2026:DHC:9430

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

\# **CNR No. DLHC010150882024**

\+ O.M.P. (COMM) 131/2024

IRCON INTERNATIONAL LTD. .....Petitioner

Through: Mr. Chandan Kumar and Mr. Vikram Sharma, Advs.

versus

PROGRESSIVE INFOTECH PVT. LTD. .....Respondent

Through: Mr. Amit Goel, Adv.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 14.10.2026

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996[1], seeking to set aside the Arbitral Award[2] dated 11.12.2023 passed by the learned Sole Arbitrator.

2. It emerges from the record that the Petitioner is engaged in the business of executing engineering and infrastructure projects, whereas the Respondent is a company engaged in the business of providing Information Technology infrastructure services.

3. Pursuant to a Notice Inviting Tender dated 19.02.2007, the Respondent was declared the successful bidder for the work involving the supply, installation, testing, and maintenance of hardware and

[1] "the Act" hereinafter
[2] "impugned Award" hereinafter

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system software for a 64-bit UNIX/64-bit LINUX based thin client solution, together with its associated servers, storage and backup solution, at the Petitioner's Corporate Office at Saket, New Delhi.

4. Thereafter, a Purchase Order dated 11.04.2007 was issued in favour of the Respondent, followed by the execution of an Agreement dated 15.05.2007[3]. The total Contract value was Rs.1,11,34,350/-.

5. Under the terms of the Contract, the release of the payment was linked to three milestone-based stages, i.e.: (i) Stage-I: 65% of the Contract value upon delivery, installation, testing, commissioning of the system and training of the Petitioner's staff; (ii) Stage-II: 25% of the Contract value upon successful completion of the work, including integration of the system and issuance of the acceptance certificate; and (iii) Stage-III: the balance 10% of the Contract value upon successful operation of the entire system for a period of one year.

6. It is not in dispute that the Petitioner released the payments payable under Stage-I and Stage-II of the Contract. The dispute relates to the balance 10% payable under Stage-III. After completion of the project, the Respondent sought release of the final milestone payment.

7. By its letter dated 27.04.2009, the Petitioner informed the Respondent that the Stage-III payment was under process. The payment, however, was not released and the dispute regarding the Stage-III payment continued.





8. In the meantime, the Petitioner issued notices under Clause 38 of the General Conditions of Contract, alleging defaults in the performance of the Contract. Ultimately, by letter dated 23.12.2009, the Petitioner terminated the Agreement and the Performance Bank Guarantee furnished by the Respondent was also invoked.

9. Aggrieved by the aforesaid actions of the Petitioner, the Respondent invoked the arbitration agreement contained in Clause 40 of the Contract, pursuant to which the parties were referred to arbitration.

10. Before the learned Arbitrator, the Respondent raised various claims arising out of the Contract, while the Petitioner contested those claims and also raised counter-claims. The claims and counter-claims, along with the awarded amount by the learned Arbitrator, are tabulated herein below for reference:

Claim	**Amount Claimed**	**Amount Awarded**
A. Balance Payment	12,16,150	12,16,150
B. Amount of Bank Guarantee	5,56,718	5,56,718
C. Earnest Money Deposit	50,000	50,000
D. Loss of Opportunity on Bank Guarantee Margin Money	20,59,957	Nil (Rejected)
E. Loss of Opportunity on earnest money deposit	3,40,000	Nil (Rejected)
F. Loss of Goodwill	25,00,000	Nil (Not pressed)
G. Mental Agony & Harassment	25,00,000	Nil (Not pressed)

[3] "Agreement or Contract" hereinafter

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H. Interest	@ 16% amounting to 10,26,033	Simple interest @ 12% p.a. on Claims a, b & c from 17.12.2009
I. Cost of Arbitration	5,00,000	2,00,000
Counter- Claims	13,88,13,027 + interest @ 16%	Rejected
Total	Claims – 1,07,48,758 & Counter-Claims – 13,88,13,027	Rs. 18,22,868 + simple interest @ 12% p.a. & Rs. 2,00,000

11. In challenging the impugned Award, Mr. Chandan Kumar, learned Counsel for the Petitioner submits that the learned Arbitrator travelled his jurisdiction by holding the termination of the Contract to be illegal, even though the Respondent neither sought any declaratory relief nor challenged the termination notices in its prayer. The grievance is that, in doing so, the learned Arbitrator *suo moto* adjudicated an issue which was never referred for determination and thereby acted in contravention of Section 23 of the Act. Reliance was placed on ***J.C. Budhraja v. Chairman, Orissa Mining Corpn. Ltd.***[4]**,** ***Bharat Amritlal Kothari v. Dosukhan***[5]**,** ***State of Orissa & anr. v. Mamata Mohanty***[6] ***and State of Goa v. Praveen Enterprise***[7]**.**

12. It is next submitted that, in the absence of any finding on the

[4] **(2008) 2 SCC 444**
[5] **(2010) 1 SCC 234**
[6] **(2011) 3 SCC 436**
[7] **(2012) 12 SCC 581**

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contentious issue of whether the system had successfully operated for one year, as required for release of the Stage-III payment, the learned Arbitrator could not have directed the release of the final payment. Reliance was placed on ***I-Pay Clearing Services (P) Ltd. v. ICICI Bank Ltd.***[8] ***and Canara Bank v. State Trading Corpn. of India Ltd.***[9]**.**

13. It is further submitted that, in the absence of any authorisation under Section 28(2) of the Act, the learned Arbitrator erred in awarding the claim on the basis of justice, fairness and equity.

14. Lastly, he submits that the learned Arbitrator erred in rejecting the Petitioner's counter-claims on the ground that they had been raised for the first time in the Statement of Defence and that there is no evidence to establish the loss suffered by the Petitioner. It is pointed out that both findings are unsustainable, as the counter-claims are maintainable in law even if they were not raised earlier, and the Respondent had specifically admitted the relevant fact in paragraph 7(i) of its written statement to the Petitioner's counter-claim.

15. I have considered the submissions advanced and perused the material on record.

16. As the present petition is filed under Section 34, it would be apposite to notice the limited scope of jurisdiction vested in this Court under Section 34 of the Act. It is now too well settled by a catena of decisions of the Hon'ble Supreme Court that this Court does not sit in

[8] **(2022) 3 SCC 121**
[9] **2022 SCC OnLine Del 3060**

appeal over an arbitral award and cannot re-appreciate the evidence or substitute its own view merely because another view is possible. Interference is confined strictly to the grounds specifically enumerated under Section 34.

17. Insofar as the present petition is concerned, it is apparent that through the aforesaid submissions, the Petitioner has essentially invoked the ground of patent illegality under Section 34 of the Act and contended that the findings recorded in the impugned Award are unsupported by evidence. The Hon'ble Supreme Court has had the occasion to consider the scope of interference under the head of "patent illegality" in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[10]. The relevant observations are read as follows-

> ***"Patent illegality***
>
> ***
>
> ***67.*** *In Associate Builders, this Court held that an award would be patently illegal if it were contrary to:*
> *(a) substantive provisions of the law of India;*
> *(b) provisions of the 1996 Act; and*
> *(c) terms of the contract.*
> *The Court clarified that if an award is contrary to the substantive provisions of the law of India, in effect, it is in contravention of Section 28(1)(a) of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.*
>
> ***68.*** *In Ssangyong, 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 the 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 back door when it comes to setting aside an*

[10] **(2025) 2 SCC 417**

award on the ground of patent illegality. Further, it was observed that reappreciation of evidence is not permissible under this category of challenge to an arbitral award.

Perversity as a ground of challenge

69. *Perversity as a ground for setting aside an arbitral award was recognised in Western Geco. 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, 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:*

(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 a 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 (supra), which dealt with the legal position post 2015 amendment in Section 34 of the 1996 Act, it was observed that a perverse decision, 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 a decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.*

72. *The tests laid down in Associate Builders to determine perversity were followed in Ssyanyong and later approved by a three-Judge Bench of this Court in Patel Engineering Limited v. North Eastern Electric Power Corporation Limited.*

73. *In a recent three-Judge Bench decision of this Court in DMRC Ltd. v. Delhi Airport Metro Express Pvt. Ltd., 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."

(emphasis supplied)

18. Keeping the aforesaid principles in mind, I shall now proceed to examine the challenges raised by the Petitioner.

19. At the outset, I do not agree with the submission that the learned Arbitrator travelled beyond his jurisdiction by recording findings on the legality of the termination of the Contract. In this context, paragraphs 29 and 30 of the Statement of Claim assume importance and the same are delineated below for consideration:

*"29. **That it is submitted that on 23.12.2009, the Respondent sent a letter to the Claimant illegally, un-authorizedly and malafidely terminating contract with immediate effect and also threatened that the balance work shall be got done through alternative sources, a copy of the letter dated 23.12.2009 is attached hereto and marked as ANNEXURE-XXXV.** On 23.12.2009 itself, the Respondent sent a letter dated 23.12.2009 addressed to Citi Bank invoking the bank guarantee dated 24.05.2007 for a sum of Rs.5,56,718/-. It is submitted that the Claimant in a most fare, honest and bona fide manner handed over a demand draft for a sum of Rs. 5,56,718 vide DD NO.698753 dated 23.12.2009 drawn on Citi Bank, a copy of the DD is attached hereto and marked as ANNEXURE-XXXVI. The DD was handed over to the Respondent to keep their impeccable bank record with their Bankers, as in the past, there had never been any single instance where their bank guarantee had been en-cashed for breach of contract. It is submitted that the invocation of the Bank Guarantee by the Respondent is wholly illegal, unauthorized, ultra-vires and blatant arbitrary exercise of powers and not permitted under the provisions of law and contract. The claimant has*

suffered due to illegal, dishonest, arbitrary exercise of powers and for which the Claimant are entitled to claim damages and losses from the Respondent.

30. ***That it is submitted that the alleged and purported termination of the contract by the Respondent is wholly illegal, un-authorized, mala fide and against the terms and conditions of the contract.*** *It is submitted that because of the illegal, un-authorized and illegal termination of the contract, the Claimants are entitled to claim damages and losses suffered and/or caused to be suffered by the Claimant."*

20. These pleadings, in my view, clearly put the validity of the termination in issue. The Respondent not only challenges the termination as being illegal and contrary to the Contract, but also bases its claim for damages on the alleged illegality of the termination. Thus, although no formal declaratory relief is expressly sought in the prayer clause, the legality of the termination was one of the rudimentary issues put forth in the Respondent's claims.

21. This conclusion is further borne out by the impugned Award itself, wherein the learned Arbitrator records that the "*Claimant vigorously contends that the termination of the contract pursuant to Clause 38.0 of the General Conditions of Contract is devoid of validity*".

22. It is true that the prayer clause does not separately seek a declaration that the termination was illegal. However, the Respondent claimed an amount of Rs.1,07,48,758/- and specifically pleaded that its claims arose, *inter alia*, from the alleged illegal termination of the Contract. Thus, the challenge to the termination was not beyond the pleadings but was an issue subsumed within the claim ultimately

raised by the Respondent.

23. In ***State of Orissa (supra)***, the Hon'ble Supreme Court observed that pleadings serve to narrow the controversy and identify the matters in dispute, and that relief must ordinarily be founded on the pleadings. In the present case, the illegality of the termination was expressly pleaded in support of prayer. Therefore, the absence of a separately worded prayer for declaration cannot defeat the substance of the claim or prevent the learned Arbitrator from examining the issue on which the claim was founded.

24. The reliance placed by the Petitioner on ***J.C. Budhraja (supra), State of Goa (supra)*** and ***Bharat Amrit Lal Kothari (supra)*** is misplaced. In ***J.C. Budhraja (supra)***, the learned Arbitrator had awarded amounts in excess of the amounts claimed, whereas no such excess amount has been granted here. Further, ***State of Goa(supra)*** deals with the adjudication of claims and counter-claims within the scope of the arbitration agreement and does not suggest that an Arbitrator is precluded from examining an issue expressly raised in the pleadings on the basis of which substantive relief is claimed merely because no separate declaratory relief is sought. In the same manner, ***Bharat Amrit Lal Kothari (supra)*** concerned the grant of relief not prayed for in writ proceedings. The distinction in the present case is that the learned Arbitrator did not grant any independent declaration invalidating the termination but considered its legality while deciding the monetary claims before him. None of these decisions, therefore, supports the contention that the learned Arbitrator exceeded the limits of his jurisdiction.

25. Therefore, in the considered view of this Court, the learned Arbitrator cannot be said to have overstepped its jurisdiction by delving into an issue which did not arise for consideration. The Petitioner was well within its rights to contest before the arbitrator on validity of the termination in its Statement of Defense and if the Petitioner failed to do so, no fault can be attributed to the Arbitrator.

26. The next submission of the Petitioner is that the learned Arbitrator has awarded the Stage-III payment without recording any specific finding that the system had "successfully run for one year", which was a precondition as per the Contract for release of the said payment.

27. I am unable to accept the submission of the Petitioner in this regard. According to this Court, merely because the impugned Award does not record, in so many words, that the system had successfully operated for one year does not render it patently illegal or perverse. An arbitral award is required to be read as a whole.

28. If, on a fair reading of the Award and the material referred to therein, the reasons which weighed with the Arbitral Tribunal while granting the ultimate relief are discernible, the Court would not be justified in interfering merely because those reasons are not articulated in the manner suggested by one of the parties. This is precisely the principle recognised by the Hon'ble Supreme Court in ***OPG (supra)*** in the following words:

> **168.** We have given due consideration to the above submission. In our view, a distinction would have to be drawn between an arbitral award where reasons are either lacking/unintelligible or perverse and an arbitral award where reasons are there but appear inadequate or insufficient. In a case where reasons appear insufficient or inadequate, if, on a careful reading of the entire award, coupled with documents recited/relied therein, the underlying reason, factual or legal, that forms the basis of the award, is discernible/intelligible, and the same exhibits no perversity, the Court need not set aside the award while exercising powers under Section 34 or Section 37 of the 1996 Act, rather it may explain the existence of that underlying reason while dealing with a challenge laid to the award. In doing so, the Court does not supplant the reasons of the Arbitral Tribunal but only explains it for a better and clearer understanding of the award.

29. Keeping the above principle in view, the following relevant portion of the impugned Award may now be examined:

> *"**Findings***
> *7. Milestone-III (31st March 2009): The contractual narrative continued to unfold as Milestone-III approached on 31st March 2009. Milestone-III, defined as the successful operation of the entire system for one year from the date of OSAT completion. In response to the upcoming milestone. the Claimant proactively addressed the matter in a formal letter dated 16th April 2009. This letter underscored the importance of the pending payments related to Milestone-III, which remained unresolved despite earlier commitments.*
>
> *8. It is critical to point out that in their communication dated 27th April 2009, the Respondent had confirmed that the "payment is under process." However, in a subsequent turn of events, the Respondent claimed, in their letter dated 22nd June 2009, that they had already made a payment of Rs. 5,56,717/- on account of Milestone-III. This abrupt shift in stance sought to create a misleading narrative, which the Claimant vehemently contested.*
>
> *9. As the contractual disputes escalated, both parties embarked on a series of claims and counterclaims. The Claimant, in its letter dated 16th October 2009 addressed to the Managing Director of the Respondent Company, formally requested intervention and, more critically, sought the release of the 10% Milestone-III retention money, which had fallen due for payment on 31st March 2009.*

10. In response to the same, the Respondent issued letter dated 23rd November 2009, alleging that an Operational Service Acceptance Test (OSAT) was never issued to the Claimant. This assertion contradicted the admitted fact of the release of Rs. 27,70,323/- on 31st March 2008 by the Respondent to the Claimant, a payment tied explicitly to the completion of the OSAT. The Respondent's failure to issue written confirmation of this acceptance became a point of contention.

11. Subsequently, the Claimant dispatched a letter dated 02nd December 2009 to the Managing Director of the Respondent Company, reiterating their request for the release of legitimate dues. In response, the Respondent referred to Clause 38.0 of the General Conditions of the Contract in their letter dated 09th December 2009. giving the Claimant seven days to rectify alleged shortcomings. The Respondent's claims of shortcomings were contested by the Claimant, as no grievances regarding the availability of the system had been raised in any of the letters exchanged between the parties during the period from 1st April 2008 to 31st March 2009 i.e. the warranty period. The Claimant maintained that minor operational issues were part of warranty support and did not warrant the invocation of the bank guarantee, which was furnished to ensure continued services during the warranty period only.

Reasoning

V. Further complicating this arbitration are the contradictory statements attributed to the Respondent concerning the retention payment. Initially. the Respondent represented that the payment was in process on 27th April 2009. Subsequently, this stance was modified to assert that payment would only be processed upon the resolution of the raised issues, i.e. vide letter dated 5th June 2009. Finally, the Respondent claimed that the retention money had already been disbursed as of 9th July 2008, a statement incongruous to prior communications. The assessment of these conflicting declarations assumes paramount importance in ascertaining the Respondent's true intent and their adherence to contractual obligations.

VI. A thought-provoking question raised by the Claimant pertains to the severity of the purported system performance issues. In the event that these issues were indeed as grave and if the system was a unreliable as asserted by the Respondent, the rationale behind the decision to place an additional order for 50 P's as confirmed vide letter dated 2nd July 2008 warrants a judicious examination. I his inquiry invites an analysis of the practical implications and motivations underlying this

supplementary procurement, thereby casting light upon the credibility of the Respondent's claims as to the issues that were allegedly being faced due to underperformance."

The Award

Accordingly, this Arbitral Tribunal. considering all the facts, evidence, and arguments presented by both parties, awards in favour of the Claimant. ***There is fundamental breach on the part of the Respondent which relates to the significant delay in making payments and provision of milestone certificates as stipulated in the contractual agreement.*** *This delay has had a substantial impact on the progress of the project. It is essential to highlight that the contract explicitly outlined payment schedules and due dates in three phases. which the Respondent failed io adhere to. The delays in payments as initiated by the Respondent, have contributed significantly to the disputes having been arisen between the parties.*

The Respondent's non-fulfilment of their payment obligations as well as their failure to provide Claimant with milestone certificates such as the OSAT which was already due to be issued as per Respondent's own document goes to show that formal non-issuance of same was an afterthought. Further, release of payment towards Milestone II by the Respondent clearly establishes that the Claimant had satisfied the requirement towards the project and the timelines therein".

30. A reading of the aforesaid paragraphs shows that the learned Arbitrator was aware of the requirement for release of Stage III payment. In fact, the impugned Award itself notes that the milestone was linked to the successful operation of the entire system for one year. After noticing the condition required in the Contract, the learned Arbitrator proceeded to examine the material placed before him before directing release of the Stage-III payment.

31. This Court further finds that the impugned Award discusses the relevant correspondence exchanged between the parties, including the Respondent's request for release of the Stage-III amount, the Petitioner's letter dated 27.04.2009 stating that the payment was under

process, the Petitioner's subsequent inconsistent stands regarding the payment, the absence of any complaint by the Petitioner regarding the functioning of the system during the warranty period from 01.04.2008 to 31.03.2009, and the Petitioner's subsequent placement of an additional order for 50 PCs despite its allegations of serious deficiencies in the system, in this regard. These circumstances were considered by the learned Arbitrator while assessing the Petitioner's defence.

32. The learned Arbitrator, also considered the technical sheets relied by the Petitioner, however the same was labelled as an attempt to show underperformance. The learned Arbitrator also expressed serious reservations regarding the credibility of the Petitioner's allegations of persistent deficiencies in the system. Upon considering the material as a whole, the learned Arbitrator found that the Petitioner had committed a fundamental breach of the Contract, particularly by delaying payments and failing to issue the requisite milestone certificates which was also labelled as afterthought. Thus, this Court find that the Arbitrator has taken a plausible view after considering the material on record.

33. The reliance placed by the Petitioner on ***I-Pay Clearing Services and Canara Bank (supra)*** is misplaced. In those cases, the absence of a finding on a contentious issue was held to constitute a ground for interference. In the present case, however, the learned Arbitrator considered the Petitioner's defence regarding the unsuccessful operation of the system, examined the correspondence and other material on record, and was not persuaded by the allegations

of deficiencies. It was in this context that the learned Arbitrator rendered a specific finding that the Petitioner had committed a fundamental breach of the Contract by delaying payments. The grievance that no separate finding was recorded in the precise terms suggested by the Petitioner does not render the impugned Award vitiated for want of findings.

34. In view of the above, I find no merit in the Petitioner's submission that the learned Arbitrator failed to render finding on a contentious issue. The learned Arbitrator has recorded findings that the Petitioner committed a breach of the Contract, which formed the basis for allowing the Stage-III payment, and the reasons supporting that conclusion are discernible from a reading of the impugned Award as a whole. As held in ***OPG (supra)***, where the reasons underlying an award can be gathered on a reading of the Award as a whole, interference under Section 34 is not warranted merely because those reasons are not recorded in any particular form.

35. The Petitioner's endeavour of taking this Court through the correspondence exchanged between the parties, the documentary record and the evidence led before the learned Arbitrator to contend that the system had not successfully operated for the stipulated period is also of no avail.

36. Once the learned Arbitrator has considered the entire material and returned a reasoned finding, this Court cannot substitute its own view merely because the Petitioner seeks to place a different interpretation on the same evidence, as these are matters squarely

within the domain of the learned Arbitrator, who is the final Arbiter on facts.[11] Such an exercise would fall outside the limited jurisdiction under Section 34 of the Act. Accordingly, no ground of interference is made out on this count.

37. The Petitioner has next challenged the rejection of its counterclaims, contending that the learned Arbitrator erred in holding them to be barred merely because they were raised for the first time in the Statement of Defence. In the view of this Court, the challenge to the rejection of the counterclaim is also without merit.

38. A reading of the reasoning in the impugned Award indicates that the learned Arbitrator did not reject the counterclaims solely on the ground that they were raised for the first time in the Statement of Defence. The learned Arbitrator also examined whether the Petitioner had established the loss alleged to have been suffered. In this regard, the learned Arbitrator specifically recorded that "*the Respondent could not place on record any document to establish that they suffered any substantial loss or damage thereof*". The impugned Award further notices that although technical data sheets were produced to allege underperformance of the software, no material was placed on record to establish any actual monetary or operational loss. It was on this basis that the learned Arbitrator concluded that the counterclaims could not be sustained. The relevant observations are reproduced below:

> *"In the present case the Respondent has brought on record technical data sheets in an attempt to establish underperformance of the software solution, however no concrete evidence was*

[11] **Quadrant Televentures Ltd. v. ATC Telecom Infrastructure (P) Ltd., 2024 SCC OnLine Del 9191**

brought on record that would show that the Respondent has suffered actual monetary or operational loss."

39. The nature of the counterclaims further supports the conclusion reached by the learned Arbitrator. Of the total claim of approximately Rs.13 crore, Rs.2,29,78,027.04 was claimed as a refund of amounts already paid under the Contract, inclusive of interest at 16% for five years, Rs.9,75,000 was claimed towards additional expenditure allegedly incurred to improve hardware-software integration and Rs.11,48,60,000 was claimed towards alleged losses relating to business and user productivity, IT technical resources, stress and harassment, allegations against the IT Department, loss to the careers of IT personnel and PRP.

40. The learned Arbitrator found these counter-claims to be unsupported by evidence of actual loss which is evident from a mere reading of the counter-claims raised by the Petitioner and perusing the documents placed in support of it. The Petitioner's reliance on the alleged admission in paragraph 7(i) of the Respondent's written submissions does not advance its case.

41. Even if the payment of Rs.1,09,40,138 stood admitted towards Stage I and Stage II, such admission established only the fact of payment, and not the Petitioner's entitlement to recover or seek refund of the said amount. That entitlement had to be independently established by material evidence. Once the learned Arbitrator found that the fundamental breach was attributable to the Petitioner, the claim for refund of the amounts paid for the initial stages could not be sustained. The same reasoning applies to the claim towards additional

expenditure allegedly incurred to improve hardware-software integration.

42. The only submission of the Petitioner which, in my view, merits closer consideration is that the impugned Award is contrary to Section 28(2) of the Act as the learned Arbitrator has observed that the impugned Award is "*grounded firmly in the principles of justice, fairness and equity*". The Petitioner is right in contending that, in the absence of the consent of the parties, an arbitral tribunal cannot decide a dispute *ex aequo et bono or as an amiable compositeur*.

43. While examining the above remark by the learned arbitrator, I find it relevant to reproduce the following observations made by the coordinate bench of this court in ***Oracle international vs CIS IT Solutions.***[12]

> *"81. Merely because certain observations may not have been strictly necessary or may have been articulated in broader terms would not render the Award patently illegal or contrary to public policy.*
>
> *82.* ***An arbitral award cannot be dissected by isolating stray observations divorced from the Award as a whole. The Impugned Award is required to be read holistically and meaningfully****. The Hon'ble Supreme Court in a catena of judgments, has cautioned Courts against approaching arbitral awards with a hyper-technical or dissective approach while exercising jurisdiction under Section 34 of the A&C Act.* ***The Court is not required to search for errors in isolated sentences nor reinterpret the Impugned Award as though sitting in appeal over the reasoning adopted by the tribunal****. Minor inadequacies in reasoning, imperfect articulation or stray observations cannot be transmuted into grounds for annulment unless they strike at the very root of the arbitral determination and render the Award wholly unsustainable in law".*

[12] **2026 SCC OnLine Del 4472**

44. In view of the above, the aforesaid submission is of no aid to the Petitioner in the facts of the present case. A holistic reading of the impugned Award reveals that the learned Arbitrator has not decided the disputes on considerations of justice, fairness or equity. The ultimate relief granted is neither *ex facie* contrary to, nor *dehors*, the terms of the Contract, but is based on the evidences and pleadings on record and is in line with the conditions stipulated in the Contract.

45. The reference to "justice, fairness and equity" appears only in the concluding part of the impugned Award and cannot alter its true character. To hold otherwise would amount to giving undue weight to one isolated expression over the substance of the impugned Award. At best, the expression used by the learned Arbitrator can be characterised as an infelicitous choice of words and, by itself, does not furnish a ground for interference under Section 34 of the Act on the ground of contravention of Section 28(2).

46. In view of the above reasons, no ground for interference under Section 34 of the Act is made out.

47. Accordingly, the present petition is dismissed.

OM PRAKASH SHUKLA, J

OCTOBER 14, 2026/*gunn/at*

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