2026:DHC:9202

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

Date of decision: 13th OCTOBER, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010009452022**

\+ **O.M.P. (COMM) 23/2023 & I.A. 1241/2023**

SOM SHIVA IMPEX LTD. .....Petitioner

Through: Mr. Rajshekhar Rao, Sr. Adv. with Mr. Malak Bhatt and Ms. Sukanya Joshi, Advs.

versus

NATIONAL RESERACH DEVELOPMENT CORPORATION & ANR. .....Respondents

Through: Mr. JM Kalia, Mr. Siddhartha Shukla and Mr. Dhruv Kalia, Advs.
Along with Mr. AP Singh, Sr. Manager (Legal).

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 *(herein referred to as the "Act")* against the award dated 29.09.2022 passed by the Learned Sole Arbitrator.

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

3. The Petitioner, M/s. Som Shiva (Impex) Limited *(hereinafter referred to as "SSIL")*, is a company incorporated under the provisions of the Companies Act, 1956, having its registered office in Ahmedabad, Gujarat,

and is primarily engaged in the commercial manufacturing of plastic master batches. SSIL was the original Respondent and Counter-Claimant in the arbitral proceedings.

4. Respondent No. 1, National Research Development Corporation *(hereinafter referred to as "NRDC")*, is an enterprise of the Government of India under the administrative control of the Department of Scientific and Industrial Research, established with the mandate to promote, develop, and commercialise industrial technology and innovations.

5. Respondent No. 2, the Department of Scientific and Industrial Research *(hereinafter referred to as "DSIR")*, is a department under the Ministry of Science & Technology, Government of India. NRDC and DSIR were the joint Claimants in the arbitral proceedings.

6. In June 2010, DSIR launched the Technology Development and Demonstration Programme under the broader Technology Promotion, Development and Utilisation scheme to provide partial financial support to Indian industrial units for research, development, and commercialisation of indigenous technologies.

7. Pursuant to the launch of the scheme, SSIL submitted a formal project proposal on 01.10.2010 titled *"New Process Development for Special Elastomer Compound"*, aimed at developing an innovative modified Polycarbonate and Nylon 6 blend.

8. Upon evaluating the proposal, DSIR issued a financial sanction on 24.10.2011 approving partial financial assistance to the extent of ₹2,70,00,000/- (Rupees Two Crores Seventy Lakhs) against an estimated overall project cost of ₹7,74,25,000/-. In execution of the sanction, DSIR

actually disbursed a total sum of ₹2,40,00,000/- (Rupees Two Crores Forty Lakhs) across multiple tranches between the years 2011 and 2015.

9. On 12.10.2011, to formalise the terms of funding, development, and commercialisation, the parties executed two distinct bilateral and multilateral instruments, namely, a Tripartite Agreement (TPA) executed between DSIR, NRDC, and SSIL to define the project parameters, timeline, monitoring mechanism, funding milestones, and post-completion obligations and a Royalty Agreement (RA) executed between NRDC and SSIL to govern the financial return, royalty recovery, and repayment schedule. Under the said agreements, there were certain core contractual obligations. Clause 7 of the TPA stipulated that the project was to be completed within a strict period of 24 months from the date of commencement. Under Clause 4.1(f) read with Clause 11(a) of the TPA and Clause 3 of the RA, SSIL was obligated to pay NRDC an annual royalty calculated at 26% of the actual funds disbursed by DSIR over a span of 5 years (aggregating to 1.3 times the financial grant received) along with applicable GST. Crucially, the liability to pay royalty was expressly contingent upon the commencement of production for captive use and/or commercial sale. In addition to this, in the event of default or delay in remitting royalty instalments, interest was chargeable at the rate of 12% per annum for the initial six months of delay, escalating to 18% per annum thereafter.

10. Another imperative clause was the technology transfer clause being Clause 11(e) of the TPA, according to which, SSIL undertook to assign and transfer the complete technology, design, and know-how documentation to NRDC within 60 days if:

a. SSIL explicitly refused to commercialise the technology within 1 year of project completion; or

b. SSIL failed to achieve commercialisation of the technology within 4 years of project completion.

11. On 29.03.2016, SSIL formally intimated DSIR regarding the completion of the project, which was subsequently recorded as complete on 11.04.2016.

12. Following completion, NRDC issued a demand notice on 16.11.2016 requesting remittance of the first royalty instalment. In response, SSIL issued cheque dated 30.12.2016 for an amount of ₹64,74,000/- towards the first instalment. However, SSIL consistently maintained that this remittance was made under economic coercion and protest to prevent coercive cancellation of the project, despite the fact that no commercial manufacturing, sale, or captive consumption had taken place.

13. Subsequently, through formal communications dated 27.03.2018, 13.05.2018 and 29.08.2018, SSIL repeatedly informed NRDC and DSIR that the project was commercially unviable due to sharp raw material price inflation and an absence of market demand. SSIL affirmed that not a single kilogram of the compound had been sold or captively consumed, and accordingly declined to honour further demands for royalty.

14. Upon SSIL's refusal to pay further instalments, NRDC issued demand notices on 25.04.2018 and 11.12.2018. Subsequently, NRDC and DSIR instituted a petition under Section 11 of the Act being ARB. P. No. 242/2021 before this Court wherein this Court *vide* Order dated 23.07.2021, appointed Hon'ble Mr Justice G.P. Mittal (Retd.) as the Sole Arbitrator to adjudicate the disputes between the parties.

15. Before the Arbitral Tribunal, NRDC & DSIR**,** being the Claimants, sought recovery of ₹3,36,94,752/- (subsequently revised to ₹3,82,88,061/-), comprising balance royalty instalments, GST, and default interest.

16. SSIL sought total dismissal of the claims on the ground that the precondition for royalty, i.e. commercial exploitation, was never triggered, and preferred a counter-claim for the refund of ₹64,74,000/- paid under protest towards the initial instalment.

17. On 29.09.2022, the learned Sole Arbitrator rendered the Arbitral Award holding as under:

a. Rejection of Royalty Claim: The Arbitral Tribunal rejected NRDC's claim for royalty in its entirety, holding that since commercial production, commercial sale, or captive consumption had admittedly never commenced, the contractual prerequisite for triggering royalty liability was not fulfilled.

b. Finding of Breach against SSIL: The Arbitral Tribunal found SSIL in breach of Clause 11(e)(ii) of the TPA for failing to assign and transfer the developed technology and know-how documents to NRDC within 60 days following the expiry of 4 years from project completion (i.e., on or before 10.06.2020)

c. Award of Damages: Consequent to the breach of Clause 11(e)(ii) of the TPA, the Tribunal awarded damages to the tune of ₹2,60,83,200/- in favour of NRDC, along with interest at 11% per annum for the period from 10.06.2020 to 04.10.2021, besides *pendente lite* and future interest at 10% per annum until realisation.

d. Dismissal and Set-Off of Counter-Claim: SSIL's counter-claim seeking refund of ₹64,74,000/- was dismissed on merits and ordered to be set off against the damages awarded to NRDC.

18. Aggrieved by the award of damages and the dismissal of its counter-claim, the Petitioner (SSIL) has preferred the present petition under Section 34 of the Act.

19. Learned Senior Counsel appearing for the Petitioner, SSIL, has vehemently submitted that the impugned Arbitral Award dated 29.09.2022 suffers from patent illegality and is per se contrary to the fundamental policy of Indian law, thereby attracting the bar under Section 34(2A) and Section 34(2)(b)(ii) of the Act.

20. It is submitted that the learned Sole Arbitrator committed a fundamental error of law by awarding massive damages of ₹2,60,83,200/- against the Petitioner under the guise of an alleged breach of Clause 11(e)(ii) of the TPA, despite the fact that no claim for damages was ever pleaded, quantified, or proved by the Claimants (Respondents herein) in their Statement of Claim. Learned Senior Counsel emphasised that the original claim filed by NRDC and DSIR was strictly limited to the recovery of unpaid royalty instalments along with interest and GST. It is submitted that by suo motu converting a rejected royalty claim into an award for unpleaded damages, the learned Arbitrator went beyond the scope of the reference, thereby travelling outside the contours of the pleadings and violating the principles of natural justice, which renders the Impugned Award vulnerable to be set aside under Section 34(2)(a)(iv) and Section 34(2A) of the Act.

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21. It is further contended that the learned Arbitrator completely misconstrued and misapplied Clause 11(e)(ii) of the TPA as the said clause merely provides for the transfer and assignment of technology and know-how documentation to NRDC in the event of non-commercialisation after 4 years. It is submitted that the said clause does not contain any liquidated damages clause or forfeiture mechanism equivalent to the total disbursed grant amount. In the absence of any contractual provision prescribing monetary compensation or liquidated damages for non-transfer of know-how, any measure of damages had to be strictly governed by Section 73 of the Indian Contract Act, 1872. It is argued that the Respondents failed to lead any evidence whatsoever to establish actual loss or injury suffered on account of the non-transfer of the technology documentation, particularly when the technology had already been rendered commercially unviable and obsolete due to market conditions.

22. Learned Senior Counsel strongly submitted that the award of damages equivalent to the exact financial grant disbursed of INR 2,40,00,000/- plus interest, effectively operates as a full refund or claw-back of the financial support granted under the Technology Development and Demonstration Programme. This approach fundamentally mischaracterises the nature of the financial sanction, which was explicitly a grant-in-aid aimed at sharing R&D risks, and not a commercial loan or an absolute guarantee of success. To support this contention, reliance was placed on the judgment of the Supreme Court in Kailash Nath Associates v. Delhi Development Authority, **(2015) 4 SCC 136**, to argue that compensation for breach of contract can only be awarded if legal injury or actual loss is proved, and in the absence of proof of loss, no damages can be granted.

23. Regarding the dismissal of the Petitioner's counter-claim, learned Senior Counsel argued that the learned Arbitrator erred in refusing to order a refund of the first royalty instalment of ₹64,74,000/- paid by SSIL. It was submitted that once the Arbitral Tribunal held on merits that the precondition for liability to pay royalty (i.e. commercial production or sale) was never triggered, any amount remitted by SSIL under protest and coercion was retaining the character of an unjust enrichment by the Respondents under Section 72 of the Indian Contract Act, 1872, and ought to have been refunded in full with interest, rather than being set off against illegal damages.

24. *Per contra*, learned Counsel appearing on behalf of the Respondents (NRDC & DSIR) strongly supported the impugned Arbitral Award dated 29.09.2022 and submitted that the present petition under Section 34 of the Act is wholly devoid of merit. It was submitted at the outset that the scope of judicial interference under Section 34 of the Act is extremely narrow and circumscribed, and this Court does not sit as a court of appeal to re-appreciate evidence or substitute its own view for that of the Arbitral Tribunal. Learned Counsel contended that the learned Sole Arbitrator has rendered a well-reasoned award after detailed appreciation of the contractual provisions and documentary evidence, and no ground of patent illegality or perversity has been made out by the Petitioner.

25. Learned Counsel for the Respondents submitted that the argument of the Petitioner regarding damages being unpleaded is factually incorrect and misconceived. It was contended that the Statement of Claim explicitly detailed the breach committed by SSIL in failing to assign and transfer the technology, design, and know-how documentation pursuant to Clause

11(e)(ii) of the TPA. The Respondents had specifically pleaded an alternative prayer for damages/compensation arising out of the non-performance of core contractual obligations by SSIL. Therefore, the award of damages fell squarely within the scope of reference and the Tribunal acted well within its jurisdiction.

26. It was further submitted that Clause 11(e)(ii) of the TPA imposes a mandatory and independent reciprocal obligation upon the Petitioner to transfer and assign the complete know-how documentation to NRDC within 60 days if commercialisation is not achieved within 4 years of project completion. The financial support provided by DSIR/NRDC was derived from public funds/exchequer under a promotional scheme aimed at technological development. Having received a massive grant of ₹2,40,00,000/- out of public money, SSIL could not be permitted to retain both the financial benefits and the proprietary technological know-how without fulfilling its reciprocal obligation of technology transfer or compensating the public exchequer for the resulting loss.

27. Learned Counsel for the Respondents emphasised that the measure of damages awarded by the learned Arbitrator, being equivalent to the principal disbursed amount along with interest, is fully justified and reasonable, as the failure to transfer the technology completely deprived NRDC of the opportunity to commercialise or license the technology through third parties. Regarding the Petitioner's counter-claim, it was submitted that the rejection and set-off of ₹64,74,000/- was entirely proper, as the initial payment made by SSIL was toward valid contractual liabilities and could not be claimed back when SSIL itself stood in breach of its essential contractual commitments.



28. Heard the learned Counsels for the parties and perused the material on record.

29. Before this Court proceeds to analyse the merits of the case, it is quintessential to refer to the scope of interference of this Court under Section 34 of the Act. The Apex Court in OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., **(2025) 2 SCC 417**, has delineated the said scope and has observed as under:-

> *"**60.** In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while this Court was dealing with the concept "public policy of India", in the context of a Section 34 challenge prior to the 2015 Amendment, it was held that an award can be said to be against justice only when it shocks the conscience of the court [See Associate Builders case, (2015) 3 SCC 49, para 36 : (2015) 2 SCC (Civ) 204] . The Court illustrated by stating that where an arbitral award, without recording reasons, awards an amount much more than what the claim is restricted to, it would certainly shock the conscience of the court and render the award vulnerable and liable to be set aside on the ground that it is contrary to justice.*
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> ***61.** In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , which dealt with post the 2015 Amendment scenario, it was observed that an argument to set aside an award on the ground of being in conflict with "most basic notions of justice", can be raised only in very exceptional circumstances, that is, when the conscience of the court is shocked by infraction of some fundamental principle of justice. Notably, in that case the majority award created a new contract for the parties by applying a unilateral circular, and by substituting a workable formula under the agreement by another, dehors the agreement. This, in the view of*

the Court, breached the fundamental principles of justice, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered with the other party [See Ssangyong Engg. case, (2019) 15 SCC 131, para 76 : (2020) 2 SCC (Civ) 213] . However, a note of caution was expressed in the judgment by observing that this ground is available only in very exceptional circumstances and under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the court because that would be an entry into the merits of the dispute.

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

(c) justice or morality; and/or is
(d) patently illegal.

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

Morality

64. *The other ground is of morality. On the question of morality, in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court, after referring to the provisions of Section 23 of the Contract Act, 1872; earlier decision of this Court in Gherulal [Gherulal Parakh v. Mahadeodas Maiya, 1959 SCC OnLine SC 4 : AIR 1959 SC 781] ; and Indian Contract Act by Pollock and Mulla, held that judicial precedents have confined morality to sexual morality. And if "morality" were to go beyond*

sexual morality, it would cover such agreements as are not illegal but would not be enforced given the prevailing mores of the day. The Court also clarified that interference on this ground would be only if something shocks the Court's conscience [See Associate Builders case, (2015) 3 SCC 49, para 39 : (2015) 2 SCC (Civ) 204] .

Patent illegality

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

66. *In Saw Pipes [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 [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court held that an award would be patently illegal, if it is contrary to:*

(a) substantive provisions of law of India;

(b) provisions of the 1996 Act; and
(c) terms of the contract [See also three-Judge Bench decision of this Court in State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275 : (2022) 2 SCC (Civ) 776] .
*The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a) ["**28. Rules applicable to substance of dispute**.—(1) Where the place of arbitration is situated in India—(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;***(2)***(3) While deciding and making an award, the Arbitral Tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction."(As substituted by Act 3 of 2016 w.e.f. 23-10-2015)Prior to substitution by Act 3 of 2016, sub-section (3) of Section 28 read as under:"**28. (3)** In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."] 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 Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] 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 Ssangyong Engg. case, (2019) 15 SCC 131, para 37 : (2020) 2 SCC (Civ) 213] . Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See Ssangyong Engg. case, (2019) 15 SCC 131, para 38 : (2020) 2 SCC (Civ) 213] .

Perversity as a ground of challenge

69. *Perversity as a ground for setting aside an arbitral award was recognised in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] . Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.*

70. *In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:*
(i) a finding is based on no evidence; or
(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.
However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on

evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

71. *In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See Ssangyong Engg. case, (2019) 15 SCC 131, para 41 : (2020) 2 SCC (Civ) 213] .*

72. *The tests laid down in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] to determine perversity were followed in Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] and later approved by a three-Judge Bench of this Court in Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149]*

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

2024 INSC 292] , the ground of patent illegality/perversity was delineated in the following terms : (SCC p. 376, para 39)

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

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 [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."*

30. The only issue that arises for consideration before this Court is whether the Learned Arbitrator erred in awarding damages to the Respondents by observing that the Petitioner was in breach of Clause 11(e)(ii) of the TPA.

31. A perusal of the Impugned Award reveals that the Learned Arbitrator has rejected the entitlement of the Respondents to royalty under the project, on the ground that nothing has been placed on record by the Respondent to show that the technology has been commercialised by the Petitioner. It has been observed by the Learned Arbitrator that not even a single invoice of sale has been produced on record by the Respondent to establish commericalisation of the product. On the aspect of captive use as well, it is categorically observed by the Learned Arbitrator that the Respondent has failed to discharge the initial onus that the Petitioner indulged in captive use of the product.

32. However, damages to the extent of INR 2,60,83,200/- have been awarded by the Learned Arbitrator on account of failure on the part of the

Petitioner to transfer technology as stipulated under Section 11(e)(ii) of the Agreement. For the sake of reference, Clause 11(e)(ii) of the TPA is reproduced hereunder:

> *"**11. UTILIZATION OF TECHNOLOGY***
>
> *a) SSIL will enter into an agreement with NRDC within 120 days from the date of first sanction letter under the "Project" to enable NRDC to collect royalty/lumpsum payments as mentioned in clause 4.1(f) and clause 4.1(g) above, and will pay to NRDC a royalty / lumpsum payments on the sale of the "Product(s)" as per clause 4.1(f) and service tax as per clause 4.1(g) of this Agreement.*
>
> *b) SSIL will have the right to utilize the technology developed or other IPRs generated through the "Project" for production and sale of 'Products' on Pilot / Commercial basis. For such commercial utilization of technology by SSIL, SSIL will pay to NRDC, who will receive on behalf of DSIR, royalty/ lumpsum payments as envisaged in clause 4.1(f) and clause 4.1(g) above.*
>
> *c) After commercialization of technology by SSIL as stated in clause 11(b) above, SSIL may do third party licensing, if SSIL and DSIR perceive that such a need arises. This third party licensing and related terms and conditions would be finalised by SSIL with the approval of DSIR. The revenue so generated by such third party licensing shall be shared between SSIL and DSIR in the ratio of their actual financial contributions towards the project as assessed at the end of the project.*
>
> *d) SSIL may, if they do desire, utilize the services of NRDC for third party licensing as per mutually agreed terms and in consultation with DSIR. The revenue so collected by NRDC on behalf of DSIR by way of third*

party licensing shall be shared between SSIL and DSIR in ratio of their actual financial contributions towards the project as assessed at the end of the project.

e) SSIL shall assign the technology proposed to be developed under this "Project" with right to license the intellectual property owned by them and transfer the know-how document to NRDC within 60 days from the occurrence of any of the following:

(i) If SSIL refuses to exercise its right, within one year of completion of "The Project", its option to commercialize technology.

(ii) If SSIL fails to commercialize technology within four years of completion of the project.

(iii) If SSIL fails to execute agreement referred to in clause 11(a) above.

f) NRDC will have an exclusive right to license the technology developed through the "Project" to third parties in case of occurrence of either of the events referred in clause 11(e) above. SSIL will provide to NRDC full details of any improvement(s) made on the "Product(s)" and the process of manufacture and any additional information, which NRDC may require to license this technology to third parties, in the event of third party licensing under the circumstances given in clause 11(e) above. In such cases, SSIL will also provide training to third party licensees on request from NRDC on mutually agreed terms. Revenues earned by NRDC through third party licensing under this clause will be shared in the ratio of actual financial contributions by DSIR and SSIL towards the project as assessed at the end of the project."

33. The Learned Arbitrator has reasoned that the Petitioner herein could have assigned/transferred by 10.06.2020 at the latest, counting the period of 4 years and 60 days from the completion of the project. However, it did not



do so. It is reasoned that even though the Respondent had issued a notice of arbitration dated 25.04.2018 and 11.12.2018, the Section 11 petition was filed as late as on 10.02.2021, much after 10.06.2020, and the invocation of arbitration was of no consequence as the Respondent could have assigned/transferred the technology in terms of the TDDP Agreement. It is on this account that the Learned Arbitrator has observed in paragraph 74 of the Award that though the Respondent won't be entitled to royalty, it would still be entitled to damages on account of failure to transfer technology.

34. With respect to the quantification of damages done by the Learned Arbitrator, the relevant paragraphs of the Impugned Award are reproduced hereunder:

> *"74. Although, the Claimants have raised a claim for INR 3,82,88,061/- along with die interest including penal interest in terms of the Royalty Agreement, The Claimant No. 1 would not be entitled to the payment of Royalty yet would be entitled to damages for breach of contract. The question for consideration is as to what would be the quantum of damages.*
>
> *75. The measures for grant of damages for breach of contract is that the Party complaining of breach should so far as it can be done by money, be placed in the .same position as he would have been in, if the contract had been performed. One way to look at the damages could be the amount which was released by Claimant No. 2 between the year 2011 to 2015 and interest thereon and the other could be the balance amount of Royalty in the shape of damages as on 10.06.2020 as a part of Royalty amounting to INR 64,74,000 /- had already been paid by the Respondent to Claimant No.1. The financial support sanctioned by Claimant No. 2 was in the shape of a soft loan as the TDDP Agreement envisaged completion of the Project in 24 months and*

payment of Royalty of 1.3 times the released grant along with Service Tax (now GST) on 25% of the released amount in five equated annual instalments after commcrcialisation/ Captive use of the technology. In Council of Scientific and Industrial Research, Anusandhan Dhawan v. Goodman Drug House (P) Ltd. 2007 SCC OnLine Utt 5., the Respondent and CS1R along with Indian Institute of Petroleum (I.I.P., Appellant No. 2) entered into an agreement for the purpose of setting up a Project for conversion of Menthone to Menthol. The I.I.P had to complete the Project in 5 months. As per the agreement between the Parties in consideration of the work done by I.I.P. and for using intellectual property generated for conversion of Menthone to Menthol, the Respondent Goodman agreed to pay I.I.P a sum of INR 3,00,000 /-. It was further agreed between the Parties that Goodman shall further pay a consolidated sum of INR 9,00,000 /- towards the Royalty in three equal instalments. After the agreement, the Respondent incurred huge expenditure in setting up the Project, The Respondent alleged that the know how supplied by the Appellants failed to show the result of conversion of Menthone to Menthol and Appellant had committed breach of Contract. The Appellants argued that the Project in question, agreed to be set up, was a research and development Project and the success and failure of such development work depended on the research carried out. During the course of the arbitration, it was found that the I.I.P. had represented that they had the expertise of converting Menthone to Menthol. It was further found that without having successfully achieved the process of converting Menthone into Menthol, I.I.P. entered into an agreement with the Respondent to permit them to use the technology. The correspondence between the Parties showed that the work which was required to be done within five months by I.I.P. could not be done even after three years. As such, the

Division Bench of the Hon'ble Uttarakhand High Court took the view that it was clearly a case of breach of contract and it cannot be accepted that the agreement between the Parties was only to run are search and development Project, The loss suffered by the Respondent under the agreement between the said Parties was awarded in the shape of damages. The objections filed under Section 34 of the Act were found to be without any merit The Appeal preferred by CSIR and I.I.P. was also found to be meritless and was accordingly dismissed.

76. Similarly, in the ease of Union of India v. Sugauli Sugar Works (P) Ltd., (1976) 3 SCC 32; Ghaziabad Development Authority v. Union of India, (2000) 6 SCC 113; Fortune Infrastructure v. Trevor D'lima (2018) 5 SCC 442; It was held that if a contract has been breached as far as possible, the injured party should be placed in as good a situation as if the contract had been performed. Similar view was taken by the Han'ble Supreme Court of course in respect of a construction contract in MD Army Welfare Housing Organisation (supra) relied upon by the Claimant.

77. As stated above, the Claimants have made a claim of INR 3,82,88,061/- as on the date of filing of the Statement of Claim. The Claimants have further claimed pendente lite and future interest @ 18% per annum. In my view, the damages to place the Claimants in the same position in which they would have been if the contract had been performed would be to require the Respondent to pay the amount of INR 2,60,83,200/- i.e., (1.3 times of INR 2,40,00,000/- with GST @ 18% on 25% of the balance amount of INR 2,49,60,000/-. Obviously, there will be deduction of the amount of INR 64,74,000/- less Service Tax paid i.e.,

INR 62,40,000/-. For the sake convenience, the computation of damages payable is made hereunder:-

Particulars	***Amount***	***Total amount***
Amounts to be paid by the Respondent in 5 equal instalments (without Service tax /GST). 'A'	*62,40,000 X 5*	*3,12,00,000*
The amount already paid by Respondent w.r.t the 1st Instalment. 'B'	*62,40,000 (without Service Tax)*	*64,74,000 (With Service Tax)*
Balance amount of 4 Instalment left to be paid (without GST) 'C'	*62,40,000 X 4*	*2,49,60,000*
18% GST on 25% of the balance Repayment amount 2,49,60,000 'D'	*18 % GST on 2,49,60,000*	*11,23,200*
Total amount to be paid as Damages 'C+D'	*2,49,60,000 + 11,23,200*	*2,60,83,200*

Although the amount of INR 2,40,00,000/- provided as a financial support to the Respondent, on market rate of interest, during the relevant period from 2011 to 2015, as stated above would have more than doubled as on 10.06.2020, yet on the principle of Section 73 of the Indian Contract Act, 1872 ("the Contract Act"), it would be the amount of INR 2,60,83,200/- on the date as stated above (10.06.2020) that would put the Claimants in the same position as if the Contract has not been breached by the Respondent. Point no. 3 is decided accordingly."

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35. While awarding damages, the Learned Arbitrator has principally relied on Section 73 of the Indian Contract Act, 1872. The award of damages under the said provision is the meat of the challenge before this Court. Before we proceed further, it is pertinent to refer to the aforesaid Section. The same is reproduced hereunder:

> *"**73. Compensation for loss or damage caused by breach of contract**.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*
> *Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*
> *Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*
> *Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account…."*

36. In McDermott International Inc. v. Burn Standard Co. Ltd., **(2006) 11 SCC 181**, while holding that unless the damages are not quantified they cannot be awarded, the Apex Court has held as under:



> "*100. While claiming damages, the amount therefor was not required to be quantified. Quantification of a claim is merely a matter of proof.*"

37. Section 73 of the Contract Act stipulates that for applying the said provision, it must be first proved that there has been a breach of the contract and that the breach has resulted in a damage which is actual and undisputed and that the damage has to be pleaded and proved. It is well settled that a claim for liquidated damages does not give rise to a debt until the liability is adjudicated upon and damages are assessed. A person does not get damages or compensation by reason of an existing obligation on the part of the person committing breach without the Petitioner being able to prove and establish the loss that has been caused by such breach. It is also well settled that damages are compensation which a party is entitled to get on adjudication of disputes by a court of law and till that loss is not adjudicated by pleading and proving, damages cannot be awarded. Loss must result from such breach and only that loss which is adjudicated upon can be recovered. Undoubtedly, when the Respondent has been found to have breached the contract, then the Court can award nominal damages but not the entire value of the contract unless the extent of the damage is not established by pleading and proving. In fact, even in a case where Section 74 of the Contract Act applies, that is a contract which provides for compensation for breach of contract where penalty stipulated for, the Apex Court in Kailash Nath Associates v. DDA, **(2015) 4 SCC 136** has observed as under:

> *"**43.** On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:*

43.1. *Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.*

43.2*. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.*

43.3. *Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.*

43.4. *The section applies whether a person is a plaintiff or a defendant in a suit.*

43.5*. The sum spoken of may already be paid or be payable in future.*

43.6. *The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to*

prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7. *Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."*

38. In the present case, the Arbitrator has not given nominal damages. A perusal of the Award indicates that the learned Arbitrator has proceeded to award damages on failure of transfer of technology by the Petitioner to the Respondent by and after 10.06.2020, i.e. the date on which the Petitioner was under a contractual obligation to transfer the technology on failure to commercialise the product. On this limited aspect, there are no observations rendered by the learned Arbitrator as to whether any loss has been suffered by the Respondent herein. While it is within the power of the learned Tribunal to award compensation/damages, however, the same cannot be done without taking into consideration whether loss has been suffered or not. Nothing in the Award discloses that loss has been suffered and the same has been assessed by the Learned Arbitrator.

39. A perusal of paragraph 75 of the Award reveals that the learned Arbitrator has simplicitor proceeded on the ground that the party complaining of the breach, so far as money is concerned, must be placed in the same position as it would have been, if the contract would have been performed.

40. It appears to this Court that the learned Arbitrator has awarded damages to the Respondent on account of breach after 10.06.2020 without



ascertaining whether loss has been suffered by the Respondent or not. Furthermore, an essential ingredient of Section 73 has also not been taken into account while rendering the Award. Section 73 of the Indian Contract Act, 1872 mandates that compensation/damages can only be granted as long as mitigation efforts have been made by the claimant. The Apex Court in Murlidhar Chiranjilal v. Harishchandra Dwarkadas, **1961 SCC OnLine SC 100,** has further observed as under:

> *"9. The two principles on which damages in such cases are calculated are well-settled. The first is that, as far as possible, he who has proved a breach of a bargain to supply what he contracted to get is to be placed, as far as money can do it, in as good a situation as if the contract had been performed; but this principle is qualified by a second, which imposes on a plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps : (British Westinghouse Electric and Manufacturing Company Limited v. Underground Electric Railways Company of London [(1912) AC 673, 689]). These two principles also follow from the law as laid down in Section 73 read with the Explanation thereof. If therefore the contract was to be performed at Kanpur it was the respondent's duty to buy the goods in Kanpur and rail them to Calcutta on the date of the breach and if it suffered any damage thereby because of the rise in price on the date of the breach as compared to the contract price, it would be entitled to be re-imbursed for the loss. Even if the respondent did not actually buy them in the market at Kanpur on the date of breach it would be entitled to damages on proof of the rate for similar canvas prevalent in Kanpur on the date of breach, if that rate was above the contracted rate resulting in loss to it. But the respondent did not make any attempt to prove*

> *the rate for similar canvas prevalent in Kanpur on the date of breach. Therefore it would obviously be not entitled to any damages at all, for on this state of the evidence it could not be said that any damage naturally arose in the usual course of things."*

41. In light of the fact that this Court cannot re-evaluate the evidence relied on by the Learned Arbitrator and in the absence of any findings rendered by the Learned Arbitrator regarding any loss suffered by the Respondent, this Court is inclined to set aside the Award to the extent of damages granted to the tune of Rs.2,60,83,200/- in favour of NRDC, along with interest at 11% per annum for the period from 10.06.2020 to 04.10.2021, besides *pendente lite* and future interest at 10% per annum until realisation. This Court is further inclined to set aside the adjustment of the amount of INR. 64,74,000/- given by the Petitioner to the Respondent as a first tranche of instalment towards royalty in the damages awarded.

42. In view of the above, the present Petition is allowed on the ground that the Respondents has not been able to prove the damages suffered by them. The Award rendered by the learned Arbitrator is set aside.

43. It is always open for the Respondents to file an appropriate application under Section 11 of the Act for constituting a Tribunal in order to prove the damages.

SUBRAMONIUM PRASAD, J

OCTOBER 13, 2026
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