms of settlement, whereby the *consensus* arrived at between the parties was given binding legal effect, including the grant of a decree for specific performance in terms of the settlement.

64. In the considered opinion of this Court, the Arbitral Award dated 21.11.2016 is fully consistent with the statutory scheme envisaged under Sections 30 and 31 of the A&C Acct. Section 30(3) of the A&C Act mandates that an arbitral award on agreed terms shall be made in accordance with Section 31 of the A&C Act and shall expressly state that it is an arbitral award. Equally, Section 31(3)(b) of

the A&C Act specifically dispenses with the requirement of recording reasons where the award is an arbitral award on agreed terms under Section 30.

65. It is also noteworthy that the Award dated 21.11.2016 bears the signatures of both parties as well as that of the learned Arbitrator, thereby unmistakably evidencing not only the *consensus* between the parties but also their acceptance of the terms embodied in the Award. Since the contents of the Award assume significance for the adjudication of the present Petition, the operative portion thereof is reproduced hereinbelow:

"AWARD

1. That I hereby pass a decree of Specific Performance of the Said Agreement to Sell dated 24.06.2014 in favour of the claimant and against the respondent in respect of the said property i.e. Entire Freehold Built Up Property bearing No. 32, Street No. Paschimi Marg, situated at Vasant Vihar, New Delhi, along with the ownership rights in the plot of land underneath measuring 858 Sq. Yds, with all rights, title and interest, easements, privileges and appurtenances thereto, with all fittings, fixtures, connections, structure standing thereon, with all rights of ownership and possession, with direction to the respondent to execute and get registered the Sale Deed of the said property in favour of the claimant or its nominee(s) on or before 31.03.2017, against handing over vacant possession at the cost and expenses of the claimant. In case of failure on the part of the respondent to execute and get registered such sale deed, then in that event, the said attorney holder Shri Dinesh Gupta shall be fully entitled and empowered, without any claim/objection therein by the respondent or any of his legal heirs, successors etc. for execution/registration of the said sale deed, at the cost of the claimant.
2. As regards the payment of the balance sale consideration of Rs. 1,00,00,000/-, Rs. 12,80,000/-, stands adjusted towards payment of deduction of TDS, which shall be deposited by the claimant in the account of respondent with the Tax Authorities, within a period of 30 days from the date hereof and the remaining sum of Rs. 87,20,000/-stands adjusted towards payment of license fee for the grant of permissive license to the respondent to stay in the said property till 31.03.2017. The legal and symbolic possession of the said property shall henceforth vest absolutely

and forever in favour of the claimant with direction to the respondent to vacate and handover vacant possession of the said property, with all fitting, fixtures, furniture and other installations/improvements made by the respondent therein, on AS IS WHERE IS BASIS, latest by 31.03.2017. The interest payable to the Tax Authorities, for delay in depositing TDS shall be to the account of the Claimant. The claim for compensation of Rs. 5,00,00,000/- has already been forgiven by the claimant, as per his statement duly recorded in the order sheet dated 14.11.2016.

3. The claimant is directed to deposit a Non Judicial Stamp Paper worth Rs. 5,85,500/- and Registration Fee amounting to Rs. 58,54,500/- required for getting the award registered before the office of the concerned Sub-Registrar. The parties to the award have signed the same in token of their having accepted the terms of the same and in token of the fact that they would not challenge the same and the award would have a binding effect upon them and their respective legal heirs, successor etc., at all times.
4. The cost of the arbitration proceedings, including arbitrator's fee in all amounting to Rs. 50,000/-, shall be paid by the claimant.
5. A certified copy of this Award will be handed over to each of the parties for their record and further compliances, after completion of the registration formalities.
6. The Award is accordingly made and published by me.

Dated: 21.11.2016

Sd/-
Naresh Gupta (Advocate),
(Sole Arbitrator)

Sd/-	Sd/-
Rajesh Gupta (Director)	**Shri Lalit Modi**
M/s BDR Builders & Developers Pvt. Ltd.	
(Consenting Claimant Party)	(Consenting Respondent Party)”

66. A plain reading of the Arbitral Award dated 21.11.2016 leaves no manner of doubt that the same is an arbitral award on agreed terms within the meaning of Section 30 of the A&C Act. The Award does not contravene any of the statutory requirements prescribed under Sections 30 and 31 of the A&C Act. Rather, it is evident that the award has been rendered in due compliance with the statutory

framework governing arbitral awards on agreed terms. Consequently, this Court has no hesitation in holding that the Award dated 21.11.2016 constitutes a valid arbitral award rendered strictly in accordance with the provisions of the A&C Act and is, therefore, entitled to the same sanctity, finality and legal effect as any other arbitral award rendered under the said Act.

67. It is further significant to note that, on the very same date, i.e., 21.11.2016, both parties executed a separate document titled "*Acceptance*". By the said document, the Petitioner as well as Shri Rajesh Gupta, Director of the Respondent Company, unequivocally acknowledged the passing of the Arbitral Award dated 21.11.2016 and voluntarily accepted the same in its entirety. They further declared that neither of them had any claim, counterclaim or demand against the other in respect of the subject property and expressly undertook that the said award would not be challenged on any ground whatsoever. The execution of the said document leaves no manner of doubt that the parties consciously accepted the award as a complete and final resolution of their disputes. For the sake of completeness, the contents of the said Acceptance are reproduced hereinbelow:

"**A C C E P T A N C E**

> We, Shri Lalit Modi and Shri Rajesh Gupta (Director) M/s BDR Builders & Developers Pvt. Ltd., the parties to the above Arbitration Proceedings, do hereby agree and accept willfully the Award dated 21.11.2016, passed by the Sole Arbitrator Shri Naresh Gupta Advocate, in totality.
>
> We, neither have any claim, counter-claims and/or demand against one another qua the said property nor there is any matter in dispute between us qua the said property.
>
> That the said Award shall not be challenged by any one of us on any ground whatsoever.

PLACE: NEW DELHI
DATED: 21.11.2016

Sd/-	Sd/-
Shri Lalit Modi	M/s BDR Builders & Developers Pvt. Ltd., Rajesh Gupta (Director)"

68. Apart from the aforesaid Acceptance, proceedings were also recorded by the learned Arbitrator on 21.11.2016. The said proceedings record that the arbitral award was pronounced in the presence of both parties and that both parties signed the award in token of their acceptance thereof. The proceedings further record that, at the request of both parties, the learned Arbitrator was requested to have the award registered before the office of the concerned Sub-Registrar. Accordingly, the learned Arbitrator directed the Respondent Company to deposit the requisite stamp duty and registration charges within a period of eight weeks so as to facilitate the registration of the award. The said proceedings, which bear the signatures of the learned Arbitrator as well as both parties, are reproduced hereinbelow:

"**Present:** Dated: 21.11.2016

Naresh Gupta (Advocate), Sole Arbitrator

and

Shri Rajesh Gupta (Director) for M/s BDR Builders & Developers Pvt. Ltd., (the claimant) and Shri Lalit Modi (the respondent).

1, Naresh Gupta (Advocate) Sole Arbitrator in the present Arbitral proceedings announced the Award in the presence of the parties, the parties signed the Award in token of their acceptance to the same and requested me to get it registered before the Sub-Registrar. Accordingly steps will be taken in this regard. The claimant is directed to deposit a Non-Judicial Stamps of Rs. 5,85,500/- and Registration Fee at the rate of 1% of the Circle Value of the Property amounting to Rs. 58,54,500/- within (8) eight weeks from today, so that necessary formalities regarding registration of the Award be taken. The cost of the arbitration proceedings shall be paid by the claimant.

NARESH GUPTA (Advocate)
(Sole Arbitrator)

Sd/- Sd/-
Shri Lalit Modi M/s BDR Builders & Developers Pvt. Ltd.,
Rajesh Gupta (Director)"

69. Pursuant to the aforesaid directions, the Respondent Company deposited the requisite non-judicial stamp papers on 12.01.2017. Thereafter, the learned Arbitrator engrossed the arbitral award on the said stamp papers. While doing so, the learned Arbitrator substituted Paragraph 6 of the award dated 21.11.2016, which originally read, *"The Award is accordingly made and published by me,"* with the following:

> "The Award is accordingly made and published by me on 21.11.2016 which is now being engrossed on Non-Judicial Stamp Paper of Rs. 5,85,500/- for the purpose of getting the same registered with the office of the learned Sub-Registrar, New Delhi."

70. Thereafter, the engrossed copy of the Award was signed by the learned Arbitrator and forwarded to the parties under a forwarding letter dated 22.01.2017. A copy of the engrossed award was also transmitted to the office of the concerned Sub-Registrar for the purposes of registration.

71. The aforesaid acts of engrossing the award on the requisite stamp papers and forwarding the same to the parties as well as to the office of the Sub-Registrar were undertaken pursuant to the express request jointly made by both parties, as recorded in the proceedings dated 21.11.2016. It is no doubt true that the A&C Act does not specifically contemplate such a procedure after the publication of an

arbitral award. Nevertheless, in the peculiar facts and circumstances of the present case, these subsequent acts were merely consequential and ministerial in nature and cannot be construed as affecting either the legality, validity or finality of the Arbitral Award, which had already come into existence upon its pronouncement on 21.11.2016. In any event, the communication to the Sub-Registrar was based on the agreement as between the parties.

72. By the time the Award came to be engrossed on the stamp papers, the arbitral award had already been validly made and published, and had also been unequivocally accepted by both parties. The subsequent engrossment neither altered nor modified any of the substantive terms embodied in the award, nor did it amount to the making of a fresh or substituted award. The acts undertaken thereafter were purely administrative and ministerial in nature, intended solely to facilitate the registration of the award in accordance with the request jointly made by the parties. Such acts cannot invalidate or diminish the legal efficacy of an otherwise valid consent award.

73. This Court is, therefore, of the considered opinion that the Arbitral Award dated 21.11.2016 attained finality on the very date of its pronouncement. The subsequent engrossment of the award on stamp papers and its communication to the office of the Sub-Registrar were merely consequential steps undertaken with the consent of both parties for the limited purpose of facilitating its registration. These subsequent steps neither reopened the arbitral proceedings nor modified, substituted or superseded the award already rendered.

74. It is true that, as a matter of principle, once an arbitral award has been made and published, the mandate of the Arbitral Tribunal

ordinarily stands exhausted, except to the limited extent expressly recognised under the A&C Act, such as correction, interpretation or the making of an additional award under Section 33 of the A&C Act. However, in the peculiar facts of the present case, where the award itself was an award on agreed terms, the parties had expressly requested the learned Arbitrator to facilitate its registration, and no alteration whatsoever was made to the substantive rights or obligations embodied in the award, the subsequent acts of engrossment and communication cannot be regarded as rendering the award vulnerable or unenforceable. At the highest, such acts may raise an issue of procedural propriety, but they do not affect the validity or finality of the arbitral award itself.

75. While exercising jurisdiction under Section 34 of the A&C Act, this Court is primarily concerned with examining the legality and validity of the arbitral award and whether any of the statutory grounds for setting aside the award are made out. As already noticed hereinabove, the Arbitral Award dated 21.11.2016 fully satisfies the requirements prescribed under Sections 30 and 31 of the A&C Act and attained finality on the date of its publication.

76. This Court is therefore of the considered opinion that the subsequent acts undertaken by the learned Arbitrator for the purposes of engrossment and registration neither affect the legal character or finality of the award nor furnish any ground whatsoever for setting aside the same under Section 34 of the A&C Act.

77. The Court shall now consider the remaining substantial contentions advanced by the Petitioner, *namely*, the alleged failure of the learned Arbitrator to make the disclosures mandated under Section

12(1) of the A&C Act and the various circumstances relied upon by the Petitioner to contend that there existed justifiable doubts regarding the independence and impartiality of the learned Arbitrator.

78. Since both issues are intrinsically connected and arise from the statutory framework governing the appointment and challenge of arbitrators, it is apposite to first examine the relevant provisions of the A&C Act, which are reproduced hereinbelow:

> "**12. Grounds for challenge.- (1)** When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,-
> (a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and
> (b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.
> *Explanation* 1.- The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.
> *Explanation* 2.- The disclosure shall be made by such person in the form specified in the Sixth Schedule.
> **(2)** An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.
> **(3)** An arbitrator may be challenged only if-
> (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
> (b) he does not possess the qualifications agreed to by the parties.
> **(4)** A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.
> **(5)** Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

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Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing."

"**13. Challenge procedure. - (1)** Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.
(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.
(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
(4) If a challenge under any procedure agreed upon by the parties or under the procedure under subsection (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.
(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.
(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees."

79. A conjoint reading of Sections 12 and 13 of the A&C Act reveals the legislative framework governing the obligation of disclosure cast upon a proposed as well as an appointed arbitrator; the circumstances which may give rise to justifiable doubts regarding an arbitrator's independence or impartiality; the procedure for challenging an arbitrator on such grounds; and the consequences flowing from the acceptance or rejection of such challenge. These provisions must therefore be construed harmoniously to ascertain the true scope of the statutory obligations imposed upon an arbitrator and the corresponding rights and remedies available to a party seeking to question the arbitrator's appointment or continuance.

80. Section 12(1) of the A&C Act unequivocally mandates that every person approached in connection with his possible appointment as an arbitrator shall make a written disclosure of all circumstances that may have a bearing upon his independence or impartiality. The obligation extends to the disclosure of any direct or indirect past or present relationship with, or interest in, any of the parties or in relation to the subject matter of the dispute, whether financial, business, professional or of any other nature, which is likely to give rise to justifiable doubts regarding the arbitrator's independence or impartiality. The provision further requires disclosure of any circumstance likely to affect the arbitrator's ability to devote sufficient time to the arbitration and, in particular, to conclude the proceedings within the prescribed statutory period.

81. Explanation 1 to Section 12(1) clarifies that the circumstances enumerated in the Fifth Schedule shall serve as a guide for determining whether circumstances exist which give rise to justifiable doubts regarding the independence or impartiality of an arbitrator. Explanation 2 further mandates that such disclosure shall be made in the form prescribed in the Sixth Schedule.

82. Section 12(2) extends the obligation of disclosure beyond the stage of appointment by imposing a continuing statutory duty upon the arbitrator to disclose, without delay and in writing, any circumstance referred to in Section 12(1) which may arise or come to his knowledge after his appointment and throughout the arbitral proceedings, unless such circumstance has already been disclosed to the parties. The legislative intent is thus to ensure complete

transparency throughout the arbitral process by imposing a continuing obligation of disclosure upon the arbitrator.

83. However, although Sections 12(1) and 12(2) of the A&C Act prescribe the obligation of disclosure in mandatory terms, neither provision provides that every instance of non-disclosure, delayed disclosure, incomplete disclosure or inaccurate disclosure would, by itself, invalidate the arbitral proceedings or render the arbitrator *de jure* incapable of acting. Likewise, the statute does not provide that every omission to disclose a circumstance falling within the Sixth Schedule automatically vitiates the arbitral process.

84. The consequences of any alleged non-disclosure must therefore be gathered from the remaining provisions of Section 12 of the A&C Act. In this context, Section 12(3) assumes significance, as it provides that an arbitrator may be challenged only if circumstances exist which give rise to justifiable doubts regarding his independence or impartiality; or he does not possess the qualifications agreed upon by the parties.

85. The Legislature has consciously employed the restrictive expression "*only if*", thereby confining the permissible grounds of challenge. Consequently, every instance of non-disclosure does not, *ipso facto*, constitute a valid ground for challenging an arbitrator. The determinative enquiry is not whether there has merely been a failure to disclose, but whether the underlying circumstance is of such a nature as to give rise to justifiable doubts regarding the arbitrator's independence or impartiality. Thus, the omission to disclose is not an independent ground of challenge; rather, it is the underlying circumstance itself, whether disclosed or undisclosed, that must

satisfy the statutory test prescribed under Section 12(3) of the A&C Act.

86. Section 12(4) further provides that where a party has itself appointed the arbitrator or participated in his appointment, such party may challenge the arbitrator only on grounds of which it became aware after the appointment was made. The object of this provision is to prevent a party from acquiescing in the appointment process and thereafter raising objections founded upon facts that were already within its knowledge.

87. Section 12(5) of the A&C Act, however, operates in an altogether different sphere. It commences with a non obstante clause and creates an absolute statutory disqualification by providing that any person whose relationship with the parties, their counsel, or the subject matter of the dispute falls within any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. Such ineligibility is not contingent upon proof of actual bias or even the existence of justifiable doubts; it operates by force of law. The only exception is contained in the proviso, whereby the parties may, after disputes have arisen, expressly waive the applicability of Section 12(5) by an agreement in writing.

88. At this stage, it is also necessary to examine the relationship between the Fifth and Seventh Schedules to the A&C Act. Although both Schedules deal with circumstances bearing upon the independence and impartiality of arbitrators, they operate in distinct statutory fields and serve different purposes.

89. The Fifth Schedule, referred to in Explanation 1 to Section 12(1) of the A&C Act, contains thirty-four illustrative entries which

serve only as guiding circumstances for determining whether justifiable doubts exist regarding an arbitrator's independence or impartiality. The entries are neither exhaustive nor conclusive and merely indicate situations that may warrant examination under Section 12(3), depending upon the facts and circumstances of each case.

90. The Seventh Schedule, in contrast, contains nineteen entries and is directly linked to Section 12(5) of the A&C Act. Significantly, each of the nineteen entries contained in the Seventh Schedule is also found within the Fifth Schedule. The Seventh Schedule is thus a narrower subset of the Fifth Schedule comprising those relationships and circumstances which the Legislature has considered sufficiently grave to attract automatic statutory ineligibility.

91. A plain reading of Sections 12(1) and 12(2), along with the entries contained in the Fifth and Seventh Schedules, makes it evident that the obligation of disclosure is confined to existing or past relationships, interests, or circumstances that either exist at the time of the proposed appointment or arise during the pendency of the arbitral proceedings. Neither the substantive provisions nor the entries contained in the Fifth or Seventh Schedules require an arbitrator to disclose speculative or future events, relationships, or circumstances that have not yet come into existence.

92. While every circumstance falling within the Seventh Schedule would necessarily constitute a circumstance giving rise to justifiable doubts regarding an arbitrator's independence or impartiality, the remaining entries contained exclusively in the Fifth Schedule do not result in automatic disqualification but merely provide guidance in determining whether, on the facts of a particular case, circumstances

exist giving rise to such justifiable doubts within the meaning of Section 12(3) of the A&C Act. Accordingly, where a case falls exclusively within the Fifth Schedule, the challenge must be examined in accordance with Sections 12(3) and 13 of the A&C Act.

93. Section 13 of the A&C Act prescribes the procedure for challenging an arbitrator. In the absence of an agreed procedure, a party intending to challenge the arbitrator is required, within fifteen days of becoming aware either of the constitution of the arbitral tribunal or of the circumstances referred to in Section 12(3) of the A&C Act, to submit a written statement setting out the grounds of challenge before the arbitral tribunal. Unless the challenged arbitrator withdraws from office or the opposite party accepts the challenge, the arbitral tribunal itself is required to decide the challenge.

94. If the challenge is rejected, the arbitral tribunal continues with the proceedings and renders the arbitral award. The unsuccessful party is not left without a remedy, as Section 13(5) of the A&C Act expressly preserves its right to assail the arbitral award under Section 34 on the ground that the challenge to the arbitrator was wrongly rejected.

95. Sections 12 and 13 of the A&C Act, when read together, constitute a comprehensive statutory code governing disclosures by arbitrators, the distinction between circumstances giving rise to justifiable doubts and those resulting in statutory ineligibility, the procedure for raising objections to an arbitrator's appointment or continuance, and the remedies available to an aggrieved party. These provisions make it abundantly clear that, although disclosure is mandatory, every instance of non-disclosure does not automatically

invalidate the arbitral proceedings. The decisive consideration always remains whether the circumstance, whether disclosed or undisclosed, is of such a nature as to either give rise to justifiable doubts regarding the arbitrator's independence or impartiality under Section 12(3), or attract one of the statutory disqualifications specified in the Seventh Schedule read with Section 12(5).

96. At this stage, this Court also considers it appropriate to refer to the decision of the Hon'ble Supreme Court in ***HRD Corpn. v. GAIL (India) Ltd.***[9], wherein the statutory scheme embodied in Sections 12 and 13 and the Fifth and Seventh Schedules to the A&C Act was explained. The Apex Court drew a clear distinction between circumstances giving rise to justifiable doubts regarding an arbitrator's independence or impartiality, governed by Section 12(3) read with the Fifth Schedule, and circumstances rendering an arbitrator statutorily ineligible under Section 12(5) read with the Seventh Schedule.

97. The Hon'ble Supreme Court, in that judgement, categorically held that while the Fifth Schedule merely serves as a guide for determining whether circumstances exist giving rise to justifiable doubts regarding an arbitrator's independence or impartiality, the Seventh Schedule identifies a narrower and more serious class of circumstances which render the arbitrator *de jure* ineligible to act.

98. The Hon'ble Supreme Court further held that Items 1 to 19 of the Fifth Schedule are identical to the entries contained in the Seventh Schedule and have been incorporated into the Fifth Schedule primarily for the purpose of disclosure. The object of requiring disclosure of those circumstances is to enable the parties to make an informed

[9] (2018) 12 SCC 471

decision, since such information ordinarily lies within the exclusive knowledge of the proposed arbitrator. The Apex Court further clarified that challenges founded upon the Fifth Schedule are to be determined in accordance with the procedure prescribed under Section 13 of the A&C Act, whereas cases falling within the Seventh Schedule stand on an entirely different footing, as they result in statutory ineligibility under Section 12(5), rendering the arbitrator *de jure* incapable of acting. The relevant observations of the Hon'ble Supreme Court are reproduced hereinbelow:

> "**11.** Under Section 12, it is clear that when a person is approached in connection with his possible appointment as an arbitrator, he has to make a disclosure in writing, in which he must state the existence of any direct or indirect present or past relationship or interest in any of the parties or in relation to the subject-matter in dispute, which is likely to give justifiable doubts as to his independence or impartiality. He is also to disclose whether he can devote sufficient time to the arbitration, in particular to be able to complete the entire arbitration within a period of 12 months. Such disclosure is to be made in a form specified in the Sixth Schedule, grounds stated in the Fifth Schedule being a guide in determining whether such circumstances exist. Unlike the scheme contained in the IBA Guidelines, where there is a Non-Waivable Red List, parties may, subsequent to disputes having arisen between them, waive the applicability of the items contained in the Seventh Schedule by an express agreement in writing. The Fifth, Sixth and Seventh Schedules are important for determination of the present disputes, and are set out with the corresponding provisions of the IBA Guidelines hereunder:
>
> *****
>
> **12.** After the 2016 Amendment Act, a dichotomy is made by the Act between persons who become "ineligible" to be appointed as arbitrators, and persons about whom justifiable doubts exist as to their independence or impartiality. Since ineligibility goes to the root of the appointment, Section 12(5) read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes "ineligible" to act as arbitrator. Once he becomes ineligible, it is clear that, under Section 14(1)(*a*), he then becomes de jure unable to perform his functions inasmuch as, in law, he is regarded as "ineligible". In order to determine whether an arbitrator is de jure unable to perform his functions, it is not necessary to go to the

Arbitral Tribunal under Section 13. Since such a person would lack inherent jurisdiction to proceed any further, an application may be filed under Section 14(2) to the Court to decide on the termination of his/her mandate on this ground. As opposed to this, in a challenge where grounds stated in the Fifth Schedule are disclosed, which give rise to justifiable doubts as to the arbitrator's independence or impartiality, such doubts as to independence or impartiality have to be determined as a matter of fact in the facts of the particular challenge by the Arbitral Tribunal under Section 13. If a challenge is not successful, and the Arbitral Tribunal decides that there are no justifiable doubts as to the independence or impartiality of the arbitrator/arbitrators, the Tribunal must then continue the arbitral proceedings under Section 13(4) and make an award. It is only after such award is made, that the party challenging the arbitrator's appointment on grounds contained in the Fifth Schedule may make an application for setting aside the arbitral award in accordance with Section 34 on the aforesaid grounds. It is clear, therefore, that any challenge contained in the Fifth Schedule against the appointment of Justice Doabia and Justice Lahoti cannot be gone into at this stage, but will be gone into only after the Arbitral Tribunal has given an award. Therefore, we express no opinion on items contained in the Fifth Schedule under which the appellant may challenge the appointment of either arbitrator. They will be free to do so only after an award is rendered by the Tribunal.

13. Confining ourselves to ineligibility, it is important to note that the Law Commission by its 246th Report of August 2014 had this to say in relation to the amendments made to Section 12 and the insertion of the Fifth and Seventh Schedules:

> "59. The Commission has proposed the requirement of having specific disclosures by the arbitrator, at the stage of his *possible* appointment, regarding existence of any relationship or interest of any kind which is likely to give rise to justifiable doubts. The Commission has proposed the incorporation of the Fourth Schedule, which has drawn from the red and orange lists of the IBA Guidelines on Conflicts of Interest in International Arbitration, and which would be treated as a "guide" to determine whether circumstances exist which give rise to such justifiable doubts. On the other hand, in terms of the proposed Section 12(5) of the Act and the Fifth Schedule which incorporates the categories from the red list of the IBA Guidelines (as above), the person proposed to be appointed as an arbitrator shall be *ineligible* to be so appointed, *notwithstanding any prior agreement* to the contrary. In the event such an ineligible person is purported to be appointed as an arbitrator, he shall be de jure deemed to be unable to perform his functions, in

terms of the proposed Explanation to Section 14. Therefore, while the *disclosure* is required with respect to a broader list of categories (as set out in the Fourth Schedule, and as based on the red and orange lists of the IBA Guidelines), the *ineligibility* to be appointed as an arbitrator (and the consequent de jure inability to so act) follows from a smaller and more serious sub-set of situations (as set out in the Fifth Schedule, and as based on the red list of the IBA Guidelines).

60. The Commission, however, feels that *real* and *genuine* party autonomy must be respected, and, in certain situations, parties should be allowed to waive even the categories of ineligibility as set in the proposed Fifth Schedule. This could be in situations of family arbitrations or other arbitrations where a person commands the blind faith and trust of the parties to the dispute, despite the existence of objective "justifiable doubts" regarding his independence and impartiality. To deal with such situations, the Commission has proposed the proviso to Section 12(5), where parties may, *subsequent to disputes having arisen between them*, waive the applicability of the proposed Section 12(5) by an express agreement in writing. In all other cases, the general rule in the proposed Section 12(5) must be followed. In the event the High Court is approached in connection with appointment of an arbitrator, the Commission has proposed seeking the disclosure in terms of Section 12(1) and in which context the High Court or the designate is to have "due regard" to the contents of such disclosure in appointing the arbitrator."

(emphasis in original)

14. The enumeration of grounds given in the Fifth and Seventh Schedules have been taken from the IBA Guidelines, particularly from the Red and Orange Lists thereof. The aforesaid guidelines consist of three lists. The Red List, consisting of non-waivable and waivable guidelines, covers situations which are "more serious" and "serious", the "more serious" objections being non-waivable. The Orange List, on the other hand, is a list of situations that may give rise to doubts as to the arbitrator's impartiality or independence, as a consequence of which the arbitrator has a duty to disclose such situations. The Green List is a list of situations where no actual conflict of interest exists from an objective point of view, as a result of which the arbitrator has no duty of disclosure. These Guidelines were first introduced in the year 2004 and have thereafter been amended, after seeing the experience of arbitration worldwide. In Part 1 thereof, general standards regarding impartiality, independence and disclosure are set out.

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17. It will be noticed that Items 1 to 19 of the Fifth Schedule are identical with the aforesaid items in the Seventh Schedule. The only reason that these items also appear in the Fifth Schedule is for purposes of disclosure by the arbitrator, as unless the proposed arbitrator discloses in writing his involvement in terms of Items 1 to 34 of the Fifth Schedule, such disclosure would be lacking, in which case the parties would be put at a disadvantage as such information is often within the personal knowledge of the arbitrator only. It is for this reason that it appears that Items 1 to 19 also appear in the Fifth Schedule."

99. While emphasising the mandatory nature and significance of the disclosure contemplated under Section 12(1) of the A&C Act, a Coordinate Bench of this Court in ***Manish Anand v. Fiitjee Ltd.***[10] nevertheless held that the A&C Act does not provide that every instance of non-disclosure or improper disclosure would, by itself, automatically terminate the mandate of the arbitrator or render him *de jure* incapable of continuing with the arbitral proceedings. The relevant observations made in the said judgment are reproduced hereinbelow:

"**4.** It is further contended by the counsel for the petitioner that the Arbitrator so appointed by the respondent has not given his disclosure in terms of Section 12(1) of the Act and therefore, he is *de jure* ineligible to proceed with the arbitration.
5. Section 12(1) of the Act is reproduced herein under:-

"12. Grounds for challenge.- [(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances—
(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and
(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

[10] 2018 SCC OnLine Del 7587

Explanation 1.-The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.
Explanation 2.-The disclosure shall be made by such person in the form specified in the Sixth Schedule.]

6. Prior to its amendment by the Arbitration and Conciliation (Amendment) Act, 2015, Section 12(1) read as under:-

> *"12. Grounds for challenge.- [(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality."*

7. The Sixth Schedule of the Act is also reproduced herein under:-

> *"The sixth schedule*
>
> *Name:*
> *Contact Details:*
> *Prior experience (including experience with arbitrations):*
> *Number of ongoing arbitrations:*
> *CIRCUMSTANCES DISCLOSING ANY PAST OR PRESENT RELATIONSHIP WITH OR INTEREST IN ANY OF THE PARTIES OR IN RELATION TO THE SUBJECT-MATTER IN DISPUTE, WHETHER FINANCIAL, BUSINESS, PROFESSIONAL OR OTHER KIND, WHICH IS LIKELY TO GIVE RISE TO JUSTIFIABLE DOUBTS AS TO YOUR INDEPENDENCE OR IMPARTIALITY (LIST OUT):*
> *CIRCUMSTANCES WHICH ARE LIKELY TO AFFECT YOUR ABILITY TO DEVOTE SUFFICIENT TIME TO THE ARBITRATION AND IN PARTICULAR YOUR ABILITY TO FINISH THE ENTIRE ARBITRATION WITHIN TWELVE MONTHS (LIST OUT):"*

8. Law Commission in its 246th report had explained the reasons for introduction of 12(1) to the Act as under:-

> *"NEUTRALITY OF ARBITRATORS*
>
> *53. It is universally accepted that any quasi-judicial process, including the arbitration process, must be in accordance with principles of natural justice. In the context of arbitration, neutrality of arbitrators viz. their independence and impartiality, is critical to the entire process.*
>
> *54. In the Act, the test for neutrality is set out in Section 12(3) which provides-*
>
> > *'12.(3) An arbitrator may be challenged only if-*
> > *(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality….'*
>
> *55. The Act does not lay down any other conditions to identify the "circumstances" which give rise to*

"justifiable doubts", and it is clear that there can be many such circumstances and situations. The test is not whether, given the circumstances, there is any-actual-bias for that is setting the bar too high; but, whether the circumstances in question give rise to any-justifiable apprehensions-of bias.

xxxxx

59. The Commission has proposed the requirement of having specific disclosures by the arbitrator, at the stage of his-possible-appointment, regarding existence of any relationship or interest of any kind which is likely to give rise to justifiable doubts. The Commission has proposed the incorporation of the Fourth Schedule, which has drawn from the red and orange lists of the IBA Guidelines on Conflicts of Interest in International Arbitration, and which would be treated as a "guide" to determine whether circumstances exist which give rise to such justifiable doubts. On the other hand, in terms of the proposed Section 12(5) of the Act and the Fifth Schedule which incorporates the categories from the red list of the IBA Guidelines (as above), the person proposed to be appointed as an arbitrator shall be - ineligible - to be so appointed, - notwithstanding - any prior agreement - to the contrary. In the event such an ineligible person is purported to be appointed as an arbitrator, he shall be de jure deemed to be unable to perform his functions, in terms of the proposed Explanation to Section 14. Therefore, while the disclosure is required with respect to a broader list of categories (as set out in the Fourth Schedule, and as based on the red and orange lists of the IBA Guidelines), the-ineligibility-to be appointed as an arbitrator (and the consequent de jure inability to so act) follows from a smaller and more serious sub-set of situations (as set out in the Fifth Schedule, and as based on the red list of the IBA Guidelines)."

9. The Law Commission in its Report further added a Note after its recommendation to add the two Explanation(s) to Section 12 (1) of the Act as under:

"[NOTE: This amendment is intended to further goals of independence and impartiality in arbitrations, and only gives legislative colour to the phrase "independence or impartiality" as it is used in the Act. The contents of the Fourth Schedule incorporate the Red and Orange lists of the International Bar Association Guidelines on Conflicts of Interest in International Arbitration. While Mr. Malhotra was of the view that the said provisions should not apply to the public sector, excluding the public sector

> *will render the provision susceptible to a challenge under article 19 of the Constitution of India.]"*
>
> **10.** Reading of Section 12(1) of the Act with the Sixth Schedule would clearly demonstrate the importance of the disclosure to be made by the proposed Arbitrator who is approached by the parties with his possible appointment as an Arbitrator. The disclosure is relevant and necessary as independence and impartiality of the Arbitrator are the hallmark of any arbitration proceedings. The amended provision is enacted to identify 'circumstances' which give rise to 'justifiable doubt' about the independence and impartiality of the Arbitrator.
>
> **11.** Having appreciated and re-emphasized the importance of the disclosure under Section 12(1) of the Act, the question is whether an improper disclosure, as in the present case would render the Arbitrator so appointed ineligible or *de jure* incapable of proceeding with the arbitration proceedings. The answer to this, in my opinion, has to be in the negative. The legislature, while emphasizing on the disclosure under Section 12(1) of the Act, has not further stated that the consequence of such non-disclosure would be automatic termination of the mandate of the Arbitrator so appointed. In absence of such a legislative consequences, in my opinion, it would depend on the facts of the given case whether the mandate of the Arbitrator would stand terminated upon non-disclosure or giving a false disclosure under Section 12(1) of the Act."

100. The same principle was subsequently followed by the Calcutta High Court in ***W.B. Housing Board v. Abhisek Construction***[11], wherein it was, *inter alia*, held that a party which fails to challenge the arbitrator's alleged non-disclosure before the arbitral tribunal in accordance with the procedure prescribed under the A&C Act cannot ordinarily be permitted to raise such a challenge for the first time in proceedings under Section 34 of the A&C Act. The relevant observations made in the said judgment are reproduced hereinbelow:

> "**9.** It has been contended by the counsel for petitioner/award debtor that there was no disclosure made in writing by the arbitrator which is contrary to the mandate under Section 12(1) of the Act. Therefore, the arbitral award must be set aside under Section 34 on this ground.

[11] 2023 SCC OnLine Cal 827

10. In the case of ***Manish Anand* v. *Fiitjee Ltd.* reported in 2018 SCC OnLine Del 7587**, the Delhi High Court propounded that mere non-disclosure under Section 12(1) would not render the arbitrator ineligible. Relevant portions have been extracted below-

> *"10. Reading of Section 12(1) of the Act with the Sixth Schedule would clearly demonstrate the importance of the disclosure to be made by the proposed Arbitrator who is approached by the parties with his possible appointment as an Arbitrator. The disclosure is relevant and necessary as independence and impartiality of the Arbitrator are the hallmark of any arbitration proceedings. The amended provision is enacted to identify 'circumstances' which give rise to 'justifiable doubt' about the independence and impartiality of the Arbitrator.*
>
> *11. Having appreciated and re-emphasized the importance of the disclosure under Section 12(1) of the Act, the question is whether an improper disclosure, as in the present case would render the Arbitrator so appointed ineligible or de jure incapable of proceeding with the arbitration proceedings. The answer to this, in my opinion, has to be in the negative. The legislature, while emphasizing on the disclosure under Section 12(1) of the Act, has not further stated that the consequence of such non-disclosure would be automatic termination of the mandate of the Arbitrator so appointed. In absence of such a legislative consequences, in my opinion, it would depend on the facts of the given case whether the mandate of the Arbitrator would stand terminated upon non-disclosure or giving a false disclosure under Section 12(1) of the Act."*
>
> Emphasis Added

11. Moreover, in the unamended Section 12(1) of the Act, the challenge on ground of the arbitrator's non-disclosure under the said section was provided for in Sections 12, 13 and 14 of the Act subject to restriction in Section 16(2) of the Act. This is because the arbitral tribunal is competent to rule on aspects of its competence and jurisdiction. The Act, being a complete code in itself, in certain cases provides a procedure for challenge in case of derogation from its provisions. In case of failure to challenge under Section 13, this Court is of the view that deemed waiver under Section 4 will apply. The relevant section is delineated below:-

> *"4 Waiver of right to object. -A party who knows that—*
>
> *(a) any provision of this Part from which the parties may derogate, or*
>
> *(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of*

time, shall be deemed to have waived his right to so object."

12. As a result of the aforementioned provision, without challenging the non-disclosure requirement before the arbitral tribunal first, the petitioner cannot be allowed to take it up for the first time under Section 34. While the fact that the arbitrator did not make a disclosure under Section 12(1) as mandated by the Act does hold significance, it cannot be the sole ground of setting aside the instant arbitral award. Merely because the petitioner/award debtor decided to wake up from its deep slumber, and raise this ground for the very first time in the Section 34 application, without having taken any recourse to other remedies available in the Act, it will in no manner render the arbitral award void and invalid. As law serves those who stand vigilant and at the same time it cannot serve as a tool for a party to have a second pick at the cherry.

13. Hence, issue no. 1 is answered in the negative."

(emphasis supplied)

101. As noted earlier, the principal grievance of the Petitioner centres around the non-disclosure by the learned Arbitrator of the disclosures contemplated under Section 12(1) read with the Sixth Schedule of the A&C Act.

102. In furtherance of that, the Petitioner has contended that he became aware of the alleged circumstances giving rise to doubts regarding the independence and impartiality of the learned Arbitrator only after the arbitral award had been rendered.

103. Although, having regard to the manner in which the learned Arbitrator came to be appointed, this contention appears *prima facie* difficult to accept, this Court does not consider it necessary to examine its correctness. Even assuming, for the purposes of the present proceedings, that the Petitioner's assertion is accepted at face value, the outcome remains unaltered.

104. Now, the decisive question before this Court is whether the circumstances allegedly not disclosed are such as to either attract any of the statutory disqualifications enumerated in the Seventh Schedule

read with Section 12(5) of the A&C Act, thereby rendering the learned Arbitrator *de jure* ineligible to act; or constitute circumstances giving rise to justifiable doubts regarding his independence or impartiality within the meaning of Section 12(3) read with the Fifth Schedule.

105. Unless either of these statutory thresholds is satisfied, mere non-disclosure, divorced from the nature and effect of the underlying circumstance, cannot by itself constitute an independent ground for invalidating either the appointment of the arbitrator or the arbitral award.

106. The principal submission advanced by the learned Senior Counsel for the Petitioner is that the learned Arbitrator had acted as the legal advisor, consultant and counsel for the Respondent and its Directors over a considerable period and, consequently, maintained a substantial professional and commercial relationship with the Respondent.

107. Upon examination of the material placed on record, this contention is principally founded upon certain deeds and documents stated to have been drafted by the learned Arbitrator for the Respondent and its Directors during the period between the years 2008 and 2012.

108. Even assuming these documents to be genuine and accepting, for the sake of argument, that the learned Arbitrator had indeed rendered professional legal services to the Respondent during the said period, this Court is unable to conclude that such circumstance, by itself, satisfies either of the statutory tests contemplated under Sections 12(3) or 12(5) of the A&C Act.

109. Insofar as Section 12(5) read with the Seventh Schedule is concerned, none of the material relied upon by the Petitioner demonstrates that the relationship between the learned Arbitrator and the Respondent falls within any of the categories enumerated in the Seventh Schedule so as to render the learned Arbitrator *de jure* ineligible to act. Indeed, the learned Senior Counsel for the Petitioner was unable to identify any specific entry in the Seventh Schedule which stood attracted on the basis of the material relied upon.

110. Equally, the Petitioner's case does not satisfy the relevant entries of the Fifth Schedule dealing with previous professional engagements. Entries 20 to 24 of the Fifth Schedule contemplate previous services rendered by the arbitrator to one of the parties or other professional involvement but significantly prescribe a period of three years preceding the commencement of the arbitration. The documents relied upon by the Petitioner pertain to the period between 2008 and 2012, whereas the arbitral proceedings commenced in the year 2016. Thus, even on the Petitioner's own showing, the alleged professional engagements fall well beyond the period specifically contemplated by the Legislature under the relevant entries of the Fifth Schedule.

111. This Court is of the opinion that the aforesaid temporal limitation cannot be ignored while assessing whether justifiable doubts arise. Although the Fifth Schedule is illustrative and serves only as a guide, the Legislature has consciously prescribed a period of three years in relation to previous professional engagements, thereby indicating the degree of proximity ordinarily considered sufficient to

give rise to justifiable doubts regarding an arbitrator's independence or impartiality.

112. To disregard this legislative benchmark and hold that every professional engagement, irrespective of its remoteness in time, is sufficient to establish justifiable doubts would render the statutory limitation otiose and defeat the legislative scheme. While the Fifth Schedule is not exhaustive and circumstances falling outside its entries may, in an appropriate case, still give rise to justifiable doubts, where the Legislature has consciously prescribed objective parameters governing a particular category of relationship, those parameters cannot ordinarily be ignored in the absence of exceptional facts. No such exceptional circumstance has been demonstrated in the present case.

113. At this juncture, this Court also finds it necessary to deal with the submission advanced on behalf of the Respondent that the Petitioner's challenge is liable to be rejected merely because the learned Arbitrator had allegedly rendered professional services to the Petitioner as well.

114. The said contention cannot be accepted. Neither Section 12 nor the Fifth or Seventh Schedule draws any distinction based upon the identity of the party raising the objection. The statutory enquiry is directed towards the independence and impartiality of the arbitrator and not towards identifying which party is entitled to raise such objection. Consequently, the mere fact that the learned Arbitrator may have rendered professional services to both parties at different points of time cannot, by itself, preclude the Petitioner from maintaining a challenge under Sections 12, 13 and 34 of the A&C Act. The

maintainability and success of such challenge must necessarily depend upon whether the statutory requirements are otherwise satisfied.

115. The Petitioner, in support of his assertions, has also placed reliance upon a typed copy of an alleged reply dated 08.03.2018 stated to have been filed by the learned Arbitrator before an authority.

116. This Court finds considerable substance in the objection raised by the learned counsel for the Respondent regarding the evidentiary value of the said document.

117. The original communication of the same has not been produced before this Court. Nor has any material been placed on record to establish that the typed copy is a true and faithful reproduction of any communication actually issued by the learned Arbitrator. In the absence of proof regarding its authorship, authenticity and genuineness, this Court is unable to place reliance upon the contents thereof for recording findings which may have the effect of questioning the independence or impartiality of the learned Arbitrator. Proceedings under Section 12 or Section 34 of the A&C Act are not intended to permit findings founded upon unproved or doubtful material, particularly where allegations affecting the integrity of an arbitrator are involved.

118. Accordingly, despite the elaborate submissions advanced on behalf of the Petitioner, no material has been brought to the notice of this Court to demonstrate that, on or before the passing of the arbitral award, the learned Arbitrator's relationship with either of the parties, their counsel or the subject matter of the dispute attracted any of the disqualifications enumerated in the Seventh Schedule so as to render him *de jure* ineligible under Section 12(5) of the A&C Act. Equally,

the Petitioner has failed to establish that the alleged non-disclosure pertained to any circumstance which objectively gave rise to justifiable doubts regarding the learned Arbitrator's independence or impartiality within the meaning of Section 12(3) of the A&C Act.

119. This Court is also conscious of the manner in which the learned Arbitrator came to be appointed in the present case. The appointment was made with the participation and concurrence of both parties and culminated in the passing of what has already been held hereinabove to be a consent award.

120. This Court is of the considered opinion that the Petitioner's challenge cannot succeed merely on the ground of the alleged non-disclosure under Section 12(1) of the A&C Act. More importantly, the Petitioner has failed to establish, on the basis of cogent and reliable material, either that the learned Arbitrator suffered from any statutory disqualification contemplated under Section 12(5) read with the Seventh Schedule or that circumstances existed which objectively gave rise to justifiable doubts regarding his independence or impartiality within the meaning of Section 12(3) read with the Fifth Schedule. Consequently, no case has been made out for holding that the arbitral award is vitiated on account of bias, lack of independence or statutory ineligibility of the learned Arbitrator.

<u>DECISION</u>:

I. <u>O.M.P. 7/2017</u>

121. In view of the foregoing discussion and for the reasons recorded hereinabove, this Court is of the considered opinion that the Petitioner has failed to establish any ground warranting interference with the

Arbitral Award under Section 34 of the A&C Act. Accordingly, the present Objection Petition is dismissed.

122. All pending applications also stand disposed of in the above terms.

123. No Order as to costs.

II. *EX.P. 69/2017*

124. In view of the dismissal of the Petition under Section 34 of the A&C Act, there remains no legal impediment to the continuation of the execution proceedings.

125. Accordingly, the Execution Petition filed by BDR Builders & Developers Pvt. Ltd. shall proceed further in accordance with law for enforcement and execution of the Arbitral Award dated 21.11.2016.

126. List before the learned Roster Bench on 28.10.2026 for further proceedings.

POST SCRIPT:

127. This Court considers it necessary to add this candid Post Script since, initially, during the hearing, this Court was of the view that the Petition should be allowed, but upon closer scrutiny and circumspection, and consideration of the relevant law, decided otherwise. This is also one of the reasons why its pronouncement slightly overshot a period of three months.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 18, 2026/sm/va