2026:DHC:9127

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

Date of decision: 13th OCTOBER, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010098732023**

\+ O.M.P. (COMM) 107/2023

MS ABHOY CHARAN BAKSHI .....Petitioner

Through: Mr. Anantaprasad Mishra, Advocate.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ORS.

.....Respondents

Through: Mr. Abhay Gupta and Ms Simran Goel, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present is a Petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), seeking setting aside of the Award dated 30.11.2022 (*hereinafter referred to as, "impugned Award"*), passed by the learned Arbitral Tribunal, whereby the learned Tribunal has passed the Majority Award against the Claimant, i.e., Petitioner herein, thereby rejecting all the claims raised by the Claimant/Petitioner herein. *Vide* the impugned Award, the learned Tribunal has passed a nil award against the Claimant/Petitioner herein. However, *vide* the minority award, the Respondent-NHAI has been directed to pay Rs. 6,22,16,346/- to the Claimant/Petitioner herein, within 90 days, failing which, an interest of 9% per annum from the date of Award till the date of payment was to be paid by



the Respondent to the Petitioner herein. Accordingly, Petitioner assails the majority Award as well the minority Award to the extent the Claims of the Petitioner were rejected by the learned Tribunal.

2. Shorn of unnecessary details, the facts as stated in the present Petition are enumerated as follows:

a. Respondent No.1-NHAI invited bids for short-term maintenance contracts for certain sections of the National Highways *vide* Short Term Tender Notice. Petitioner submitted its bid in relation to "Repair and Maintenance of Baharampore to Farakka (Km. 193 to Km. 295) Section of NH-34-Package-B" on 30.11.2005. Subsequently, the bid of the Petitioner was accepted by Respondent No.1 *vide* Letter of Acceptance dated 12.12.2005. Accordingly, Petitioner furnished Bank Guarantee dated 20.12.2005 of State Bank of India, Haldia Port Branch, for Performance Security of Rs.43,74,450/-.

b. An Agreement was executed between the parties on 21.12.2005 for amount of Rs. 4,37,44,478/- (*hereinafter referred to as, "Agreement"*). The work was to be completed within 4 months, commencing from 27.12.2005 till 27.04.2006. However, the work was completed on 31.07.2006 due to execution of revised quantity of work *vide* Memo dated 21.04.2006.

c. Subsequent thereto, Petitioner executed work of rectification during the "Defect Liability Period", commencing from 31.07.2006 allegedly till 31.01.2007.



d. Since the aforenoted Bank Guarantee dated 20.12.2005 furnished by the Petitioner was valid till 08.11.2006, the Petitioner, on the request of the Respondents, extended its validity till 28.02.2007. Additionally, on further request of Respondents, another Bank Guarantee dated 06.11.2006 of Rs.6,05,500/- issued by State Bank of India, Haldia Port Branch, was also submitted by the Petitioner, with validity up until 28.02.2007.

e. During the Defect Liability Period, the Respondents invoked the said Bank Guarantee dated 20.12.2005 of Rs.43,74,450/-

f. Consequently, disputes arose between the parties allegedly in relation to payment of dues to the Petitioner, unilateral encashment of Bank Guarantee and non-payment of Security Deposit by the Respondent, as well as fulfilment of terms of the Agreement. Accordingly, Petitioner invoked Clause 25.3 of the General Conditions of the Contract (*hereinafter referred to as, "GCC"*) for reference of disputes to the Arbitrator by issuing a notice under Section 21 of the Arbitration Act. Pursuant thereto, a 3-member Arbitral Tribunal was constituted as per Clause 25.3 of the GCC.

3. The case of the Petitioner before the learned Arbitral Tribunal was that the Petitioner carried on additional/extra items of work beyond the scope of contract as per the instructions of the Respondents. It was contended that the such maintenance was required in view of incessant rainfall which damaged the work already executed by the Petitioner. Furthermore, it was stated that the Respondents illegally encashed the Bank Guarantee furnished by the Petitioner, even before the expiry of the Defect



Liability Period. Moreover, the Security deposit was also illegally retained by the Respondents. Accordingly, before the Tribunal, the Claimant, i.e., the Petitioner herein raised the following claims:

Claim Item	***Description***	***Amount (Rs.)***
1.	*Execution of Non-Agreemental items (Resectioning work)*	*5,51,13,375/-*
2.	*Execution of Repair work over the damaged portion previously repaired*	*1,39,46,800/-*
3.	*Security Deposit*	*35,27,462/-*
4.	*Performance Security*	*43,74,450/-*
5.	*Loss of Goodwill*	*5,00,00,000/-*
6.	*Compensation against business/loss of business*	*3,84,81,040/-*
7.	*Breach of Contract*	*43,74,448/-*
8.	*Interest on the amount of Rs.7,69,62,087/- for the period from 31.01.2007 to 20.06.2019 @ 18% per annum & Interest @ 9% per annum on the Awarded amount till the payment is made in full.*	

4. The learned Tribunal rendered its Award dated 30.11.2022 and by virtue of the Majority Award, a Nil Award has been rendered, thereby rejecting all the Claims of the Claimant/Petitioner herein. A summary of findings of the Majority Award is stated as follows:

With respect to Claim Nos.1 & 2:

5. The learned Tribunal recorded that the scope of the Work, as per the terms of the Agreement, included repair work, therefore, the repairs carried out by the Petitioner during the Defect Liability Period were "within" the scope of the Agreement. It was observed that incessant rainfall is natural and



repeats every monsoon and therefore, the Claimant/Petitioner herein could not have been precluded to perform its obligations under the Agreement entered into between the parties.

6. The learned Tribunal, while rejecting Claim No.1 recorded that there has not been a single material placed on record before the learned Tribunal to assess the "Execution of Non-Agreemental items", as alleged by the Claimant/Petitioner herein. The learned tribunal also recorded that the Petitioner did not even produce any Interim Payment Certificate to show if such a claim was ever put for consideration before the Engineer. In absence thereof, the claim was held to be out of the scope of Agreement and thus, outside the Arbitration.

7. Further, while rejecting Claim No.2, the learned Tribunal recorded that the compensation sought for by the Claimant/Petitioner for rectification of the defects in the work executed as part of the Agreement, is admitted by the Petitioner to have been duly paid by the Respondent in its letter dated 19.09.2006. Nonetheless, Petitioner was duty bound to rectify the defects during six months of the Defect Liability Period as envisaged under Clause 33. Additionally, it was recorded that the paper clipping relied upon by the Claimant/Petitioner to aver damages caused due to heavy rainfall pertains to a different location from what the site was for execution of the work.

With respect to Claim Nos.3 & 4:

8. While rejecting the said Claims, the learned Tribunal recorded that Respondent had the right to withhold the Performance Security in view of Clause 44.2 as the Claimant/Petitioner had failed to perform its obligations during the Defect Liability Period. It was also recorded that Retention

Money/ Security Deposit could have been refunded in accordance with Clause 44.3, however, since Petitioner did not fulfill the conditions under Clause 44.3, retention money could also not be refunded. As such Clause Nos.3 and 4 also came to be rejected.

With respect to Claim No.5:

9. Considering the letter dated 06.11.2006, whereby Claimant/Petitioner had acknowledged the full and final settlement made to it by the Respondent, and also recording that the said claim was not quantified by the Claimant, the learned Tribunal rejected the above claim for compensation for loss of goodwill to the Petitioner.

***With respect to Claim Nos.6, 7 & 8*:**

10. In light of rejection of Claim Nos. 1 to 4, it was observed that no claim for compensation against business loss, i.e., Claim No.6, survived. With respect to Claim for Breach of contract, i.e., Claim No. 7, the same was rejected as it was held that contrarily, it was the Petitioner herein who had committed breach. Since no claim of the Claimant/Petitioner sustained, therefore, the claim for interest, i.e. Claim No.8, was also rejected.

11. Accordingly, the majority Award rejected all the Claims raised by the Claimant, i.e., the Petitioner. Hence the present Petition.

12. The grounds raised by the Petitioner assailing the impugned Award are stated as under:

(i) The learned Tribunal did not take into consideration the material placed on record and the evidences adduced by the Petitioner, and

therefore, the Tribunal has not acted impartially, thereby violating the Public Policy of India.

(ii) Claim No. 1, i.e., "Execution of Non-Agreemental Items" was rejected by the learned Tribunal despite the execution of additional/extra items of work by the Petitioner, outside their scope of work under the Agreement. Petitioner has executed additional items of work which were not part of the contract between the parties, but was subsequently agreed to as per the instructions given by Respondent Nos. 2 and 3. In view thereof, Petitioner sought for amount of Rs.5,51,13,375/- as compensation for the extra work. The impugned Award however, is erroneous as it does not take into account the provisions of Indian Contract Act, 1872 particularly Section 70. It is submitted that the Petitioner lawfully executed the additional work, for which the Respondents were duty-bound to compensate the Petitioner.

(iii) It is stated that learned Tribunal rejected the said claim without taking into consideration that the Petitioner adduced sufficient evidence and contrarily, Respondents did not adduce any evidence to disprove the fact of execution of additional work by the Petitioner, nor did the Respondents specifically deny the quantity, rate and amount for the execution of Non-Agreemental items of work, as contended by the Petitioner. Ignorance of such material facts is tantamount to violation of Public Policy of India. The learned Tribunal mechanically rejected the said claim by recording that it does not fall in the ambit of arbitration.

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(iv) With respect to Claim No.2, i.e., "Execution of Repair Work over the damaged portion previously repaired", the Petitioner executed Repair work over the already executed work in view of the bad condition of the road within the stretches of the works contract because of the heavy rainfall. Petitioner accordingly sought compensation for executing the repair work, aggregating to Rs. 1,39,46,800/, which was erroneously rejected by the learned Tribunal.

(v) It is stated that for adjudicating upon the abovementioned Claim No.2, the Tribunal inadvertently took irrelevant material i.e., the letter dated 19.09.2006 into consideration. The said letter was neither produced nor relied upon by either the Petitioner or the Respondents. Contrarily, a misplaced reliance upon the terms of the Contract, i.e., Clause 33, Clause 11.1 and Clause 13.1 of the GCC, has been placed by the learned Tribunal to reject the said claim of the Petitioner.

(vi) The impugned Award so far as the said Claim No.2 is concerned is patently illegal, as the learned Tribunal erroneously concluded that the newspaper clipping depicting rainfall was at a location other than the place of site where the damages work was carried out by the Petitioner.

(vii) So far as Claim No.3 – "Security Deposit" is concerned, Petitioner had deposited an amount of Rs. 35,27,462/- towards security deposit in terms of the Agreement. It is averred that Petitioner had completed the work in terms thereof, and despite that, Respondent Nos. 1 to 3 did not release the Security Deposit and the impugned

Award failed to award the said sum in favour of Petitioner. It is the case of the Petitioner that the learned Tribunal completely ignored the material relied upon by the Petitioner which categorically records that the Petitioner had completed the maintenance work within the Defect Liability Period and therefore, he was entitled to the Security Deposit.

(viii) The findings of the learned Tribunal insofar as Claim No.3 is concerned are not only perverse but also irrational, as the Tribunal took into consideration letter dated 14.02.2007 of the Respondent while rejecting the said Claim of the Petitioner. It is stated that contents of the said letter have been used by the Tribunal in a manner that is completely contrary to what its actual contents are. Moreover, reliance upon terms of the Agreement, namely, Clause 44.2 is also erroneous as it has no bearing upon the release of the security deposit. The Impugned Award, *vis-à-vis* Claim No.3 is concerned is therefore, patently illegal.

(ix) Insofar as Claim No.4 for "Performance Security" is concerned, it is stated that the Respondents, without releasing the said Performance Security amount in favour of the Petitioner, unilaterally encashed the Bank Guarantee, violating the terms and conditions of the Agreement for no fault of the Petitioner. It is stated that Petitioner is therefore, entitled to an amount of Rs. 43,74,450/- towards illegal encashment of Bank Guarantee.

(x) It stated that the learned Tribunal passed mutually conflicting findings. Firstly, it recorded that the Defect Liability Period was infinite. Secondly, it held that Respondents have not produced any

document to show that the Defect Liability Period was extended. Despite this, it eventually recorded that the Respondents had the right to hold the Performance Security.

(xi) It is stated that the above reasoning of learned Tribunal is in complete *volte face* to the terms of the Contract. The Tribunal has recorded that Petitioner is not entitled to reimbursement of Performance Security under Clause 44.2 of the Agreement. Such a finding is completely irrational, as there is no such Clause 44.2 giving right to the Respondents to forfeit the Performance Security.

(xii) With respect to Claim No.5, i.e., "Loss of Goodwill", which was also rejected by the learned Tribunal, it is the case of the Petitioner that the Petitioner could not make payments owing to non-payment of dues by the Respondent. Petitioner lost his goodwill and therefore sought compensation for Rs.5,00,00,000/- for loss of goodwill. Learned Tribunal rejected the said Claim while taking into consideration a completely alien material, i.e., letter dated 06.11.2006, which was neither produced nor referred to by the Petitioner or the Respondents. The learned Tribunal erroneously recorded that Petitioner has not computed the said Claim, despite the Petitioner having clearly quantified the Claim with respect to "Loss of Goodwill", which the learned Tribunal completely ignored.

(xiii) For Claim Nos.6, 7 & 8, Petitioner claimed Rs.3,84,81,040 for "loss of profit", Rs. 4,37,44,478/- for "breach of contract", and Rs.7,69,62,087/- as "interest" on account of defaults of the

Respondent. It is stated that all of the said claims were rejected by the learned Tribunal. The Impugned Award with respect to Claim No. 7 is in conflict with principles of law, namely Section 73 of the Indian Contract Act. Moreover, there has been no reason assigned by the learned Tribunal to reject the Claim No. 8.

(xiv) The learned Tribunal has given an imaginary finding that the Petitioner has mentioned that it has received the payment in full against the final bill and that there is no further claim left for the work executed by the Petitioner. It is stated that there is no material on record to show that the Petitioner has received the payment in totality. Therefore, it is stated that the learned Tribunal has acted in a partial manner, rendering the impugned Award patently illegal.

13. *Per contra,* the Respondents, in their reply have stated as under:

(i) Allegations raised in the present Petition are outside the confines of Section 34 as they warrant review on merits and re-appreciation of evidence. The Petitioner is trying to raise new grounds, which were not raised before the learned Tribunal.

(ii) Every Award is a product of its own circumstances and factual matrix. Dubbing of well-established standards of "perversity", or "patently illegality" would therefore corrode with the entire purpose and object of the Arbitration Act. Every error in application of law cannot amount to patent illegality. The permissible ground for judicial intervention is when the Arbitrator takes a view which is not even remotely possible, or when a Clause has been interpreted in such a manner which is completely

unreasonable, or when an Arbitrator has exercised its power beyond its jurisdiction by dealing with matters outside the scope of contract or matters not allotted to him/her. Reliance is placed upon Delhi Metro Rail Corporation Limited, **2021 SCC OnLine SC 695**.

(iii) The contention of the Petitioner that Arbitral Tribunal has not considered documentary and ocular evidence is a false and misleading averment raised by the Petitioner. The Award has categorically dealt with this aspect and the Tribunal has in fact recorded that except a newspaper clipping, which too does not show any damage at the site in question, no material has been produced before the Arbitral Tribunal in support of Claim No.1.

(iv) Petitioner in its letter dated 06.11.2006 has itself stated that it has received the full payment against the final bill as final settlement and that there remains no further claim from its side. Now, the Petitioner cannot be allowed to approbate and reprobate regarding payment of dues.

(v) Contentions regarding Claim Nos.1 and 2 therefore have no bearing on the impugned Award as there is no material, except for a newspaper clipping, which cannot substantiate the alleged extra ordinary damages of the highway pavement. Even the newspaper clipping exhibiting rainfall pertains to a location other than the site where damages and repair has been carried out. Even otherwise, heavy rain as per the Contract should have been accounted for by the Petitioner.

(vi) For the learned Tribunal to work out on extra work executed by the Petitioner, no certified quantities of various items of work, supported with progress reports, executed during the scope of work, or during the Defect Liability Period, were provided by the Petitioner. The Tribunal therefore had no mechanism to work out these quantities and nature of damages to assess the claims raised by the Petitioner herein. Mere newspaper cutting would do no good to the case of the Petitioner that Petitioner had to carry out extra work due to alleged heavy rainfall. Petitioner was duty bound to prove the alleged damage for which Petitioner allegedly carried out repair.

(vii) Petitioner incorrectly avers that Petitioner completed his work along with the rectification during the Defect Liability Period. There is no evidence to establish that Petitioner executed additional work. Moreover, neither the terms of the contract nor the terms of the Bank Guarantee contemplate issuance of any prior intimation to the Petitioner before seeking encashment of the same. Respondent was therefore well within its rights, as per the terms of the Agreement, to encash the Bank Guarantee as Petitioner failed to perform its part of the obligation.

(viii) The grievance of the Petitioner regarding the reliance placed upon the letter dated 19.09.2006 by the Arbitral Tribunal is also misconceived as the perusal of the finding in the Impugned Award vividly indicates that while rejecting Claim No.2, the learned Tribunal has relied upon the newspaper clipping and not the letter dated 19.09.2006. Nevertheless, such a contention is tantamount

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to re-appreciation of evidence, which is impermissible under the scope of Section 34 of the Arbitration Act.

(ix) Insofar as the contentions of the Petitioner with respect to Claim Nos.3 and 4 are concerned, the grounds raised herein were never raised before the Arbitral Tribunal. The case of the Petitioner that the NHAI did not suffer any loss by incurring the cost of repair and therefore, Performance Bank Guarantee was supposed to be released to the Petitioner, was never raised before the Tribunal. Nonetheless, Respondents had carried out the repair work through third party. Thus, it was permissible for NHAI to encash the Bank Guarantee.

(x) To make out a case for release of Performance Security and Security Deposit, it was incumbent upon the Petitioner to establish that it has performed the obligations under the Agreement and had rectified all the defects. However, various letters issued by the Respondents, including the Joint Inspections dated 16.01.2007 as well as 13.02.2007, showcase that the defects were not cured by the Petitioner even after the expiry of the Defect Liability Period. Ultimately, by the letter dated 09.05.2008, the Respondents confirmed that the rectification work has been carried out through third party namely, M/s Kar Enterprises.

(xi) Under Clause 44.2 of the Agreement, the security deposit and the performance security were to be released to the contractor only on the completion of Defect Liability Period and subsequent to the Engineer certifying that all the defects have been cured. A perusal of the facts would reveal that Petitioner failed to rectify the

defects, the Defect Liability Period continued, and a third party was engaged to carry out the work of rectification of defects, wherein huge money had to be spent by the Respondents for the purposes of rectifying the defects. Hence, the finding of the learned Tribunal does not warrant any interference.

(xii) There being a categorical finding of the Tribunal that the Petitioner herein committed a breach of contract and that repair of defects was never completed by the Petitioner even after the completion of the work, including the Defect Liability Period, there arises no ground for the release of the Performance Security as well as the Security Deposit. Even otherwise, the Petitioner had the option of exercising its rights under Clause 44.3 to seek release of Security Deposit, which was never exercised.

(xiii) With respect to Claim No.5, the case of the Petitioner that the letter relied upon by the Arbitral Tribunal dated 06.11.2006 is irrelevant is also misplaced as the said letter was filed by the Respondents in response to the queries raised by the Arbitral Tribunal, to which no objection was raised by the Petitioner. Moreover, there is no substance placed on record to show that the Petitioner incurred Loss of Goodwill amounting to Rs.5,00,00.000/-.

(xiv) Insofar as Claim Nos.6 and 7 are concerned, there has been no material placed on record to substantiate the said claims. Accordingly, in view of all of the said claims being baseless, the claim of “Interest” under Claim No. 8 is also superfluous.

Analysis:

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

15. At the outset, it becomes pertinent to recall the scope of Section 34 of the Arbitration Act before adverting to the merits of the instant case. The scope and ambit of Section 34 has been time and again expounded by the Apex Court in various judgments. In a recent judgment of M.P. Road Development Corpn. Ltd. v. Jabalpur Corridor (P) Ltd., **2026 SCC OnLine SC 1001**, the Apex Court, while dealing with the limited scope of interference of the Courts under Section 34 has held as under:

> ***"32.*** *There are a plethora of decisions of this court, crystallizing the scope of interference under section 34 of the 1996 Act. This court has consistently held that the jurisdiction of the court under section 34 of the 1996 Act is narrowly circumscribed and confined to the specific grounds enumerated therein.* ***The court cannot assume the role of an appellate forum while deciding an application for setting aside of the award under section 34 of the 1996 Act, to correct the errors of facts, reconsider costs, or engage in review of merits of the arbitral award. The arbitral tribunal alone is the master of evidence and of interpretation of contractual terms between the parties.***
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> ***33.It is also well settled that once the arbitral tribunal has applied its mind, appreciated the evidence on record, and interpreted the terms of the contract to take a certain view, such view of the arbitral tribunal would ordinarily be accepted and ought not to be interfered with by the court unless it is palpably erroneous, falling within the limited grounds as mentioned in section 34 of the 1996 Act. Even if two views are possible, it is beyond the scope of section 34***

> ***for the court to reappraise the evidence to take a view different from the one taken by the arbitral tribunal***. *Thus, as long as the conclusion arrived at by the arbitral tribunal is a plausible one that a reasonable person could arrive at, the court should be circumspect in intervening with such view of the arbitral tribunal."*
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> (Emphasis Supplied)

16. In another case of Municipal Corporation of Greater Mumbai v. R.V. Anderson Associates Ltd., **2026 SCC OnLine SC 354**, the Apex Court held as under:

> *"36. Of course, while saying so we are cognizant of the sacrosanct principle of party autonomy and the fact that courts cannot substitute the commercial wisdom of parties as is borne out from the plain meaning of the words used in the contract. However, clause 8.3(b) has been rightly interpreted by the learned arbitral tribunal in the section 16 order and the matter has been dealt with in the right perspective by the learned single judge in section 34 and the learned Division Bench in the section 37 appeal. The law in respect of the scope of interference permissible in proceedings arising out of a challenge to the arbitral award under section 34 of the 1996 Act, is well settled.* ***Generally, the scope of interference is quite narrow. The arbitrator is the master of evidence and so also of interpretation of the terms of contract. If the arbitrator has reached at a certain view with respect to interpretation which is plausible, interference is not warranted merely because some other view may also be possible. This is a settled principle of law which has been recently reiterated in the decisions of this court in Consolidated Construction Consortium Ltd. v. Software Technology Parks of India [(2025) 7 SCC 757; (2025) 3 SCC (Civ) 782; 2025 SCC OnLine SC 956.] and SEPCO Electric Power Construction***

Corporation v. GMR Kamalanga Energy Ltd. [(2026) 2 SCC 542; (2026) 1 SCC (Civ) 152; 2025 SCC OnLine SC 2088.]The role of the court, in the proceedings arising out of section 34 of the 1996 Act, is clearly demarcated. The approach of the court must be to respect arbitral autonomy and ensure minimum judicial interference."

(Emphasis Supplied)

17. Having examined the scope of Section 34 of the Arbitration Act, this Court shall now advert to the merits of the instant matter.

18. Petitioner herein assails the impugned Award, whereby by way of the majority Award a Nil Award has been passed against the Petitioner, rejecting all its claims. Petitioner avers that the said Award is patently illegal and the findings are a violation of public policy and therefore, the impugned Award requires interference of this Court under Sections 34(2) and (2A) of the Arbitration Act.

19. The meaning of the term "public policy" and "patent illegality" has been time and again expounded by the Apex Court. It is now well established that since the scope under Section 34 of the Arbitration Act is very narrow, therefore, even though public policy being a wider term, it does not give the Petitioner the right to challenge the Award on "errors of facts". Furthermore, mere erroneous application of law also precludes the Court to intervene under the ambit of Section 34. Just because another view was plausible, under the garb of Arbitrator's non-judicial approach, intervention on merits, or re-appreciation of evidence, is no more permissible. Moreover, patent illegality must be such an erroneous finding that must go to the root of the matter, shocking the conscience of the Court. The Apex Court in the

case of Prakash Atlanta (JV) v. National Highways Authority of India, **2026 SCC OnLine SC 98** ruled as under:

> *"24. In Associate Builders v. Delhi Development Authority18, this Court noted that the expression „public policy of India" in Section 34(2)(b)(ii) of the Arbitration Act was given a wider meaning in Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.19. It was held therein that the concept of public policy connotes some matter which concerns public good and public interest. It was observed that what is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time but an arbitral award which, on the face of it, is patently in violation of statutory provisions, cannot be said to be in public interest. It was further observed that such an award is likely to adversely affect the administration of justice. This Court, therefore, held that, in addition to the narrower meaning given to the term 'public policy' by a 3-Judge Bench of this Court in Renusagar Power Co. Ltd. v. General Electric Co.20, an arbitral award can be set aside if it is patently illegal. The result was that an arbitral award could be set aside if it was contrary to the fundamental policy of Indian law; or the interest of India; or justice or morality; or if it is patently illegal. It was observed that illegality must go to the root of the matter but, if the illegality is of trivial nature, it cannot be held that the award is against public policy. It wasfurther held that if the award is so unfair and unreasonable that it shocks the conscience of the Court, it would be opposed to public policy.*
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> *25. Thereafter, in Oil and Natural Gas Corporation Limited v. Western Geco International Ltd.21, a 3 Judge Bench of this Court added three other distinct*





and fundamental juristic principles which must be understood as part and parcel of the fundamental policy of Indian law. The first is the principle that in every determination that affects the rights of a citizen or leads to civil consequences, whether by a Court or other authority, such Court or authority is bound to adopt what is, in legal parlance, called 'judicial approach'. The second principle is that a Court and so also a quasi-judicial authority, while determining rights and obligations of parties before it, must do so in accordance with the principles of natural justice. It was observed that, in addition to audi alteram partem, the Court/authority deciding the matter must apply its mind to the attendant facts and circumstances as non application of mind is a defect that is fatal to any adjudication. It was, therefore, held that the requirement that an adjudicating authority must apply its mind is so deeply embedded in our jurisprudence that it can be described as the fundamental policy of Indian law. The last principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same cannot be sustained. Decisions that fall short of the standards of reasonableness were, therefore, held liable to challenge in a Court of law and even in statutory processes wherever the same were available.

26. It was further held in Associate Builders (supra) that when a Court is applying the public policy test to an arbitral award, it does not act as a Court of appeal and, consequently, errors of fact cannot be corrected.A plausible view by the arbitrator on facts necessarily has to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his award. It was 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 invalid on this score. Once it is found that the arbitrator's approach was not arbitrary or capricious, then he is the last words on facts.

20. Furthermore, in Ssangyong Engineering & Construction Co. Ltd. v. NHAI, **(2019) 15 SCC 131**, it was held that:

> ***"37.*** *Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.*
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> ***38.*** *Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.*
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> *xxx*
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> ***41.*** *What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding*

based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."

21. The Petitioner, i.e., the Claimant before the learned Tribunal raised Eight Claims as stated above. With respect to Claim Nos.1 and 2, the case of the Petitioner is that it executed extra work, which was beyond the scope of the Agreement entered into between the parties. Additionally, it is averred that Petitioner carried out repair work on the work site during the Defect Liability Period to cure the damages. It is stated that the site got damaged due to unprecedented rainfall and therefore, Petitioner had to execute further repairs to mend the same. For this, the Petitioner sought compensation before the learned Tribunal.

22. A perusal of the majority Award shows that the learned Tribunal, after appreciating the evidences adduced by the parties and contentions raised therein, sufficiently recorded that there has not been any material placed before the Tribunal to indicate that the Petitioner had executed extra work on the site, outside the scope of the Agreement. The learned Tribunal recorded that the scope of the Work, as per the terms of the Agreement, included repair work, therefore, the repairs carried out by the Petitioner during the Defect Liability Period were "within" the scope of the Agreement. Incessant rainfall is natural and repeats every monsoon and

therefore, the Claimant/Petitioner herein cannot be precluded to perform its obligations under the Agreement entered into between the parties.

23. The Petitioner herein does not aver as to how the finding of learned Tribunal is patently illegal or that the learned Tribunal's interpretation of the terms of the Agreement is erroneous. Rather, the contentions raised herein are mere *ipse dixit* stating that the Petitioner executed extra work on the "instructions" of the Respondent. The learned Tribunal on the other hand intrinsically perused the terms of the Agreement and other relevant transactions entered *inter se* the parties and has accordingly recorded that repair work happened within the scope of the Agreement. In absence of any material to showcase additional work done by the Petitioner, there was no mechanism available before the Tribunal to compute or even establish that the alleged extra work was done by the Petitioner.

24. The case of the Petitioner is not that the learned Tribunal did not take into consideration any evidence adduced before it, but is merely a reiteration of its Statement of Claims. In a way, the Petitioner is asking this Court to re-appreciate evidences, which have already been placed before the learned Tribunal and have conclusively been adjudicated by the learned Tribunal. A reiteration of arguments as were raised before the learned Tribunal is also of no avail to the Petitioner as the law insofar as judicial scrutiny under Section 34 is concerned is very clear and that the Court cannot sit in appeal while adjudicating upon the Petition under Section 34.

25. While dealing with Claim No.2, the learned Tribunal has also recorded that the compensation sought for by the Claimant/Petitioner for rectification of the defects in the work executed as part of the Agreement, is admitted by the Petitioner to have been duly paid by the Respondent in its

letter dated 19.09.2006. Petitioner avers that the letter dated 19.09.2006 has no nexus with the execution of the major repair work during the Defect Liability Period. However, mere averment that the letter was not sent for execution of work during Defect Liability Period, does not render the finding patently illegal, nor does it establish that the finding was perverse and Arbitrator came to an erroneous conclusion. Accordingly, the Petitioner has failed to discharge its burden to challenge the finding within the confines of Section 34 of the Arbitration Act. Damage repair admittedly happened during the Defect Liability Period and the learned Tribunal has recorded that pursuant to Clause 33, any repair carried out within the Defect Liability Period was not subject to compensation. In absence of any substantiation as to why the finding is incorrect, a mere averment that the finding is incorrect would hold no water, especially when the Court's scrutiny is very limited in the given proceedings. Petitioner has therefore, failed to brings its case within the confines of Section 34, more particularly Section 34(2) and (2A) of the Arbitration Act.

26. Accordingly, having perused the contentions raised in this Petition and having heard the learned Counsel for the Petitioner at length, this Court is of the opinion that the case of the Petitioner so far as challenge to the aforenoted claims is concerned is a mere re-iteration of the case raised before the Tribunal and does not require any interference.

27. Insofar as Claim Nos. 3 and 4 are concerned, Petitioner states that Petitioner had completed the work by 31.07.2006 and had also performed the requisite work during the Defect Liability period, which ended on 31.01.2007. In view of the same, Petitioner was entitled to the Performance Security as well as the Security Deposit retained by the Respondent.

28. Petitioner relies upon various letters sent by the Petitioner to the Respondent and avers that the learned Tribunal did not take those documents into consideration wherein it is categorically recorded that the Petitioner completed the requisite work. The learned Tribunal on the other hand, relies on the Joint Inspection Reports dated 16.01.2007 as well as 13.02.2007 to conclude that the repair work remained incomplete and defects were not rectified even during the Defect Liability Period.

29. It is pertinent to note that there were two claims for release of monies, i.e., Claim No.3 – for Performance Security and Claim No.4 – for Security Deposit. A perusal of the impugned Award reveals that while rejecting the aforesaid Claim No.3 raised by the Petitioner, the learned Tribunal has recorded that since there was breach on part of the Petitioner, Respondent-NHAI was well within its rights to not release the Performance Security in view of Clause 44.2 of the Agreement. Clause 44.2 of the Agreement is reproduced as under:

> ***"44.2*** *The security deposit/retention money and the performance security aggregating to 15 percent of the Contract price will be released to the Contractor when the Defect Liability period is over, and the Engineer has certified that the Defects, if any, notified by the Engineer to the Contractor before the end of this period have been corrected."*

30. The learned Tribunal, after considering the Joint Inspection Reports concluded that the defects were certainly not cured within the Defects Liability Period and the work remained incomplete. Further, the learned Tribunal while relying on Clause 44.2 recorded that Security Deposit and Performance Security could only be released after the expiry of the Defect

Liability Period. However, Defect Liability Period remained infinite, as the defects were not cured by the Petitioner and there is no material placed on record by Respondent to show the date of expiry of Defect Liability Period. In the light of the same, the learned Tribunal concluded that Respondent had the right to hold the Performance Security.

31. Petitioner relies upon certain letters to aver that Tribunal's findings were erroneous as it failed to take into consideration those letters which were sent by the Petitioner to the Respondent stating that the work was completed and defects were cured within the Defect Liability Period. The controversy therefore is regarding the finding of the learned Tribunal on the one hand, which state that the Petitioner did not execute the repair work, and the letters referred to by the Petitioner on the other hand, which state that Petitioner completed the work within Defect Liability Period. In the opinion of this Court, such a comparison can only be done by re-appreciating the evidences placed before the Tribunal. Such an exercise is prohibited under the jurisdiction conferred upon this Court under Section 34. Secondly, even if Petitioner's averment that material evidence was not considered by the Tribunal is taken into consideration, this Court is of the opinion that the Joint Inspection Report certainly holds value as participation of both the parties is involved, as opposed to unilateral letters sent by the Petitioner to the Respondent. On that account also, the impugned finding does not require any interference.

32. Insofar as the Claim with respect to the Security Deposit is concerned, learned Tribunal recorded that the Security Deposit could not have been retained by the Respondent. It was observed that Retention Money (i.e., the Security Deposit) was part of compensation for the original work carried out



by the Petitioner. After recording that Security Deposit should have been refunded, it was, however, held that since the Petitioner did not opt for conditions contained in Clause 44.3 of the Agreement, the said Security Deposit could not be refunded.

33. Clause 44.3 in its entirety is reproduced as under:

> *"44.3 If the contractor so desires then the Security Deposit/retention money can be released earlier at an interest @ 6 % p.aon submission of unconditional Bank Guarantee at the following three stages:-*
>
> *(a) At a point after the progress of work in financial term (gross value of work done) has reached 25% of the contract amount·*
>
> *(b) At a point after the progress of work in financial term (gross value of work done) has reached 35% of the contract amount*
>
> *(c) After the retention money has been deducted to the full value."*

34. The Tribunal was of the opinion that as per Clause 44.3 the Security Deposit could have been refunded to the Petitioner herein with interest of 6% per annum subject to the Petitioner submitting an unconditional bank guarantee. However, there is nothing on record to show that the requirement of Clause 44.3 was complied with by the Petitioner herein. Further, performance security also could not be released by the Respondent herein as the Tribunal was of the opinion that the work remained incomplete and Clause 44.2 gives the power to the Respondent to forfeit the performance security. It cannot be said that the said view is so perverse or contrary to the stipulation in the Agreement which would require interference by this Court

under Section 34 of the Arbitration Act. This Court is, therefore, inclined to accept the view taken by the Arbitral Tribunal, which is a plausible view on the facts of this case.

35. So far as Claim Nos.5, 6 and 7 are concerned, the premise of the contentions raised by the Petitioner is that the Respondents did not make timely payments to the Petitioner and that the Respondents breached the Agreement. Since this Court has upheld the findings of the learned Tribunal whereby it has been recorded that the alleged extra work done by the Petitioner and damages repaired fall within the scope of the work of the Petitioner, and Respondents rightfully enchased the Bank Guarantee in view of the breach committed by the Petitioner, therefore, challenge of the Petitioner against Claim Nos. 5 to 7 wherein Petitioner had sought for Loss of Goodwill, Compensation for Business loss and breach of contract hold no water and accordingly, no interreference is required with regard to the said Claims. In view of the aforesaid, Claim No.8, i.e., for interest also does not require any intervention.

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

SUBRAMONIUM PRASAD, J

OCTOBER 13, 2026
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