RESERVED ON 20TH JULY 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

COMMERCIAL APPEAL NO.189 OF 2025

BETWEEN:

1. SMT. PUSHPA
   D/O. KRISHNA REDDY,
   AGED ABOUT 52 YEARS,

2. SRI. VENKATARAMANA REDDY
   S/O. LATE SANJEEVA REDDY,
   AGED ABOUT 75 YEARS,

3. SRI. B.V. SRINATH
   S/O. VENKATARAMANA REDDY,
   AGED ABOUT 46 YEARS,

4. SRI. B.V. MAHESH
   S/O. VENKATARAMANA REDDY,
   AGED ABOUT 42 YEARS,

5. SMT. ANANDAMMA
   W/O. LATE GOVINDA REDDY,
   AGED ABOUT 67 YEARS,

6. SRI. NARENDRA BABU
   S/O. LATE GOVINDA REDDY,
   AGED ABOUT 45 YEARS,

7. SRI. MANJUNATH
   S/O. LATE GOVINDA REDDY,
   AGED ABOUT 41 YEARS,

8. SRI. HARISH
S/O. LATE GOVINDA REDDY,
AGED ABOUT 39 YEARS,

9. SRI. NARAYANA REDDY
S/O. LATE SANJEEVA REDDY,
AGED ABOUT 70 YEARS,

10. SMT. LAVANYA
D/O. NARAYANA REDDY,
AGED ABOUT 36 YEARS,

11. KUM. KAVITHA
D/O. NARAYANA REDDY,
AGED ABOUT 32 YEARS,

12. SRI. YOGESH
S/O. NARAYANA REDDY,
AGED ABOUT 27 YEARS,

13. SMT. SAROJAMMA
W/O. LATE KRISHNA REDDY,
AGED ABOUT 79 YEARS,

ALL ARE RESIDING AT
BALAGERE VILLAGE,
VARTHUR HOBLI
BANGALORE EAST TALUK
PIN - 560087.

…APPELLANTS

(BY SRI. SRIHARI A.V., ADVOCATE)

AND:

1. M/S. TERMINUS PARK INDIA PVT. LTD.,
A COMPANY INCORPORATED
UNDER THE PROVISIONS OF
COMPANIES ACT, 1956
HAVING ITS REGD. OFFICE AT
7TH & 8TH FLOORS, 'SJR PRIMUS',
NO.1, INDUSTRIAL LAYOUT,
SEVENTH BLOCK KORAMANGALA,
BENGALURU-560 095

REPRESENTED BY ITS DIRECTOR
MR. VIJAY REDDY

ALSO AT NO.27, BREN
CENTRE, LAVELLE ROAD,
SHANTHINAGAR,
ASHOKNAGAR,
NEW BMW SHOWROOM,
BENGALURU-560 001.

2. SMT. B.V. SUDHA,
D/O. VENKATARAMANA REDDY,
AGED ABOUT 42 YEARS,
RESIDING AT BALAGERE VILLAGE,
VARTHUR HOBLI,
BENGALURU EAST TALUK,
BENGALURU - 560 087.

...RESPONDENTS

(BY SRI. AJESH KUMAR S., ADVOCATE FOR C/R-1)

THIS COMMERCIAL APPEAL IS UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT DATED 29.01.2025 PASSED IN COM.A.P.NO.64/2024 BY THE HON'BLE LXXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU (CCH-83); CONFIRM THE AWARD DATED 11.01.2024 IN AC.NO.245/2021 PASSED BY THE HON'BLE SOLE ARBITRATOR.

THIS COMAP HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

C.A.V. JUDGMENT

(PER: HON'BLE MRS. JUSTICE K.S. HEMALEKHA)

1. The appellants, who were the claimants before the Arbitral Tribunal, have preferred the present Commercial Appeal under Section 13 (1) (a) of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996 [**A&C Act**], calling in question, the judgment dated 29.01.2025 [**impugned order**] passed by the learned LXXXII Additional City Civil and Sessions Judge, Bengaluru (CCH-83) [**Commercial Court**] in Com. A.P. No.64/2024, captioned M/s Terminus park India Pvt. Ltd., Vs. Smt. Pushpa and others. Respondent No.1 had filed the said petition under Section 34 of the A&C Act seeking setting aside of the arbitral award dated 11.01.2024 [**the impugned award**] passed in A.C No.245/2021 by the Arbitral Tribunal. The learned Commercial Court allowed the said petition and by the impugned order set aside the impugned award.

Facts in brief:

2. The appellants instituted arbitral proceedings arising out of the Joint Development Agreement [**JDA**] dated 04.06.2008 entered into between the parties in respect of the schedule properties. The appellants also executed a registered General Power of Attorney

[**GPA**] in favour of respondent No.1/developer, authorising to carry out all acts necessary to implement the proposed development project on 04.06.2008 – on the same date as the execution of the JDA.

3. The appellants contended that, despite execution of the JDA and GPA, respondent No.1 failed to take effective steps for implementation of the project, compelling them to terminate the JDA and GPA. The record further discloses that respondent No.1 had not commenced the project even after several years had lapsed.

4. The appellants accordingly, *inter alia,* sought a declaration that the JDA dated 04.06.2008 stood cancelled/terminated; a direction to respondent No.1 to execute the deed of cancellation of the JDA and deed of revocation of the GPA; a direction to respondent No.1 to pay damages of ₹3,42,66,960/- with interest at the rate of 18% per annum; a permanent injunction restraining respondent No.1 from interfering with the appellants' peaceful possession and enjoyment of the schedule properties; interest at the rate of 24% per annum from the date of filing the claim petition and cost of the legal proceedings.

Counter Claim:

5. Respondent No.1, by way of counter claim sought, *inter alia,* a declaration that termination of the JDA and Power of Attorney [**POA**] was void *ab initio;* for specific performance of the JDA and POA, a direction to the legal heirs of late Krishna Reddy to execute a fresh POA, and, in the alternative, compensation of ₹150 crores towards loss of opportunity/loss of profits. Respondent No.1 also sought reimbursement of the pre-construction expenditure of ₹1,69,15,532/- incurred by it, refund of the security deposit of ₹1,95,75,000/- and a permanent injunction restraining the appellants from alienating the properties.

Arbitral Award:

6. The Arbitral Tribunal framed the following issues and additional issues for consideration:

> "1. Whether the claimants prove that they have performed their part of obligations under the Joint Development Agreement dated 04.06.2008 and that the respondent No.1 has failed to perform its part of the obligations there under?
>
> 2. Whether the claimants prove that the termination of the Joint Development Agreement and Power of Attorney, both dated 04.06.2008 is valid?
>
> 3. Consequently whether the claimants prove that they are entitled to get the direction to the respondent No.1 to execute the deed of cancellation of the Joint Development Agreement dated 04.06.2008 and to

execute deed of revocation of General Power of Attorney dated 04.06.2008?

4. Whether the claimants prove that they are entitled to damages of Rs.3,42,66,960/- (Rupees three crores forty two lakhs sixty six thousand nine hundred and sixty only)?
5. Whether the claimants prove that they are entitled to the injunctive order restraining the 1st respondent from interfering with the claimants' peaceful possession of the schedule property?

6. Whether the respondent No.1 proves that the termination of the JDA and Power of Attorney both dated 04.06.2008 are null and void?

7. Whether the 1st respondent proves that the legal heirs of Krishna Reddy are obliged to execute a fresh Power of Attorney in favour of the respondent No.1?

8. Whether the respondent No.1 proves that the reasons for the delay in the execution of the project is attributable to the claimants, like their failure (i) to establish that they have clear and marketable title to the schedule property (ii) to remove the standing structures on the schedule property and (iii) of the LRs of Krishna Reddy to execute fresh Power of Attorney?

9. Whether the 1st respondent proves that it has performed its part of the obligations under the JDA dated 04.06.2008 and that it is therefore entitled to its specific performance?

10. Whether the 1st respondent proves that this claim petition is liable to be dismissed as non-arbitrable for the non-joinder of necessary parties and mis-joinder of parties?

11. If any amount is held to be liable to be paid by the respondent No.1 to the claimants, whether it carries interest? If so, at what rate and for what period?

12. What order or award?

16. In view of the amendment of the counter-claim, the

following Additional Issues were framed on hearing the learned advocates:

ADDITIONAL ISSUES

1. (Issue No.13 in the statement of issues) Whether the respondent No.1 proves that it is entitled to claim Rs.1,50,00,00,000/- (Rupees One Hundred Fifty Crores Only) towards compensation, Rs.1,69,15,532/- (Rupees One Crore Sixty Nine Lakhs Fifteen Thousand Five Hundred and Thirty Two Only) towards reimbursement of the expenditure stated to have been incurred by the respondent No.1 towards pre-construction activities and to the refund of a sum of Rs.1,95,75,000/- (Rupees One Crore Ninety Five Lakhs and Seventy Five Thousand Only)?

2. (Issue No.14 in the statement of issues) If any amount is held to be liable to be paid by the claimants and the respondent No.2 to the respondent No.1, whether it carries interest? If so, at what rate and for what period?"

7. While answering Issue No.1, the Arbitral Tribunal held that respondent No.1 was obligated to perform the obligations under the JDA and that the same remained unperformed. It further held that respondent No.1's defence was not substantiated by evidence on record. Accordingly, the Arbitral Tribunal found that respondent No.1 had failed to perform its contractual obligations.

8. Issue Nos.2, 3 and 6 were answered in favour of the appellants. The Arbitral Tribunal held that, in view of respondent No.1's failure to perform its obligation under the JDA, the appellants' termination was valid and binding and that respondent No.1 had failed to establish that the termination of the JDA and

GPA was null and void. Accordingly, the contention of respondent No.1 that the JDA continued to remain binding on the parties notwithstanding the prolonged non-performance was rejected by the Arbitral Tribunal.

9. In this context, the Arbitral Tribunal also considered the allegation of non-performance and found that the appellants had executed the GPA, taken steps required of them under the JDA, including submitting the application for conversion.

10. The Arbitral Tribunal, upon consideration of the rival pleadings and evidence, passed the Award. Among other directions, the Arbitral Tribunal held that the appellants and respondent No.2 were jointly and severally liable to refund the security deposit of ₹1,95,75,000/- and to reimburse a sum of ₹27,00,000/- towards pre-construction expenditure, together with interest at the rate of 18% per annum. The Arbitral Tribunal further directed respondent No.1 to execute a deed of cancellation of the JDA dated 04.06.2008 and a deed of revocation of the POA dated 04.06.2008.

Proceedings under Section 34:

11. Aggrieved by the impugned award, respondent No.1 instituted Com. A.P. No.64/2024 under Section 34 of the A&C Act, seeking to set aside the impugned award. The Commercial Court, at the outset, recorded the settled principle that, while exercising jurisdiction under Section 34 of the A&C Act, the Court does not sit in appeal over the arbitral award. The learned Commercial Court further observed that findings of fact based on evidence cannot be substituted merely because another view is possible and that interpretation of the contract lies within the domain of the Arbitral Tribunal. The Commercial Court also held that the findings of the Arbitral Tribunal were neither contrary to the public policy of India nor perverse or patently illegal. However, the Commercial Court ultimately set aside the impugned award on the ground that the Arbitral Tribunal had failed to give effect to Clauses 26.1 and 26.2 of the JDA, particularly the requirement to issue notice of breach and afford an opportunity to cure the alleged breach.

Submissions:

12. The learned counsel for the appellants would contend that the impugned order is unsustainable, since the Commercial Court, having correctly stated the limited scope of Section 34 of A&C Act,

nevertheless proceeded to substitute its own interpretation for that of the Arbitral Tribunal. It is contended that the Arbitral Tribunal did not ignore Clause 26. On the contrary, the Arbitral Tribunal specifically considered Clause 26 and recorded a finding that, in the peculiar facts and circumstances of the case, issuance of the notice contemplated under Clause 26 would be an empty formality, since respondent No.1 had not even applied for the sanction plan necessary for commencement of construction. The relevant finding of the Tribunal was extracted in the Commercial Court's judgments itself. It is, therefore, contended that the learned Commercial Court erred in holding that the Arbitral Tribunal had ignored Clause 26, when the said clause had, in fact, been expressly considered by the Tribunal. The learned counsel would further submit that the view taken by the Arbitral Tribunal was a plausible view based on the facts and the contractual terms and therefore, could not have been substituted by the Commercial Court while exercising its jurisdiction under Section 34 of the A&C Act.

13. The learned counsel appearing for respondent No.1 would support the impugned order and contend that Clause 26 of the JDA prescribed a mandatory contractual mechanism governing breach. It is contended that, under Clause 26.2, a party alleging breach

was required to issue a written notice calling upon the other party to remedy the breach within 15 days, or within such extended period as may be mutually agreed. According to respondent No.1, no such notice was issued and consequently, the termination of the JDA was premature. It is further submitted that the Arbitral Tribunal, by holding that issuance of such notice would be an empty formality, effectively rewrote the contract and thereby traveled beyond the terms of the JDA. It is, therefore, contended that the impugned award suffered from patent illegality and was opposed to public policy, warranting interference under Section 34 of A&C Act.

The reasons and Conclusion:

14. The JDA was admittedly executed on 04.06.2008. Clause 12 of the JDA reads as under:

> "12) **COMMENCEMENT AND COMPLETION OF CONSTRUCTION**:
>
> 12.1) The Second Party shall commence construction of the buildings in the Larger Property or in Schedule Property as the case may be within Three months from the date of sanction of licence and plan and all other permissions in respect of buildings in which 'OWENERS' AREA' is earmarked. The Second Party in the absence of any restrictions, shall complete the construction of OWNERS AREA within Forty Two months from the date of sanction of license and plans and issue of Commencement Certificate by the plan sanctioning authorities, which period does not

include the time taken for obtaining the Occupancy Certificate from the plan sanctioning authorities and Electrical, Water and Sanitary Connections from the respective departments. However, the Second Party shall not incur any liability for any delay in delivery of possession of the "OWNERS AREA" by reason of non-availability of Government Controlled Materials, and/or by reason of Governmental restrictions and/or civil commotion, transporters strike, Act of God or due to any injunction or prohibitory order (not attributable to any action of the Second Party) or conditions force majeure and for reasons beyond the control of the Second Party. In any of the aforesaid events, the Second Party shall be entitled to corresponding extension of time for delivery of the OWNERS AREA.

The time taken for obtaining occupancy certificate, power/water/sanitary connections by the Second Party shall be excluded at the time of computing the period stipulated for construction.

12.2) In the event of any delay in completing the construction as stated above for reasons other than what is stated above, the Second Party shall be entitled for six months grace period to complete the construction and delivery of the 'OWNERS AREA' After such extension also, if the Second Party is unable to deliver the OWNERS AREA the Second Party will be entitled to extension of time to deliver the 'OWNERS AREA' subject to payment of Rs.2/- (Rupees Two Only) per Sq. Ft., super built-up area of 'OWNERS AREA' per month of delay by way of damages and the Second Party agrees to pay the same in the form of money at the time of delivery of OWNERS AREA' which the members of the First Party have agreed to receive. If part of OWNERS AREA is delivered, the damages payable shall be for undelivered portion of 'OWNERS AREA', Provided further that in case delay in delivery of 'OWNERS AREA' is on account of any acts of the members of the First Party including those of omission or commission, time to deliver OWNERS AREA' stands extended automatically and

proportionately without liability to pay any damages for the delayed period.

12.3) In the event of delay in securing permanent Power/sanitary/water connections, the Second Party shall at their cost arrange to provide temporary electrical, water and sanitary connections until permanent connections are obtained and the same shall constitute compliance with regard to construction of built-up areas. But it shall not be treated as waiver of Second Party's obligations to secure and provide such permanent connections. The First Party is liable to pay consumption charges to the authorities for utilising the said amenities."

15. The project was required to be completed within the stipulated period of 42 months from the date of sanction of the license and plans and issuance of the commencement certificate, with a further grace period of six months, thereby making the contemplated completion period approximately four years.

16. Clause 2 and Clause 3 of the JDA read as follows:

"**2) PERMISSION TO ENTER:**

The members of the First Party hereby authorise and empower the Second Party to enter the Schedule Property immediately on the Schedule Lands being converted for non-agricultural purposes. On such entry into Schedule Property the Second Party shall be entitled to commence and complete the development of the Schedule Property without any objections or restrictions from the members of First Party and/or persons claiming through or under them.

3) CONVERSION:

The Second Party has agreed to secure at their cost conversion of the Schedule Property from the existing

> agricultural to non-agricultural purposes by incurring the cost therefor. The members of the First Party shall make appropriate applications seeking for conversion within 15 days from this day by complying the rules and regulations and the procedure promptly. The Second Party agrees to support the First Party in securing such conversion and Second Party also agrees to bear and pay the cost of such conversion. Immediately on conversion of the Schedule lands, the Second Party stands permitted automatically without any further authorization or authority or any permission from members of First Party to enter the Schedule Property to commence and complete the development of the Schedule Property in terms of this Agreement. The First Party undertakes not to obstruct or prevent the Second Party entering the Schedule Property on such conversion and further they shall have no right to prevent the Second Party from entering Schedule Property."

17. Respondent No.1/developer was required to undertake the development of the property upon conversion of the land. Significantly, on the very date of execution of the JDA, the appellants executed a registered GPA in favour of respondent No.1, authorising to undertake all acts necessary for the implementation of the project.

18. The Arbitral Tribunal, upon appreciating the evidence, found that respondent No.1 failed to take the necessary steps to implement the project. The Arbitral Tribunal specifically recorded that the sanction plan had not been obtained and the construction had not commenced either on the schedule properties or on the larger property.

19. The circumstances surrounding the conduct of the parties are also relevant. The material on record, including the documents relied upon by the parties, indicates that the land acquired for the very same proposed project was subsequently dealt with by the land owners, and that respondent No.1, in relation to the project, had entered into a compromise acknowledging the non-implementation of the project. These circumstances constituted relevant material before the Arbitral Tribunal while determining whether respondent No.1 had, in fact, acted upon the JDA. More importantly, contrary to the findings of the Commercial Court, the Arbitral Tribunal did not ignore Clause 26 of the JDA.

20. Clause 26.1 and Clause 26.2 of the JDA read as follows:

> "26) **BREACH AND CONSEQUENCES:**
>
> 26.1) In the event of breach by either party, the other party (the aggrieved party) shall be entitled to specific performance and also be entitled to recover all losses and expenses incurred as a consequence of such breach from the party committing breach.
>
> 26.2) Irrespective of what is stated above, any breach committed by the members of First Party/Second Party should be complained of by the members of First Party/Second Party in writing and shall further call upon the members of First Party/Second Party to remedy the breach and on the failure of members of First Party/Second Party to remedy such breach within Fifteen days or within such extended period as may be mutually agreed from the date of receipt of such notice to that effect, the parties shall take

> steps to resolve such compliance or non-compliance in terms stated below. Any dispute/s between the members of First Party shall not affect this agreement or rights of the Second Party and such dispute/s shall be settled between them without involving the Second Party and the Schedule Property and the development therein."

21. Clause 26.1 provides that in the event of breach by either party, the aggrieved party would be entitled to specific performance and also be entitled to recover all losses and expenses incurred as a consequence of such breach.

22. Clause 26.2 provides for a written complaint of breach, an opportunity to remedy the breach within 15 days or within such extended period as may be mutually agreed upon, followed by the stipulated dispute resolution mechanism.

23. The Arbitral Tribunal expressly considered the said clause and observed that ordinarily, the appellants ought to have issued a notice enumerating the breaches and calling upon respondent No.1 to remedy them. However, the Arbitral Tribunal found that respondent No.1 had not even applied for the sanction plan for commencement of construction and in those circumstances, issuance of the notice contemplated under Clause 26 would have been an empty formality.

24. The said reasoning, in our view, cannot be said to amount to ignoring or rewriting Clause 26. The provision has to be construed in the context of the JDA as a whole and having regard to the object for which the agreement was entered into. The JDA was executed on 04.06.2008 and the project was required to be completed within the stipulated period of 42 months, with a further grace period of six months. The very object of the agreement was the development of the property. When, even after the expiry of the contractual period and for several years thereafter, the developer had neither obtained the sanctioned plan nor commenced the project, such breach could not be characterized as a mere temporary or isolated default capable of being remedied by issuance of a further 15 day notice. The breach went to the root of the contractual relationship and defeated the very object of the JDA.

25. Clause 26 cannot reasonably be construed as requiring the landowners to continue indefinitely with the JDA, notwithstanding the fundamental and prolonged failure of the developer to perform the very obligations for which the JDA was entered into.

26. A provision providing a mechanism for curing a breach cannot be interpreted as conferring upon the defaulting party an

indefinite right to keep the JDA alive despite its failure to implement the project. The finding of the Arbitral Tribunal that the JDA could not be permitted to subsist in perpetuity, despite the complete inaction on the part of the developer was, therefore, a plausible interpretation of the contractual agreement.

27. In **Assam State Electricity Board and others Vs. Buildworth Private Ltd.**[1], the Hon'ble Supreme Court observed that "matters relating to the construction of a contract lie within the province of the Arbitral Tribunal" and are not amenable to review on merits, unless the interpretation is not a plausible one.

28. The Commercial Court, however, has proceeded on the premise that the aforesaid conclusion had been arrived at by the Arbitral Tribunal by ignoring Clause 26. Having itself extracted and taken note of the reasoning of the Arbitral Tribunal with regard to Clause 26, the Commercial Court could not have thereafter substituted its own interpretation of the said clause for that of the Arbitral Tribunal.

[1] (2017) 8 SCC 146

29. It would be apposite to extract, for ready reference, the relevant portions of the findings by the Commercial Court at paragraph Nos.27, 30, 31, 32, 33 and 34:

> "27. The learned arbitrator in para 133 of the award held that, only because clause No. 26.1 of the JDA provides for the specific performance and entitles the injured party to recover the losses, it cannot be held that the JDA has to subsist perpetually inspite of total inaction on part of one party. Under normal circumstances, the claimants ought to have issued a notice No.1 enumerating the breaches and calling upon the Respondent No.1 to remedy them. But this is a case in which the Respondent No.1 has not even applied for the sanctioned plans for the purpose of construction. Issuance of the notice contemplated under clause No. 26 of the JDA would only be an empty formality. It is also to be noted that the respondent No.1 has not come forward to give any undertaking to implement the project in a definite time-frame, even in these arbitration proceedings. Fairness is not one way traffic.
>
> 30. In the present case as per clause 26 of the JDA in the event of breach by either party, the other party (the aggrieved party) shall be entitled to specific performance and also be entitled to recover all loses and expenses incurred as a consequences of such breach from the party committing breach. Any breach committed by the members of first party/ second party should be complained of by the member of first party/second party in writing and shall further call upon the members of first party/second party to remedy the breach and on the failure of members of first party/second party to remedy such breach within fifteen days or within such extended period as may be mutually agreed from the date of receipt of such notice to that effect, the parties shall take steps to resolve such compliance or non-compliance in terms stated below.

31. In the present case the learned arbitrator has contrary stated that under the claimants ought to have issued a notice to the Respondent No.1 enumerating the breaches and calling upon the Respondent No.1 and to remedy them. But in this is a case in which the Respondent No.1 has not even applied for the sanctioned plans for the purpose of construction. Issuance of the notice contemplated under clause No. 26 of the JDA would only be an empty formality.

32. The above findings of the learned arbitrator that, is not based on any pleadings and material on record. The approach to the question by the learned arbitrator was wholly erroneous. Refusal on the part of the learned arbitrator to consider the effect of clause 26.1 and 26.2 of the agreement would amounts to legal misconduct. The learned arbitrator was, in law bound to consider the relevant provisions of the contract and particular those which deal with the rights and liabilities of the parties. Learned arbitrator has not taken into consideration of terms of contract i.e., clause 26.1 and 26.2 while making the award. The learned arbitrator could not have ignored an important clause in the agreement. The arbitrator has traveled beyond his jurisdiction and acted beyond the terms of the agreement between the parties, the agreement is required to be looked into. Since the arbitrator ignorance the clauses of the contract. This amounts to against the public policy of India and it also patent illegality. So, the awards would be arbitrary capricious and without jurisdiction. Hence on this ground the award should be set aside.

33. The petitioner has taken a taken other grounds for setting aside the award. On perusal of the award, findings given by the learned arbitrator is not against the public policy of India and not perverse and illegal. Hence, not required any interference by this court.

34. In view of my above discussions, observations and findings, I am of the opinion that the Award of the Learned Arbitrator is liable to be set aside on the ground that the same is contrary to the Public Policy and also there is patent illegality in the findings of the learned Arbitrator.

> Further, I make it clear that I have discussed only about the findings given by the learned Arbitrator in the light of the contentions taken by the petitioner without re-appreciating the oral or documentary evidence placed before the Learned Arbitrator. All my findings are based on the legal aspects and the development of case law on the said subject. When such being the case, I have no other option except to set aside the entire Award passed by the learned Arbitrator. **Therefore, I answer this Point in the "Affirmative"**."

30. The question before the Commercial Court under Section 34 of the A&C Act was not whether another interpretation of Clause 26 was possible, but whether the interpretation placed by the Arbitral Tribunal was so unreasonable, perverse, or contrary to the terms of the contract as to constitute patent illegality. In our view, it was not.

31. It is well settled law that the scope of judicial interference with an Arbitral Award under Section 34 of the A&C Act is limited. In **S.V. Samudram Vs. State of Karnataka and another**[2] the Hon'ble Supreme Court reiterated that a Court exercising jurisdiction under Section 34 cannot enter into the merits of the decision rendered by the Arbitral Tribunal or substitute its own view for a plausible view taken by the Arbitral Tribunal. The Hon'ble Supreme Court at paragraph Nos.27, 28, 29 and 30, held as under:

> "27. In the instant case, the only provision under which the award could have been assailed was for it to have been in conflict with the public policy of India. This concept

[2] (2024) 3 SCC 623

has been elaborately considered by this Court in *Associate Builders* and *Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, in the following terms:

28. In *Associate Builders* the Court observed : (SCC p. 68, para 19)

> "19. When it came to construing the expression "the public policy of India" contained in Section 34(2)(*b*)(*ii*) of the Arbitration Act, 1996, this Court in *ONGC Ltd.* v. *Saw Pipes Ltd.* held : (SCC pp. 727-28, para 31)
>
> > '31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. 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. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in *Renusagar case* it is required to be held that the award could be set aside if it is patently illegal. The result would be — award could be set aside if it is contrary to:
> >
> > (a) fundamental policy of Indian law; or
> > (b) the interest of India; or
> > (c) justice or morality; or
> > (d) in addition, if it is patently illegal.
>
> *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 the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.' "

(emphasis supplied)

29. *Ssangyong Engg* followed the observations of *Associate Builders*. To efficiently encapsulate the extent thereof particularly in the context of Indian awards, we may refer only to para 37 where it has been held: (SCC p. 170)

"*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."

30. The position in *Associate Builders* was recently summarised as hereinbelow recorded by *Indian Oil Corpn. Ltd.* v. *Shree Ganesh Petroleum*: (*Shree Ganesh Petroleum case*, SCC p. 485, para 42)

"42. In Associate Builders, this Court held that an award could be said to be against the public policy of India in, inter alia, the following circumstances:

42.1. When an award is, on its face, in patent violation of a statutory provision.

42.2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.

> 42.3. When an award is in violation of the principles of natural justice.
>
> 42.4. When an award is unreasonable or perverse.
>
> 42.5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.
>
> 42.6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."

32. Similarly, in **Konkan Railway Corporation Ltd. Vs. Chenab Bridge Project Undertaking**[3] the Hon'ble Supreme Court reiterated that the Courts ought not to interfere with the arbitral award in a casual and cavalier manner and that the mere possibility of an alternative view on facts or interpretation of the contract does not entitle Courts to reverse the findings of the Arbitral Tribunal.

33. This principle was authoritatively stated in **Associate Builders Vs. Delhi Development Authority**[4], wherein the Hon'ble Supreme Court cautioned that, while applying the "Public Policy" test to an arbitral award, the Court does not act as a Court of

[3] (2023) 9 SCC 85

[4] (2015) 3 SCC 49

appeal and consequently errors of fact cannot be corrected merely because another view is possible.

34. The Apex Court in **Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI)**[5], explained the expression "fundamental policy of Indian law" and reiterated the limited scope of interference under Section 34 of the A&C Act. It held that the expression of "fundamental policy of Indian law" must be understood in the manner explained in paragraph Nos.18 and 27 of decision in **Associate Builders** (*supra)* and held at paragraph Nos.34, 35 and 36 as under:

> "34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of *Associate Builders* i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that *Western Geco* expansion has been done away with. In short, *Western Geco*, as explained in paras 28 and 29 of *Associate Builders*, would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(*a*)(*iii*) of the 1996 Act, these

[5] (2019) 15 SCC 131

> continue to be grounds of challenge of an award, as is contained in para 30 of *Associate Builders*.
>
> 35. It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of *Associate Builders*, as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.
>
> 36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of *Associate Builders*, or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of *Associate Builders*. Explanation 2 to Section 34(2)(*b*)(*ii*) and Explanation 2 to Section 48(2)(*b*)(*ii*) was added by the Amendment Act only so that *Western Geco*, as understood in *Associate Builders*, and paras 28 and 29 in particular, is now done away with."

35. The Arbitral Tribunal had considered the JDA dated 04.06.2008, the obligation of the parties, the prolonged non-implementation of the project, the failure of the developer to obtain the sanctioned plan, the termination of the JDA and GPA, the conduct of the parties, the evidence relating to the property and Clause 26, including the consequence of the alleged failure to issue notice. Upon such consideration, the Arbitral Tribunal took the view that, in the circumstances of the case, insisting upon a

formal notice would be an empty formality. The Arbitral Tribunal was within its jurisdiction in interpreting the contractual provision and had furnished reasons for the conclusion reached by it. Such conclusion cannot be characterized as irrational, perverse or contrary to the fundamental policy of Indian law.

36. The Commercial Court, however, by dissecting Clause 26 from the remaining contractual arrangement and substituting its own interpretation for that of the Arbitral Tribunal, effectively exercised appellate jurisdiction over the award, which is impermissible under Section 34 of the A&C Act. As stated *supra*, the contractual provisions cannot be read in isolation. Clause 26 has to be construed in the context of the JDA as a whole and in conjunction with the obligations cast upon the developer under the other provisions of the JDA. While considering the other grounds urged by respondent No.1, the Commercial Court itself specifically recorded that the findings of the Arbitral Tribunal were not contrary to public policy, nor perverse or patently illegal. The ultimate interference with the impugned award was thus substantially founded on the Commercial Court's interpretation and application of Clause 26 of the JDA.

37. Having considered Clause 26 of the JDA, the Arbitral Tribunal interpreted the provision and upon assigning the cogent reasons arrived at a plausible view based on the contractual provisions and evidence on record. The Commercial Court could not have substituted its own interpretation for the plausible view taken by the Arbitral Tribunal.

38. The learned counsel appearing for respondent No.1 has placed reliance upon several decisions of the Hon'ble Supreme Court to contend that the arbitral award which ignores the terms of contract, disregards vital evidence, or is contrary to the contractual stipulations would suffer from patent illegality and, consequently, would be amenable to interference under Section 34 of the A&C Act. There is no quarrel with the proposition of law laid down in the said judgments. However, the question is whether the said principles enunciated therein are attracted to the facts and circumstances of the present case.

39. In **Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation Limited**[6], the Hon'ble Supreme Court held that an arbitral award may be interfered with on the ground of patent illegality where the findings are based on no evidence,

[6] (2022) 1 SCC 131

where vital evidence has been ignored, where the award contains no reasons, or where the view taken by the arbitrator is not even a plausible view. At the same time, the Court reiterated that patent illegality must go to the root of the matter and that the Court cannot re-appreciate evidence or act as an appellate authority. The said principle has no application to the present facts.

40. This Court, in **M/s. Pratibha Industries Limited Vs. M/s. Amrutha Constructions**[7] of which one of us (Chief Justice Vibhu Bakhru) was a member, has reiterated the limited scope of interference with the arbitral award under Section 34 of the A&C Act. It has held that, so long as the view taken by the Arbitral Tribunal is a plausible view, the mere fact that another view is possible on the basis of the same evidence would not constitute a ground for interference with the award. In paragraph No.22, placing reliance upon **Atlanta Limited, through its Managing Director Vs. Union of India**[8], this Court observed that the arbitrator is the final arbiter in respect of the disputes referred to it and that interpretation placed by the Arbitral Tribunal on the contractual

[7] Commercial Appeal No.302/2025 D.D. 01.08.2025

[8] (2022) 3 SCC 739

terms is not liable to be interfered with unless the Court finds that no reasonable person could possibly have taken such a view.

41. The distinction between an error in interpreting the contract and an error going beyond the contract is also well settled. In **M/s. MSK Projects (I) (JV) Ltd. Vs. State of Rajasthan and another**[9], the Hon'ble Supreme Court observed that where an arbitrator commits an error in the construction of the contract, such error falls within the arbitrator's jurisdiction. However, where the arbitrator travels beyond the contract and deals with matters, which were not entrusted to him, such error would constitute a jurisdictional error. The same principle was reiterated in **Steel Authority of India Limited Vs. Gupta Brother Steel Tubes Limited**[10], wherein the distinction between an erroneous interpretation of a contractual provision and an act traveling beyond the terms of the contract was recognised.

42. The Division Bench of the Delhi High Court in **Noble Chartering Inc Vs. Steel Authority of India Ltd.,**[11] of which one of us (Vibhu Bakhru J) was a member, observed that the intent of

[9] (2011) 10 SCC 573

[10] (2009) 10 SCC 63

[11] 2024 SCC Online Del 4843

the parties is to be ascertained by the language of the written contract read as a whole and not by reading parts of the clauses of the contract literally. Further, it was held that it is a well-settled principle of law that the interpretation of a contract falls within the exclusive domain of the Arbitral Tribunal, thus, the Arbitral Tribunal is, therefore, the final adjudicator of such construction and its decision cannot be interfered with unless it is found that the Arbitral Tribunal's view is not a plausible one. In the instant case, the interpretation adopted by the Arbitral Tribunal is a plausible one.

43. The award under consideration is not an award based on no evidence. The Arbitral Tribunal considered the JDA and the GPA, the obligation of the respective parties, the evidence relating to conversion and development, the absence of a sanctioned plan, the failure to commence the project, the conduct of the parties and the effect of Clause 26. The Arbitral Tribunal therefore recorded reasons in support of its conclusions. The present case is not one where vital evidence has been ignored nor where the award is bereft of reasons. Indeed, the Commercial Court itself recorded that the Arbitral Tribunal's findings were not otherwise perverse or patently illegal and were not contrary to the public policy of India.

44. The other judgments relied upon by the learned counsel for respondent No.1 need not be dealt with separately, as the principles laid down in those judgments are equally not in dispute. However, those principles are not attracted to the facts of the present case. As noticed above, the Arbitral Tribunal adjudicated upon the contractual rights and obligations of the parties arising out of the JDA and GPA and its findings constitute a plausible view based on the contractual provisions and the evidence on record. The award, therefore, does not fall within any of the grounds warranting interference under Section 34 of the A&C Act.

45. Accordingly, the Commercial Appeal is allowed. The impugned judgment of the Commercial Court is set aside, confirming the arbitral award passed by the Arbitral Tribunal.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

MBM