2026:DHC:4199

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

Date of decision: 04th MAY, 2026

IN THE MATTER OF:

\+ **O.M.P. (COMM) 202/2021 & I.A. 9690-9692/2021**

DELHI METRO RAIL CORPORATION LTD .....Petitioner

Through: Mr. Tarun Johri and Mr. Vishwajeet Tyagi, Advocates

versus

GYT TPL JOINT VENTURE .....Respondent

Through: Mr Jayant Mehta, Senior Advocate, Mr. Tushad Cooper, Senior Advocate with Mr. Dhirendra Negi, Ms. Pragya Chauhan, Mr. Shaurya Rohit and Mr. Pallav Arora, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('***the Act***') has been filed by the Petitioner, challenging the Majority Arbitral Award dated 28.04.2021 ('***Impugned Award'***) passed by the Arbitral Tribunal with respect to the disputes between the parties, arising out and in relation to the Contract Agreement dated 07.01.2015 executed between the parties.

2. The Petitioner is a company incorporated under the relevant provisions of the Companies Act, 1956, having its registered office at Metro Bhawan, 13 Fire Brigade Lane, Barakhamba Road, New Delhi, is *inter alia*

engaged in the business of development and implementation of the Mass Rapid Transit System in the National Capital Territory of Delhi.

3. The Respondent is a joint venture having its registered office at 11th Floor, Hiranandani Knowledge Park, Technology Street, Powai, Mumbai.

4. The Petitioner, on 05.08.2014, issued a Tender and invited bids for development and construction of Contract No. 87: Part Design and construction of Elevated Viaduct and 8 Elevated Stations viz. Shahid Nagar, Raj Baugh, Rajendra Nagar, Shyam Park, Mohan Nagar, Arthla, Hindon River, and New Bus Adda, including Architectural finishing works of Station from Chainage 3323.582 m to 12920.678 m of Line 1 Extension (Dilshad Garden to New Bus Adda, Ghaziabad) of Phase-III MRTS Project ('***Project***').

5. On 15.10.2014, the Respondent submitted its bid for the Project in response to the said Tender. The Petitioner, on 09.12.2014, issued a Letter of Acceptance for the project in favour of the Respondent for a total value of Rs. 665, 87, 92, 409/-.

6. A Notice to Proceed was issued by the Petitioner to the Respondent on 15.12.2014. The Project work was to be completed within a period of 30 months, i.e., on or before 14.06.2017.

7. A Contract Agreement dated 07.01.2015 was executed between the parties. It is stated that the Project was completed by the Respondent on 05.02.2019 with a total delay of 19 months.

8. Disputes arose between the parties with respect to the Project. Consequentially, the Respondent invoked the arbitration clause under the Contract seeking reference of disputes to an Arbitral Tribunal. On

15.10.2019, a three-member Arbitral Tribunal ('***Tribunal***') was constituted for adjudication of disputes between the parties.

9. The Tribunal passed the Impugned Award allowing the Claim No. 1, 2, 3, 4, 7, & 8 raised by the Respondent. A Dissenting Award was passed by the third member of the Tribunal.

10. The findings of the Tribunal in the Impugned Award with respect to the objected Claims are as follows:-

a. Claim No. 1 – Prolongation Costs

This claim pertained to compensation for extended overheads and establishment expenses allegedly incurred due to prolongation of the contract period on account of delays attributed to the Petitioner. The quantification was based on site overheads, manpower deployment, head office overhead allocation, and cost statements correlated to the period of employer-attributable delay.

The Tribunal analysed the delay matrix, Extension of time (EOT) determinations, hindrance records, and contemporaneous correspondence to ascertain responsibility for delay. It held that substantial delays were attributable to the Petitioner, including late drawings and site constraints. The Tribunal rejected the contention that grant of EOT barred monetary compensation and confined the award strictly to the period and components substantiated by evidence. Consequently, the claim was allowed in part to the extent found proved and attributable to employer-caused delay.

b. Claim No. 3 – GST/ Statutory Tax Variation

This claim was for reimbursement of the additional financial burden that arose due to the introduction of GST during the currency of the contract. The amount claimed was calculated on the basis of the difference in tax liability under the pre-GST regime and the GST regime, supported by invoices and proof of payments.

The Tribunal examined the contractual provisions relating to taxes and change in law to determine who was required to bear such additional burden. It held that the introduction of GST amounted to a statutory change affecting the contract price and was not fully factored into the bid at the time of submission. On consideration of the relevant statutory notifications and the documentary evidence placed on record, the Tribunal allowed reimbursement of the differential tax liability to the extent it was actually paid and duly proved. Accordingly, the claim was partly allowed to the extent established.

c. Claim No. 5 – Increase in Minimum Wages / Labour Escalation

This claim related to additional expenditure incurred on account of statutory revision of minimum wages during the execution of the contract. The amount claimed was calculated on the basis of government notifications enhancing minimum wages, labour deployment records, wage registers, and the differential cost impact allegedly not covered under the contractual escalation formula.

The Tribunal examined the relevant contractual clauses dealing with price adjustment and statutory variations to determine whether the

increased wage liability was contractually compensable. It held that to the extent the contractual escalation mechanism did not fully absorb the increase arising from statutory revision of minimum wages, the additional burden was recoverable. Upon scrutiny of the notifications and supporting records, the Tribunal confined the award strictly to the proven differential attributable to statutory increase and disallowed any unsupported or overlapping components. Accordingly, the claim was partly allowed to the extent established by evidence.

d. Claim No. 8 – Environmental Compensation Charges (ECC)

This claim concerned reimbursement of Environmental Compensation Charges (ECC) levied during execution of the works pursuant to order passed by the Apex Court by way of notification dated 23.12.2015 read with notification dated 05.01.2016 issued by the NCT of Delhi. The Claimant sought recovery of the amounts paid towards such charges, contending that the levy was introduced during the subsistence of the contract and was not factored into the bid price.

While analysing the claim, the Tribunal examined the contractual provisions relating to statutory levies, change in law, and allocation of risk. As noted in paragraph 391 of the Award, the Tribunal considered the nature of ECC and the circumstances under which it was imposed. It observed that the levy arose from regulatory directions issued during the currency of the contract and was not part of the original contractual pricing framework. The Tribunal also

verified documentary proof of payment to ensure that only actual and substantiated amounts were considered. Reimbursement was confined strictly to the amounts proved to have been paid and supported by record. The claim was accordingly allowed to that limited extent.

e. Taxes on the Awarded Amount

This issue related to whether any statutory taxes were payable on the amounts awarded under the various claims.

The Tribunal clarified that the amounts awarded represented the principal sums found payable under each claim. It held that if any statutory tax is legally applicable on such awarded amounts and is required to be paid under law, the same would be payable in accordance with the relevant statute. However, the Tribunal did not grant any blanket or automatic direction for payment of future taxes. It made it clear that only those taxes which are legally leviable and actually payable can be recovered.

Interest was awarded on the principal sums as determined, in terms of the contract and applicable law.

11. The Petitioner, aggrieved by the findings rendered by the Tribunal in the Impugned Award, has filed the present Petition under Section 34 of the Act, objecting the Impugned Award to the extent of aforementioned Claim No. 1, 3, 5, 8, and the payment of taxes on the awarded amount.

12. With respect to Claim no. 1, it is submitted that the Tribunal erred in determining the effective period of prolongation and in awarding overheads accordingly.

13. The Counsel for the Petitioner states that the Tribunal reduced 3.25 months towards execution of variations from the total delay period and held the effective prolongation to be 16.51 months. It is the case of the Petitioner that this finding was based merely on a comparison between the scheduled completion date and the actual completion date, without examining the actual time consumed in execution of variations.

14. Learned Counsel for the Petitioner submits that the actual data regarding variations and the time required for their execution was available and could have been called for by the Tribunal. Instead, the Tribunal proceeded on assumptions without requiring documentary substantiation.

15. It is further contended that the Tribunal arbitrarily assumed contractor's Site and Head Office Overheads at 10% of the contract price while computing monthly overheads. In the absence of any evidence demonstrating existence of a separate head office of the Joint Venture or documentary proof of such expenditure, the award of head office overheads is stated to be unsustainable.

16. With respect to Plant and Machinery (***P&M***) idling charges, the Tribunal assumed that 50% of the machinery was hired and 50% was owned by the contractor. It is submitted that such an assumption was not pleaded by either party and was adopted without affording an opportunity to address the methodology. The Tribunal, according to the Petitioner, effectively created a

new case for the contractor and quantified damages on basis *de hors* the pleadings and evidence.

17. The Learned Counsel places reliance on Batliboi Environmental Engineers Limited vs. Hindustan Petroleum Corporation Limited, **2023 SCC OnLine SC 1208**, Satluj Jal Vidyut Nigam Ltd. vs. Jaiprakash Hyundai Consortium and Ors., **2023 SCC OnLine Del 4039,** Wadia Techno Engineering Services Limited vs. Director General of Married Accommodation Project and Anr., **2024 SCC OnLine Del 4062;** and on NHPC Limited vs. Hindustan Construction Company and Ors., **2023 SCC OnLine Del 8395.**

18. The Learned Counsel by way of these judgments state that the Apex Court and the High Court have consistently held that arbitral awards granting prolongation costs, wage escalation, or reimbursement-type claims must be founded on cogent evidence and reasoned analysis. While recognised formulae such as *Hudson*, *Emden* or *Eichleay* may be adopted in appropriate cases, their application must be preceded by satisfaction of foundational assumptions and cannot result in arbitrary, inflated or overlapping compensation. Claims for reimbursement of actual expenditure, in particular, must be supported by documentary proof such as wage records, payment vouchers and accounts, and cannot be sustained on mathematical derivations or notional percentages of contract value. An award that departs from contractual stipulations, scales figures notionally, or quantifies substantial sums without evidentiary basis would be vulnerable to challenge under Section 34 as being unreasoned, perverse, or contrary to the fundamental policy of Indian law.

19. For Claim No. 3, the Counsel for the Petitioner contends that the Tribunal erroneously awarded compensation on account of GST by adopting labour and P&M components of 22% and 18% respectively, relying upon the price variation formula, despite there being no documentary evidence establishing such allocation within the contract value.

20. It is submitted that the Respondent failed to produce GST challans, returns, payment records, demand notices or other primary documents to substantiate the alleged additional burden. The Tribunal, therefore, awarded the claim on assumed figures.

21. Learned Counsel for the Petitioner further submits that Clause 11.1.4 of the GCC and the corresponding sub-clause in the SCC expressly provide that the contract price is inclusive of all taxes, duties and levies, and no adjustment is permissible on account of change in law. The impact of variation in taxes was already contemplated under Clause 11.1.3 of the GCC (Price Variation Clause). The award of GST, therefore, is stated to be contrary to the express contractual stipulations. The relevant extract of Clause 11.1.4 of the GCC, Sub-Clause 11.1.4 of the SCC, and the Price Variation Clause 11.1.3 is reproduced hereunder:

Adjust in contract price	*11.1.3*	*Adjustment in contract price on account of inflation shall be done only if a "Price Variation Formula" is given in the special conditions of contract otherwise it will be a fixed price contract.*

Change in Taxes/Duty	*11.1.4*	*The Contract Price shall not be adjusted to take into account any increase or decrease in cost resulting from any change in taxes, duties, levies from the last date of submission of the Tender to the completion date including the date of the extended period of Contract unless a contrary provision exists in Special Conditions of Contract*

xxx

18	*Sub-Clause 11.1.4*	*Changes in cost due to legislation:* *"Change in Law" means the occurrence or coming into force of the following, at any time after the date of submission of tender.* *(a) any new tax which is imposed after the due date of submission of tender* *(b) change in the rate of any existing tax.* *The Contract Price shall not be adjusted due to any of the above two conditions and its impact shall be considered covered in the price indices of various components and thus compensated in Price Variation Clause. Also, the Contract price shall not be adjusted on account of fluctuations in the rates of exchange between the foreign currencies of the Contract and Indian Rupees from the last date of submission of tender.*
19	*Sub-Clause 11.1.3*	*Price Variation* *The rates as per the accepted. Bill of Quantities shall be applicable till the completion of the Work and will be varied only to the extent of permissible price variation under this Clause. However, this*

adjustment shall be to the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the Price variation formula, the rates. In the accepted Bill of Quantities shall be deemed to include amounts to cover the contingency of such rise or fall in costs.

The price variation will be payable· only on the Indian currency component (no adjustment for Foreign currency component) of the Contract Price as per the follow price variation formula.

Payment as per the contract shall be subject to adjustment in accordance with the following Price Variation formula, and other terms given herein, to provide for variation in the market rates of inputs like labour, materials and fuel/energy during the currency of the Contract:

V=Vl +Vs +Vc +Vf+Vm

Where,

v = Total adjustment on account of all factors

Vl = Adjustment on account of labour component.

= p x R x(l-lo)lo

Vs = = Adjustment. on account of Steel component

= q x R x (Ws - Wso) / Wso

Vc= Adjustment on account of Cement component

= r × R × (Wc – Wco) / Wco

Vf = Adjustment on account of Fuel/Lubricant component

= s × R × (Wf – Wfo) / Wfo

Vm = Adjustment on account of Machinery and Machine Tools

= t × R × (Wm – Wmo) / Wmo

p = Cost Coefficient of Labour to the Total Cost

= 0.22

q = Cost Coefficient of Steel to the Total Cost

= 0.25

r = Cost Coefficient of Cement to the Total Cost

= 0.15

s = Cost Coefficient of Fuel and Lubricant to the Total Cost

= 0.05

t = Cost Coefficient of other Machinery and Machine Tools to the Total Cost

= 0.18

Note : p+ q + r + s + t = 0.85, balance 0.15 shall be fixed component

R = Gross value of the work done by the Contractor for the period of work under consideration, after excluding there from the cost of any materials supplied free or at fixed rate to the Contractor.

Io = Consumer Price Index for Industrial workers, published by Ministry of Labour & Employment, Govt. of India as applicable to Ghaziabad (U.P.) area for the month in which the tender was opened.

I = Average of monthly Consumer Price Index for Industrial workers published by Ministry of Labour & Employment, Govt. of India as applicable to Ghaziabad (U.P) area for the period of work under consideration.

Wso = All India Price Index (with base Oct' 12=100) for Reinforcement bars (TMT-500) for primary manufacturers, issued by Central Public Works Department (CPWD) for the month in which the tender was opened.

Ws = All India Price Index (with base Oct' 12=100) for Reinforcement bars (TMT-500) for primary manufacturers, issued by Central Public Works Department (CPWD) for the period of work under consideration.

Wco = All India Price Index (with base Oct' 12=100) for Cement (OPC) issued by Central Public Works Department (CPWD) for the month in which the tender was opened.

Wc = All India Price Index (with base Oct' 12=100) for Cement (OPC) issued by Central Public Works Department (CPWD) for the period of work under consideration.

Wfo = Whole Sale Price Index (Averages) for Fuel & Power, as published in the RBI Bulletin for the month in which the tender was opened.

Wf = Wholesale Price Index (Averages) for Fuel & Power, as published in the RBI Bulletins for the period of work under consideration.

Wmo = Whole Sale Price Index (Averages) for Machinery and Machine Tools as published in the RBI Bulletin, for the month in which the tender was opened.

Wm = Wholesale Price Index (Averages) Machinery and Machine Tools as published in the RBI Bulletins for the period of work under consideration.

Period of Work under consideration will mean as under:

i. In the case of first "On-account Bill" the period from the month in which the tender was opened to the month of measurement of first bill.

ii. In the case of second and subsequent "On-account" and Final bills, the Period from the month of measurement for previous bill to the month of measurement of that bill.

Note:

Responsibility of arranging the RBI Bulletins desired by the Employer or the Engineer shall rest with the Contractor.

Procedure in case of Delay in Availability of Final RBI Indices

Where the final Price Indices are not available in the Reserve Bank of India Bulletins, while making payment towards on-account bills, payment towards Price Variation will be made on provisional basis based on the indices available, to be adjusted in subsequent bills as and when the final Indices figures become available.

22. The Tribunal awarded Claim No. 5 to the Respondent for additional cost due to variation in basic rate of minimum wages. The Learned Counsel for the Petitioner argues that the award of increased wages is violative of Clause 6.2 of the GCC, wherein no extra amount is payable due to increase in minimum wages. Further, Clause 11.1.4 of GCC and Clause 11.1.4 of

SCC, provides that nothing extra would be payable on account of change in law. Clause 6.2 of the GCC is reproduced hereunder:

Rates of Wages and Conditions of Labour	*6.2* *Full compliance of statutory requirements apart, the Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or the industry where the work is carried out.* *The Contractor shall make himself aware of all labour regulations and their impact on the- cost and build up the same in the Contract Price, During the Contract Period no extra amount in this regard shall be payable to the Contractor, for whatsoever reason including any revision of rates payable to the labour due to revision of rates payable in Minimum Wages Act.* *Labour provide by the Contractor, either directly or through sub-contractors, for the exclusive use of the Employer or the Engineer, shall, for the purpose of this Sub-Clause, be deemed to be employed by the Contractor.* *In the event of default belong made In the payment of any money in respect of wages of any person employed by the Contractor or any of its sub-contractors of any tier in and for carrying out of this Contract and if a claim therefore is filed. in the office of the Labour Authorities and proof thereof is furnished to the satisfaction of the· labour Authorities, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the said Contractor to the said Labour Authorities and any sums so paid shall be recoverable by the Employer from the Contractor.*

23. He further states that the Respondent did not furnish any record of payments made to labourers, PPF details, payments of salaries/wages, ESI details, before the Tribunal. Hence, the claim was allowed without verification of any actual payments.

24. The Tribunal awarded a sum of Rs. 3,47,50,300/- as Environment Compensation Charges to the Respondent. The Learned Counsel for the Petitioner states that the said award is violative of Clause C2.6(c) of the Contract. The said clause provides that the contract price shall not be adjusted to take into account any change in law, duties, levies, etc, even during the extended period of contract. The said Clause C2.6(c) is reproduced hereunder:

> *"**C 2.6 The tenderers must note the following:-***
>
> *xxx*
>
> *c) Change in Taxes/Duty:*
>
> *The contract price shall not be adjusted to take into account any change in taxes, duties, levies or introduction of any new tax, duty or levy till the completion date including date of extended period of contract."*

25. The Learned Counsel for the Petitioner also states that the award of taxes on the awarded amount is also violative of Clause 11.1.4 of the GCC and Sub-Clause 11.1.4 of the SCC.

26. *Per contra*, Learned Senior Counsel for the Respondent supports the Impugned Award and submits that the present Petition is an attempt to seek re-appreciation of evidence and re-interpretation of contractual clauses, which is impermissible under Section 34 of the Act.

27. In relation to Claim No. 1 (prolongation costs), it is contended that the Petitioner neither pleaded nor proved the actual value or duration of variations before the Tribunal. No documentary evidence was led to demonstrate the time attributable to variations. In absence of such material, the Tribunal was justified in adopting a reasonable methodology based on the evidence available on record. It is submitted that the quantification of damages and adoption of a particular formula fall squarely within the domain of the Arbitral Tribunal.

28. With respect to Claim No. 3 (GST), Learned Senior Counsel for the Respondent submits that Clause 11.1.4 applies only to a "new tax" or change in rate of tax. GST, being a subsuming tax regime replacing existing indirect taxes, does not fall within the contractual bar in the manner suggested by the Petitioner. In any event, GST was introduced after the scheduled completion date and during the extended period, the delay for which was attributable to the Petitioner. It is submitted that the Tribunal recorded a finding that GST was deposited and that the quantification was certified and based on accepted industry practice. Such findings of fact are not amenable to interference under Section 34 of the Act.

29. Insofar as Claim No. 5 (increase in minimum wages) is concerned, it is argued by the Learned Senior Counsel for the Respondent that Clause 6.2 of the GCC cannot operate to deny compensation during the extended period when the delay was caused by the Petitioner. The Tribunal has recorded that evidence was led to establish payment of enhanced wages and that the formula applied was derived from the contractual mechanism. These are pure findings of fact and contractual interpretation.

30. Regarding Claim No. 8 for Environment Compensation Charges (ECC), the Learned Senior Counsel for the Respondent states that ECC cannot be equated with a "tax", "duty" or "levy" within the meaning of the exclusion clauses. The imposition arose pursuant to the direction of the Apex Court and constituted an additional financial burden during the execution of the works. The Tribunal's interpretation, being a plausible view, is immune from challenge under Section 34.

31. As to the direction regarding payment of applicable taxes on the awarded amounts, it is submitted that the same is a natural legal consequence and does not amount to rewriting the contract.

32. Learned Senior Counsel for the Respondent finally submits that the scope of interference under Section 34 is narrow. The Court cannot substitute its own interpretation for that of the Tribunal, nor re-assess evidence or re-quantify damages. The Impugned Award represents a plausible and reasoned view based on the material on record and, therefore, warrants no interference.

33. He specifically states that the quantification of damages is in the domain of the Tribunal and such interpretation cannot be interfered with under Section 34 of the Act. He places reliance on McDermott International Inc. vs. Burn Standard Co. Ltd, **2006 (11) SCC 181**; NHAI vs. Oriental Pathways, **2016 OnLine Del 3163;** NHAI vs. Lanco Infratech Ltd., **2014 SCC OnLine Del 1029.**

34. The Apex Court in McDermott International Inc. vs. Burn Standard Co. Ltd, **2006 (11) SCC 181**, has observed as under:-

*"**106**. We do not intend to delve deep into the matter as it is an accepted position that different formulae can be applied in different circumstances and the question as to whether damages should be computed by taking recourse to one or the other formula, having regard to the facts and circumstances of a particular case, would eminently fall within the domain of the arbitrator.*

***107**. If the learned arbitrator, therefore, applied the Emden Formula in assessing the amount of damages, he cannot be said to have committed an error warranting interference by this Court."*

35. This Court in NHAI vs. Oriental Pathways, **2016 OnLine Del 3163,** has observed as under:-

*"**38**. It is trite that it is open to the Arbitrator to adopt any reasonable formula for arriving at the computation of the compensation. In this regard, reference may be made to the pronouncement of the Supreme Court in (2015) 3 SCC 49, Associate Builders v. Delhi Development Authority extracted above.*

***39**. In para 43 of the judgment, the Supreme Court has held that the construction of the contract by the Arbitrator is also within the jurisdiction of the Arbitrator. It is trite law that such construction is clearly beyond the scope of consideration by the Court while considering objections under Section 34 of the Arbitration and Conciliation Act, 1996.*

***40**. In paragraph 56 of the judgment, the Supreme Court has held that the adoption and application of a formula by an Arbitrator is a pure question of fact. Clearly, the same is beyond the purview of objections*

under Section 34 of the Arbitration and Conciliation Act.

> ***41***. *In view of the above statement of law, the objections of NHAI to the Arbitral Award were clearly beyond the scope and purview of Section 34 of the Arbitration and Conciliation Act and have been rightly rejected by the learned Single Judge."*

36. This Court in NHAI vs. Lanco Infratech Ltd., **2014 SCC OnLine Del 1029,** has observed as under:-

> *"**4.3.** If in arriving at quantum of damages, the arbitral tribunal chose a particular formula, Court ought to not interfere with it simply because another formula could have been chosen, as long as the contract does not provide for any formula and the formula adopted by the arbitrator is an acceptable and reasonable one. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181.]"*

37. He further states that as long as there is material on record to demonstrate that a party has suffered damages, the Tribunal is allowed to employ guesswork to calculate damages. He places reliance on Gemini Bay Transcription vs. Integrated Sales Service, **(2022) 1 SCC 753;** and Cobra Instalaciones Y Servicios, S.A. & Shyam Indus Power Solution Pvt Ltd. vs. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL), **2024 SCC OnLine Del 2755,**.

38. The Apex Court in Gemini Bay Transcription vs. Integrated Sales Service, **(2022) 1 SCC 753,** has observed as under:-

*"**78.** That such "guesstimates" are not a stranger to the law of damages in the US and other common law tradition nations has been established very early on in a judgment of Asutosh Mookerjee, J. reported as Frederick Thomas Kingsley v. Secy. of State for India [Frederick Thomas Kingsley v. Secy. of State for India, AIR 1923 Cal 49] . In this judgment, a learned Division Bench of the Calcutta High Court put it thus:*

> *"It may be conceded that though every breach of duty arising out of a contract gives rise to an action for damages, without proof of actual damage, Marzetti v. Williams [Marzetti v. Williams, (1830) 1 B & Ad 415 : 109 ER 842 : 35 RR 329] , Embrey v. Owen [Embrey v. Owen, (1851) 6 Ex 353 : 155 ER 579 : 86 RR 331] , the amount of damages recoverable is, as general rule, governed by the extent of the actual damage sustained in the consequence of the defendant's act, Hiort v. London & North West Railway Co. [Hiort v. London & North West Railway Co., (1879) 4 Exch Div 188] In cases admitting proof of such damage, the amount must be established with reasonable certainty, Commerce, In re [Commerce, In re, (1850) 3 W Rob 286 : 166 ER 969] . But this does not mean that absolute certainty is required, nor in all cases, is there a necessity for direct evidence as to the amount. Damages are not uncertain for the reason that the loss sustained is incapable of proof with the certainty of mathematical demonstration or is to some extent contingent and incapable of precise measurement. As Harlan, J. observed in delivering the judgment of the Supreme Court of the United States in Hetzel v. Baltimore & O.P. Co. [Hetzel v. Baltimore & O.P. Co., 1898 SCC OnLine US SC 12 : 42 L Ed 648 : 169 US 26 (1898)] , US at p. 38 certainty to reasonable extent is necessary, and the meaning of that language is that the loss of damage must be so*

far removed from speculation or doubt as to create in the minds of intelligent and reasonable men the belief that it is most likely to follow from the breach of the contract and was a probable and direct result thereof. To the same effect is the decision in Morris v. United States [Morris v. United States, 1899 SCC OnLine US SC 105 : 43 L Ed 946 : 174 US 196 (1899)] that where absolute certainty is impossible, judgment of fair men as to damages directly resulting governs." (at pp. 50, 51)"

39. This Court in Cobra Instalaciones Y Servicios, S.A. & Shyam Indus Power Solution Pvt Ltd. vs. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL), **2024 SCC OnLine Del 2755,** has observed as under:-

*"**32.** It is against this backdrop that the learned arbitrator adopted the methodology enunciated by the Supreme Court in the Construction and Design Services case; which is that a "rough and ready method" could be applied for awarding L.D. to HVPNL. The Supreme Court, in that case, directed that the damages should be borne by the disputants in equal measure because it was difficult, as opposed to impossible, to quantify damages.*

***32.1** The learned Single Judge, however, in our opinion, wrongly concluded that because the Construction and Design Services case used the expression "guesswork", such methodology could not be adopted by courts other than the Supreme Court. This view was premised on the learned Single Judge erroneously observing that the Supreme Court had reduced the burden of damages befalling the defaulting party by taking recourse to the powers conferred on it under Article 142 of the Constitution.*

***32.2** As rightly contended by Mr. Singh on behalf of the J.V. Company, the Supreme Court made no such*

observation and instead concluded that once an adjudicator (i.e., the arbitrator) found that the L.D. did not represent a genuine pre-estimate of damages and that the aggrieved person/entity may suffer on account of the breach committed by the defaulting party concerning a project conceived in public interest, the aggrieved person/entity was entitled to a reasonable compensation, subject to the maximum amount payable under the L.D. clause. It is when such circumstances are present in a given case, that the court could proceed based on "guesswork" with regard to the quantum of compensation to be allowed to the aggrieved party. The following observations made in the Construction and Design Services case being apposite are set forth hereafter:

> *"15. Once it is held that even in absence of specific evidence, the respondent could be held to have suffered loss on account of breach of contract, and it is entitled to compensation to the extent of loss suffered, it is for the appellant to show that stipulated damages are by way of penalty. In a given case, when highest limit is stipulated instead of a fixed sum, in absence of evidence of loss, part of it can be held to be reasonable, compensation and the remaining by way of penalty. The party complaining of breach can certainly be allowed reasonable compensation out of the said amount if not the entire amount. If the entire amount stipulated is genuine pre-estimate of loss, the actual loss need not be proved. Burden to prove that no loss was likely to be suffered is on party committing breach, as already observed.*
>
> *xxx*
>
> *17. Applying the above principle to the present case, it could certainly be presumed that delay in*

executing the work resulted in loss for which the respondent was entitled to reasonable compensation. Evidence of precise amount of loss may not be possible but in absence of any evidence by the party committing breach that no loss was suffered by the party complaining of breach, the Court has to proceed on guess work as to the quantum of compensation to be allowed in the given circumstances. Since the respondent also could have led evidence to show the extent of higher amount paid for the work got done or produce any other specific material but it did not do so, we are of the view that it will be fair to award half of the amount claimed as reasonable compensation."

***33**. As noticed hereinabove, the learned arbitrator did not conclude that the entire amount calculable as per Clause 26.2 of the GCC read with Clause 26.2 of the P.C. represented a genuine pre-estimate of damages that HVPNL could incur if the J.V. Company committed a breach.*

***33.1** Therefore, in our opinion, the learned arbitrator was well within the bounds of law to employ a "rough and ready method" for awarding a reasonable compensation towards losses/legal injury suffered by HVPNL.*

***33.2** The fact that HVPNL was partially responsible for the delay emerges upon perusal of the following finding of fact returned by the learned arbitrator:*

"..... The entire delay post deemed commissioning had to be condoned by the respondent as the Claimant could not be said to be responsible for said delay. Delay of certain days stated hereinbefore, even before the deemed date of commissioning was

condoned by the respondent wherever the delay was attributable to the Respondent"

***34**. Furthermore, it is evident upon a perusal of the impugned judgment that the learned Single Judge was not convinced that HVPNL could have levied L.D. with regard to the project in issue, i.e., Project G09 when it had not embarked on the said path in other contracts, as alluded to hereinabove. The observations made by the learned Single Judge in paragraph 57 of the impugned judgment bring forth this aspect:*

"57. In addition to the above, there is also merit in Cobra's contention that the Arbitral Tribunal has not taken into account other similar contracts between the parties where HVPNL had not levied any Liquidated Damages by accepting Cobra's contention that it was not responsible for the delay in commissioning of the project (s)."

***35**. According to us, although the fact that HVPNL had either not imposed L.D. or imposed minuscule damages in respect of other projects may not have much relevance work qua each project is executed based on the terms and conditions provided in the contract governing such projects, it certainly throws up a scenario where the adjudicator/arbitrator may need to employ a rough and ready method to ascertain reasonable compensation payable to the aggrieved person/entity. Rough and ready method/guesswork is a tool available to an arbitrator, which has received the imprimatur not only of the Supreme Court but also of other courts, even before judgment was rendered in the Construction and Design Services case.*

***35.1** The underlying rationale appears to be that as long as there is material available with the arbitrator that damages have been suffered, but it does not give*

him an insight into the granular details, he is permitted the leeway to employ honest guesswork and/or a rough and ready method for quantifying damages [See Mohd. Salamatullah v. Government of Andhra Pradesh, (1977) 3 SCC 590; Delhi Development Authority v. Anand and Associates, 2008 SCC OnLine Del 179; Good Value Engineers v. M.M.S. Nanda, Sole Arbitrator, 2009 : DHC : 5231; National Highway Authority of India v. ITD Cementation India Ltd., 2010 : DHC : 404; Mahanagar Gas Ltd. v. Babulal Uttamchand and Co., 2012 SCC OnLine Bom 1254; Bata India Ltd. v. Sagar Roy, 2014 SCC OnLine Cal 17998].

***35.2** Hence, in our view, the learned Single Judge could not have set aside the award on this score."*

40. Heard the Learned Senior Counsels and perused the material on record.

41. At the outset, it is necessary to delineate the contours of interference under Section 34 of the Arbitration and Conciliation Act, 1996. The jurisdiction of this Court is supervisory and not appellate. The Court does not sit in appeal over the findings of fact or interpretation of contract adopted by the Arbitral Tribunal. Interference is permissible only on the limited grounds enumerated in Section 34(2), including patent illegality appearing on the face of the award, contravention of the fundamental policy of Indian law, or conflict with the most basic notions of justice or morality. Errors of fact, re-appreciation of evidence, or substitution of contractual interpretation fall outside the permissible scope of review under Section 34 of the Act.

42. The principal objection of the Petitioner is that the Tribunal erred in determining the effective period of prolongation and in computing overheads and P&M idling charges on assumed parameters. It is contended that the Tribunal ought to have called for further documentary substantiation and that its adoption of industry norms amounts to conjecture.

43. The record reflects that the Tribunal examined the pleadings, the evidence adduced, and the sequence of extensions granted. It returned a finding that the delay in completion extended beyond the scheduled date and that such prolongation was attributable to the Petitioner. The quantification of prolongation costs was thereafter undertaken by adopting a formula based on the contract value and accepted industry practice. The Petitioner did not place before the Tribunal any specific and cogent quantification of the time exclusively attributable to variations, nor did it produce material segregating the value of work executed during the alleged variation period. In such circumstances, the Tribunal cannot be faulted for proceeding on the basis of the material available.

44. The Arbitral Tribunal in paragraphs 220, 222, 225 has dealt with the facts of the case and held that the extensions sought by the Respondent, and the delay in works were due to the conduct of the Petitioner entirely. It further held that all the extensions were granted without the levy of liquidated damages upon the Petitioner. The Tribunal held that the Respondent is benefitted under Section 54, 55, and 73 of the Indian Contract Act. The Tribunal has fairly held that if there is a contractual clause prohibiting a claim for loss/damages, then such contractual clauses have to be ignored and the contractor is liable to damages as per law. The Tribunal

relied upon a judgment of the Apex Court in *G. Ramachandra Reddy vs. Union of India* **(2009) 6 SCC 414** and *K.N. Sathyapalan vs. State of Kerala* **(2007) 13 SCC 43**.

45. The Tribunal further held in paragraphs 228 and 229 of the Impugned Award that notices of delay and cost implications were tendered by the Respondent to the Petitioner. The Apex Court in Northern Railway vs. Sarvesh Chopra **(2002) 4 SCC 45**, has held that if such notice is tendered, then in law, such claims can be provided despite of a clause prohibiting the same.

46. It is settled that while damages must be founded on evidence, mathematical precision is not an indispensable requirement where exact computation is impracticable. An arbitral tribunal is entitled to adopt a reasonable and recognised methodology for estimating loss, provided the estimation is not arbitrary and is supported by the evidentiary record. The adoption of a 10% parameter for overheads and a proportionate approach for P&M does not, in the facts of the present case, amount to creation of a new case. It constitutes a quantification exercise within the domain of the Tribunal.

47. The decisions relied upon by the Petitioner to contend that an award based on "assumptions" is liable to be set aside would apply only where the finding is based on no evidence or where material evidence has been ignored. The Impugned Award in the present case does not disclose such infirmity. The Tribunal in paragraph 233 of the impugned Award has already dismissed the objection of the Petitioner that the Claim No. 1 is based on assumed figures. The Tribunal has held that the claim has been

quantified on the basis of evidence before it, i.e., CW-1 and CW-2. Further, the Tribunal has relied upon the report of the EY to assess the claim. This Court is of the opinion that the Tribunal has passed a well-reasoned order taking into consideration all the evidence put before it for assessment of claim and therefore, this Court is not inclined to interfere with the aforesaid claim under Section 34 of the Act.

48. The Petitioner seeks a re-evaluation of the sufficiency of evidence and the correctness of the formula adopted. Such re-assessment is impermissible under Section 34. It is trite law that computation of damages depends on circumstances and how the quantum of such damages should be determined is a matter which would fall for the decision of the arbitrator. Therefore, this Court is not inclined to interfere with the findings of the Tribunal with respect to Claim No. 1.

49. In McDermott International Inc. v. Burn Standard Co. Ltd., **(2006) 11 SCC 181**, the Apex Court underscored that the court cannot correct errors of fact or re-quantify damages, and that the arbitrator is the final authority on appreciation of evidence. The Court further recognised that reasonable estimation of damages is permissible where precise computation is not feasible. The relevant portion of the said Judgment reads as under:-

> *"**52.** The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is*

desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

53. *However, this Court, as would be noticed hereinafter, has had the occasion to consider the matter in great detail in some of its decisions.*

54. *In Primetrade AG v. Ythan Ltd. [(2006) 1 All ER 367] jurisdictional issue based on interpretation of documents executed by the parties fell for consideration having regard to the provisions of the Carriage of Goods by Sea Act, 1992. It was held that as the appellant therein did not become holder of the bills of lading and alternatively as the conditions laid down in Section 2(2) were not fulfilled, the arbitrator had no jurisdiction to arbitrate in the disputes and differences between the parties.*

Vis-à-vis the duty to assign reasons

55. *Another important change which has been made by reason of the provisions of the 1996 Act is that unlike the 1940 Act, the arbitrator is required to assign reasons in support of the award. A question may invariably arise as to what would be meant by a reasoned award.*

57. *In Konkan Rly. Corpn. Ltd. v. Mehul Construction Co. [(2000) 7 SCC 201] this Court emphasised the mandatoriness of giving reasons unless the arbitration agreement provides otherwise.*

Public policy

58. *In Renusagar Power Co. Ltd. v. General Electric Co. [1994 Supp (1) SCC 644] this Court laid down that the arbitral award can be set aside if it is contrary to*

(a) fundamental policy of Indian law; (b) the interests of India; or (c) justice or morality. A narrower meaning to the expression "public policy" was given therein by confining judicial review of the arbitral award only on the aforementioned three grounds. An apparent shift can, however, be noticed from the decision of this Court in ONGC Ltd. v. Saw Pipes Ltd. [(2003) 5 SCC 705] (for short "ONGC"). This Court therein referred to an earlier decision of this Court in Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103] wherein the applicability of the expression "public policy" on the touchstone of Section 23 of the Indian Contract Act and Article 14 of the Constitution of India came to be considered. This Court therein was dealing with unequal bargaining power of the workmen and the employer and came to the conclusion that any term of the agreement which is patently arbitrary and/or otherwise arrived at because of the unequal bargaining power would not only be ultra vires Article 14 of the Constitution of India but also hit by Section 23 of the Indian Contract Act. In ONGC [(2003) 5 SCC 705] this Court, apart from the three grounds stated in Renusagar [1994 Supp (1) SCC 644] , added another ground thereto for exercise of the court's jurisdiction in setting aside the award if it is patently arbitrary.

***59.** Such patent illegality, however, must go to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the court. Where the arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute would come within the purview of Section 34 of the Act. However, we would consider the applicability of the aforementioned principles while noticing the merits of the matter.*

xxx

> ***106.*** *We do not intend to delve deep into the matter as it is an accepted position that different formulae can be applied in different circumstances and the question as to whether damages should be computed by taking recourse to one or the other formula, having regard to the facts and circumstances of a particular case, would eminently fall within the domain of the arbitrator.*
>
> ***107.*** *If the learned arbitrator, therefore, applied the Emden Formula in assessing the amount of damages, he cannot be said to have committed an error warranting interference by this Court.*
>
> *xxx*
>
> ***110.*** *As computation depends on circumstances and methods to compute damages, how the quantum thereof should be determined is a matter which would fall for the decision of the arbitrator. We, however, see no reason to interfere with that part of the award in view of the fact that the aforementioned formula evolved over the years, is accepted internationally and, therefore, cannot be said to be wholly contrary to the provisions of the Indian law."*

50. The controversy relating to GST centres around the interpretation of Clause 11.1.4 of the GCC and the corresponding provision in the SCC. The Petitioner contends that the contract price was inclusive of all taxes and that no adjustment could be granted on account of change in law. The Tribunal, however, interpreted the clause to hold that the introduction of GST, which subsumed earlier indirect tax regimes, occurred after the scheduled completion date and during an extended period attributable to the Petitioner, thereby resulting in additional financial burden to the Respondent. In fact, the Petitioner itself offered to reimburse the Respondent towards

implementation of GST at a rate lower than the awarded sum. The Petitioner therefore admitted its liability to reimburse the additional amount due to introduction of GST.

51. The Petitioner has objected to the interpretation of the relevant clauses by the Tribunal. The interpretation of contractual clauses lies squarely within the province of the Arbitral Tribunal. Section 28(3) of the Act mandates that the Tribunal decide in accordance with the terms of the contract. A mere difference in interpretation does not amount to violation of Section 28(3), unless the Tribunal disregards the contract altogether or adopts a view that is plainly contrary to its express and unambiguous language. The Impugned Award demonstrates that the Tribunal considered the relevant clauses and construed them in the factual matrix of delay and extension. The view that the exclusion clause would not operate to deny compensation for a financial burden arising during a prolonged period attributable to the employer is a plausible construction.

52. Clause 6.2 of the GCC, relied upon by the Petitioner, provides that no extra amount would be payable due to increase in minimum wages during the currency of contract period. The Tribunal interpreted this clause in the context of an extended period occasioned by the Petitioner's delay and held that the bar could not operate to deprive the contractor of compensation where the prolongation was not attributable to it. The Tribunal further recorded that evidence was led to demonstrate payment of enhanced wages. The Apex Court in P. M. Paul v. Union of India, **1989 Supp (1) SCC 368,** has held that grant of compensation when there is a delay on account of

employer is justified. The relevant extract of the judgment is reproduced hereunder:

> *"**12.** In the instant case, it is asserted that the extension of time was granted and the arbitrator has granted 20 per cent of the escalation cost. Escalation is a normal incident arising out of gap of time in this inflationary age in performing any contract. The arbitrator has held that there was delay, and he has further referred to this aspect in his award. The arbitrator has noted that claim No. I related to the losses caused due to increase in prices of materials and cost of labour and transport during the extended period of contract from 9-5-1980 for the work under phase I, and from 9-11-1980 for the work under phase II. The total amount shown was Rs 5,47,618.50. After discussing the evidence and the submissions the arbitrator found that it was evident that there was escalation and, therefore, he came to the conclusion that it was reasonable to allow 20 per cent of the compensation under claim No. I, he has accordingly allowed the same. This was a matter which was within the jurisdiction of the arbitrator and, hence, the arbitrator had not misconducted himself in awarding the amount as he has done.*
>
> ***13.** It was submitted that if the contract work was not completed within the stipulated time which it appears was not done then the contractor has got a right to ask for extension of time, and he could claim difference in price. This is precisely what he has done and has obtained a portion of the claim in the award. It was submitted on behalf of the Union of India that failure to complete the contract was not the case. Hence, there was no substance in the objections raised. Furthermore, in the objections raised, it must be within the time provided for the application under Section 30 i.e. 30 days during which the objection was not*

> *specifically taken, we are of the opinion that there is no substance in this objection sought to be raised in opposition to the award. Once it was found that the arbitrator had jurisdiction to find that there was delay in execution of the contract due to the conduct of the respondent, the respondent was liable for the consequences of the delay, namely, increase in prices. Therefore, the arbitrator had jurisdiction to go into this question. He has gone into that question and has awarded as he did."*

53. This constitutes an exercise in contractual interpretation and appreciation of evidence. The Tribunal has not ignored the clause; it has construed it harmoniously with the factual finding regarding delay. Such interpretation cannot be said to be perverse or in direct conflict with the contract. The Petitioner's objection once again invites this Court to re-appreciate evidence and re-interpret the clause, which is impermissible under Section 34.

54. The Tribunal awarded compensation towards ECC upon holding that the imposition did not fall squarely within the meaning of "tax", "duty" or "levy" as contemplated in the exclusion clauses and that it arose pursuant to order passed by the Apex Court by way of notification dated 23.12.2015 read with notification dated 05.01.2016 issued by the NCT of Delhi, during execution of the works. The Tribunal held that Clause 17.1 of the GCC permitted the Respondent to raise a claim for 'any additional payment under any clause of these Conditions and otherwise', and therefore, the Contract permitted the Respondent to advance claims 'otherwise' under law. The relevant extract of Clause 17.1 of the GCC is reproduced hereunder:

Procedure 17.1 If the Contractor intends to claim any

for claims

additional payment under any clause of these Conditions or otherwise, the Contractor shall give notice to the Engineer as soon as possible and in any event within 28 days of the start of the event giving rise to the claim.

The Contractor shall keep such Contemporary records as may be necessary to substantiate any claim, either on the Site or at any other location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer shall on receipt of such notice, inspect such records and may instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all such records, and shall (if Instructed) submit copies to the Engineer.

Within 28 days of such notice, or such other time as may be agreed by the Engineer, the Contractor shall send to the Engineer an account, giving detailed particulars of the amount and basis of the claim. Where the event giving rise to the claim has a continuing effect, such amount shall be considered as interim. The Contractor shall then, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event.

If the Contractor fails to comply with this Sub-Clause, he shall not be entitled to claim

any additional payment.

55. Since ECC was not a tax or levy but an additional charge imposed by the Apex Court, the clause C2.6(c) could not have been applicable. The Petitioner has not demonstrated that the said clause unequivocally and unambiguously bars such a claim irrespective of the cause or timing of the imposition. The interpretation adopted is not so irrational or implausible as to warrant interference.

56. The direction regarding payment of applicable taxes on the awarded amount is a consequential direction. In the absence of an express contractual prohibition, such a direction does not amount to rewriting the contract. No patent illegality is made out on this count.

57. A recurring theme in the Petitioner's objections is that the Tribunal relied upon assumptions, adopted inappropriate formulae, or ought to have demanded further documentary substantiation. These submissions, in essence, question the sufficiency and appreciation of evidence. The Impugned Award records that material evidence was led and that quantification was undertaken on the basis of recognised norms. The Court cannot sit in appeal over such appreciation.

58. This Court, therefore, finds that the Impugned Award does not suffer from patent illegality, is not in violation of Section 28(3), or in conflict with the fundamental policy of Indian law. The objections raised by the Petitioner seek re-appreciation of evidence and re-interpretation of contractual

provisions, which is beyond the permissible scope of interference under Section 34 of the Act.

59. The Apex Court in Consolidated Construction Consortium Ltd. v. Software Technology Parks of India**, (2025) 7 SCC 757** has reiterated the limited scope of interference of courts under Section 34 of the Act and has held as follows:

> "***46***. *Scope of Section 34 of the 1996 Act is now well crystallised by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.*

> ***47***. *Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act.*
>
> *****
>
> ***51***. *We are afraid the learned Single Judge had clearly gone beyond the grounds provided in Section 34 of the 1996 Act to set aside the arbitral award. The learned Single Judge exceeded the jurisdiction under Section 34 of the 1996 Act. There was no justification for setting aside the arbitral award by taking a different view. The view taken by the Arbitral Tribunal is certainly a possible and plausible view. A different interpretation of Clause 26 other than the one taken by the Arbitral Tribunal is possible but that will not bring the challenge to the arbitral award within the four corners of Section 34. In any view of the matter, mere setting aside of the arbitral award did not confer any benefit to the appellant. In the circumstances, the Division Bench [Software Technology Parks of India v. Consolidated Construction Consortium Ltd., 2019 SCC OnLine Mad 39306] was justified in reversing the order [Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, 2019 SCC OnLine Mad 1633] of the learned Single Judge under Section 37 of the 1996 Act."*

60. The Apex Court in Ssangyong Engineering & Construction Co. Ltd. v. NHAI, **(2019) 15 SCC 131**, held that "patent illegality" must appear on the face of the award and must go to the root of the matter. An erroneous application of law or re-assessment of evidence would not justify interference unless the award is so irrational that no reasonable person could

have arrived at such a conclusion. The Court emphasised that where two views are possible, the view taken by the arbitral tribunal must prevail. The relevant portion of the said Judgment reads as under:-

> "*70. The expression "most basic notions of ... justice" finds mention in Explanation 1 to sub-clause (iii) of Section 34(2)(b). Here again, what is referred to is, substantively or procedurally, some fundamental principle of justice which has been breached, and which shocks the conscience of the Court. Thus, in Parsons [Parsons & Whittemore Overseas Co. Inc. v. Societe Generale de l'Industrie du Papier (RAKTA), 508 F 2d 969 (2nd Cir 1974)] , it was held:*
>
> > *"7. Article V(2)(b) of the Convention allows the court in which enforcement of a foreign arbitral award is sought to refuse enforcement, on the defendant's motion or sua sponte, if 'enforcement of the award would be contrary to the public policy of (the forum) country'. The legislative history of the provision offers no certain guidelines to its construction. Its precursors in the Geneva Convention and the 1958 Convention's ad hoc committee draft extended the public policy exception to, respectively, awards contrary to "principles of the law" and awards violative of 'fundamental principles of the law'. In one commentator's view, the Convention's failure to include similar language signifies a narrowing of the defense [Contini, "International Commercial Arbitration: The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Award" [8 Am J Comp L 283 (1959)] , Am J Comp L at p. 304]. On the other hand, another noted authority in the field has seized upon this omission as indicative of an intention*

to broaden the defense [Quigley, "Accession by the United States to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards" [70 Yale LJ 1049 (1961)] , Yale LJ at pp. 1070-71].

8. Perhaps more probative, however, are the inferences to be drawn from the history of the Convention as a whole. The general pro-enforcement bias informing the Convention and explaining its supersession of the Geneva Convention points towards a narrow reading of the public policy defense. An expansive construction of this defense would vitiate the Convention's basic effort to remove pre-existing obstacles to enforcement. [see "Straus, Arbitration of Disputes between Multinational Corporations, in New Strategies for Peaceful Resolution of International Business Disputes" 114-15 (1971); Digest of Proceedings of International Business Disputes Conference, 14-4-1971, at 191 (remarks of Professor W. Reese)]. Additionally, considerations of reciprocity — considerations given express recognition in the Convention itself — counsel courts to invoke the public policy defense with caution lest foreign courts frequently accept it as a defense to enforcement of arbitral awards rendered in the United States.

9. We conclude, therefore, that the Convention's public policy defense should be construed narrowly. Enforcement of foreign arbitral awards may be denied on this basis only where enforcement would violate the forum State's most basic notions of morality and justice. [Restatement Second of the Conflict of Laws

117, comment c, at 340 (1971); Loucks v. Standard Oil Co. [Loucks v. Standard Oil Co., 224 NY 99 : 120 NE 198 (1918)] , NY at p. 111].”

71. *In Dongwoo Mann+Hummel Co. Ltd. v. Mann+Hummel GmbH [Dongwoo Mann+Hummel Co. Ltd. v. Mann+Hummel GmbH, 2008 SGHC 67] , the High Court of Singapore held:*

> *“131. In PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA [PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA, (2007) 1 SLR (R) 597] [PT Asuransi Jasa Indonesia (Persero)], the Court of Appeal explained what would constitute a conflict with public policy (at [57] and [59]):*
>
> > *‘57. … The legislative policy under the Act is to minimise curial intervention in international arbitrations. Errors of law or fact made in an arbitral decision, per se, are final and binding on the parties and may not be appealed against or set aside by a court except in the situations prescribed under Section 24 of the Act and Article 34 of the Model Law. … In the present context, errors of law or fact, per se, do not engage the public policy of Singapore under Article 34(2)(b)(ii) of the Model Law when they cannot be set aside under Article 34(2)(a)(iii) of the Model Law.*

***

59. Although the concept of public policy of the State is not defined in the Act or the Model Law, the general consensus of judicial and expert opinion is that public policy under the Act encompasses a narrow scope. In our view, it should only operate in instances where the upholding of an arbitral award would "shock the conscience" (see Downer Connect [Downer Connect Ltd. v. Pot Hole People Ltd., CIV 2003-409-002878, decided on 19-5-2004 (NZ, unreported)] , at p. 136, para 58), or is "clearly injurious to the public good or ... wholly offensive to the ordinary reasonable and fully informed member of the public" (see Deutsche Schachtbau-und Tiefbohrgesellschaft GmbH v. R'As al-Khaimah National Oil Co. [Deutsche Schachtbau-und Tiefbohrgesellschaft GmbH v. R'As al-Khaimah National Oil Co., (1990) 1 AC 295 : (1987) 3 WLR 1023 : (1987) 2 Lloyd's Rep 246 (CA)] , Lloyds' Rep at p. 254, per Sir John Donaldson MR), or where it violates the forum's most basic notion of morality and justice: seeParsons & Whittemore Overseas Co. Inc. v. Societe Generale de l'Industrie du Papier (RAKTA) [Parsons & Whittemore Overseas Co. Inc. v. Societe Generale de l'Industrie du Papier (RAKTA), 508 F 2d 969 (2nd Cir 1974)] , F 2d at p. 974. This would be consistent with the concept of public policy that can be ascertained from the preparatory materials to the Model Law. As was highlighted in the Commission Report

(A/40/17), at para 297 [referred to in A Guide to the Uncitral Model Law on International Commercial Arbitration: Legislative History and Commentary by Howard M. Holtzmann and Joseph E. Neuhaus (Kluwer, 1989) at 914]:

In discussing the term 'public policy', it was understood that it was not equivalent to the political stance or international policies of a State but comprised the fundamental notions and principles of justice… It was understood that the term 'public policy', which was used in the 1958 New York Convention and many other treaties, covered fundamental principles of law and justice in substantive as well as procedural respects. Thus, instances such as corruption, bribery or fraud and similar serious cases would constitute a ground for setting aside.' (emphasis in original)

132. In Profilati Italia SRL v. Paine Webber Inc. [Profilati Italia SRL v. Paine Webber Inc., (2001) 1 Lloyd's Rep 715] (Profilati), Moore-Bick, J. made the following observations in relation to the argument that non-disclosure of material documents constituted a breach of public policy in the context of Section 68 of the English Arbitration Act, 1996 (at [17], [19] and [26]):

'17. … Where the successful party is said to have procured the award in a way which is contrary to public policy it will normally be necessary to satisfy the

Court that some form of reprehensible or unconscionable conduct on his part has contributed in a substantial way to obtaining an award in his favour. Moreover, I do not think that the Court should be quick to interfere under this section [i.e. Section 68(2)(g) of the Arbitration Act, 1996]. In those cases in which Section 68 has so far been considered the Court has emphasised that it is intended to operate only in extreme cases…

***

19. Where an important document which ought to have been disclosed is deliberately withheld and as a result the party withholding it has obtained an award in his favour the Court may well consider that he procured that award in a manner contrary to public policy. After all, such conduct is not far removed from fraud…

***

26. Even if there had been a deliberate failure to give disclosure of the two documents in question it would still be necessary for Profilati to satisfy the Court that it had suffered substantial injustice as a result.'"

***72**. And finally, in BAZ v. BBA [BAZ v. BBA, 2018 SGHC 275] , the High Court of Singapore stated:*

"156. From the outset, it is important to reiterate that the public policy ground for setting aside or refusal of recognition/enforcement is very narrow in scope. The Court of Appeal has held that the ground should only succeed in cases where upholding or enforcing the arbitral award would "shock the conscience", or be "clearly injurious to the public good or ... wholly offensive to the ordinary reasonable and fully informed member of the public", or violate "the forum's most basic notion of morality and justice" [PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA [PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA, (2007) 1 SLR (R) 597] , SLR para 59] (PT Asuransi). In Sui Southern Gas Co. Ltd. v. Habibullah Coastal Power Co. (Pte) Ltd. [Sui Southern Gas Co. Ltd. v. Habibullah Coastal Power Co. (Pte) Ltd., (2010) 3 SLR 1] (Sui Southern Gas), the High Court stated that to succeed on a public policy argument, the party "had to cross a very high threshold and demonstrate egregious circumstances such as corruption, bribery or fraud, which would violate the most basic notions of morality and justice" (at [48]). The 1985 UN Commission Report states at para 297 that the term public policy "comprised the fundamental notions and principles of justice", and it was understood that the term "covered fundamental principles of law and justice in substantive as well as procedural respects". The 1985 UN Commission Report further explains that Article 34(2)(b)(ii) of the Model Law "was not to be interpreted as excluding instances or events relating to the manner in which an award was arrived at".

> *157. It is clear that errors of law or fact, per se, do not engage the public policy of Singapore under Article 34(2)(b)(ii) of the Model Law when they cannot be set aside under Art 34(2)(a)(iii) of the Model Law (PT Asuransi [PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA, (2007) 1 SLR (R) 597] , SLR para 57), with the exception that the court's judicial power to decide what the public policy of Singapore is cannot be abrogated (AJU v. AJT [AJU v. AJT, (2011) 4 SLR 739] , SLR para 62 AJU v. AJT).*
> *...*
>
> ***
>
> *159. ... This balance is generally in favour of the policy of enforcing arbitral awards, and only tilts in favour of the countervailing public policy where the violation of that policy would "shock the conscience" or would be contrary to "the forum's most basic notion of morality and justice". In determining whether the balance tilts towards the countervailing public policy, it is important to consider both the subject nature of the public policy, the degree of violation of that public policy and the consequences of the violation.""*

61. The Apex Court in Delhi Metro Rail Corporation Limited v. Delhi Airport Metro Express Private Limited, **2024 (6) SCC 357,** has reiterated the limited scope of courts under Section 34 of the Act and has held as under:

> *"**33.** Section 34 of the Arbitration Act delineates the grounds for setting aside an arbitral award. The provision, as amended by the Arbitration and Conciliation (Amendment) Act, 2015 reads as follows:*

*"**34. Application for setting aside arbitral award**.—*
*(1) * * **

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

*(a)****

(b) the Court finds that—

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

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

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

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

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

(emphasis supplied)

34. *The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by "patent illegality" appearing on the face of the award.*

35. *In Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:*

(i) based on no evidence;

(ii) based on irrelevant material; or

(iii) ignores vital evidence.

36. *Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned.*

37. *A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] observed : (SCC pp. 75 & 81, paras 31 & 42)*

> *"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*
>
> *(i) a finding is based on no evidence, or*
>
> *(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
>
> *(iii) ignores vital evidence in arriving at its decision,*
>
> *such decision would necessarily be perverse.*
>
> ***
>
> *42.1. … 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside."*
>
> *(emphasis supplied)*

38. *In Ssangyong Engg. & Construction Co. Ltd. v. NHAI [Ssangyong Engg. & Construction Co.*

Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , a two-Judge Bench of this Court endorsed the position in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , on the scope for interference with domestic awards, even after the 2015 Amendment : (Ssangyong Engg. & Construction Co. case [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , SCC p. 171, paras 40-41)

> *"40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).*
>
> *41. ... 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."*
>
> *(emphasis supplied)*

> ***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. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149.] 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 his jurisdiction or violating a fundamental principle of natural justice."*

62. Tested on the touchstone of the aforesaid law, the present challenge does not meet the threshold contemplated under Section 34 of the Act. The objections raised by the Petitioner essentially invite this Court to re-appreciate the evidence relating to delay and prolongation, re-interpret contractual clauses concerning taxes, minimum wages and change in law, and re-assess the methodology adopted for quantification of damages. Such an exercise would amount to converting proceedings under Section 34 into a first appeal on facts and law, which is impermissible.

63. The Impugned Award reflects a reasoned consideration of the pleadings, evidence and contractual framework. The Tribunal has not disregarded the contract; rather, it has interpreted the relevant clauses in the factual context of delay and extension. The interpretation adopted cannot be said to be so implausible, irrational or contrary to the express terms of the

Contract as to attract the ground of patent illegality under Section 34. Nor has the Petitioner demonstrated any violation of Section 28(3) of the Act.

64. The existence of a dissenting award, howsoever elaborate, does not dilute the binding character of the Majority Award. Arbitration law recognises that the decision of the majority constitutes the award. Where the majority view represents a plausible and reasoned construction of the contract, the Court cannot supplant it with the reasoning of the dissent.

65. In view of the foregoing discussion, this Court is satisfied that the Petitioner has failed to establish any ground falling within the limited parameters of Section 34 of the Act. The impugned Majority Award dated 28.04.2021 does not suffer from patent illegality, perversity, or conflict with the fundamental policy of Indian law.

66. Accordingly, the present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 is dismissed. All pending applications, if any, stand disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

SUBRAMONIUM PRASAD, J

MAY 04, 2026
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