

**IN THE COURT OF SH. SACHIN SOOD
DISTRICT JUDGE-01 (CENTRAL):
TIS HAZARI COURTS: DELHI**



ARB. No. 985/2017

CNR No. DLCT-01-0130802017

Union of India,

Through the Executive Engineer,
PWD,

East Road Maintenance Division

(M-212), Ramesh Park, Near Shakarpur Police Station,
Pusta Road, Delhi- 110092.

....PETITIONER

V E R S U S

1. M/s Mahavir Prasad Gupta & Sons.

E-165, Shastri Nagar,
Delhi – 110052.

2. Sh. Jagmohan Lal (Sole Arbitrator)

Flat No. – 121, Ankur Apartment,
Plot No. -7, I.P Extension,
Patparganj, Delhi – 110092.

....RESPONDENTS

Date of Institution : 06.09.2017.

Date of Reserving : 23.05.2026.

Date of judgment : 05.06.2026.

J U D G M E N T

1. The Present petition u/s 34 of the Arbitration and Cancellation Act 1996
has been preferred against the arbitral award dated 08.06.2017 whereby,

the Ld. Sole Arbitrator has directed the petitioner to pay to the respondent no 1, a sum of Rs. 36,59,032/-. The Ld. Sole Arbitrator has further directed that in case the amount of Rs. 36,59,032/- is not paid by 10.08.2017, the same shall carry simple interest at the rate of 11% per annum from the date of the award till its actual payment.

Brief facts of the case:

2. a) The petitioner floated a tender with respect to strengthening of NH-24 from RD 3.4 to 5.7 Km in which the respondent no. 1 had participated and its submitted bid was accepted for an amount of Rs. 6,12,96,575/- which was 30.65 below the estimated cost of Rs. 8,83,87,275/-. As per the NIT, as floated by the petitioner, the stipulated date of start was 04.07.2015, and the work was required to be completed within 60 days from the date of starting the work i.e. on 01.09.2015. As per the NIT, the respondent no 1 was required to deposit performance guarantee in favour of the petitioner at the rate of 5% of the tendered amount which was submitted by the respondent no 1 to the petitioner at an amount of Rs. 30,64,829/- under the cover of letter dated 27.06.2015. The performance bank guarantee was extended upto 24.10.2018 by the respondent no 1 vide letter dated 09.07.2015. As per the NIT, the said NIT was to form part of the contract and the NIT was subject to the

additional conditions, specifications and drawings besides being subject to the standard general condition of contract for CPWD works. As per the terms of the general specifications forming part of the contract, MORTH specifications for roads and bridge work published by IRC was to form part of the contract.

b) Since as per the petitioner, the respondent no 1 failed to commence the work within the stipulated date of the start, the petitioner vide letter dated 07.07.2015 informed respondent no 1 that the scheduled date of start of the work was 04.07.2015 and the respondent no 1 has not started the work despite the site being available which was reiterated by the petitioner vide its letter dated 17.07.2015. The respondent no 1 vide letter dated 28.07.2015 informed the petitioner that they have already mobilized at site during the first week of July, 2015 and have deployed the survey team. It was further stated by respondent no 1 that the department would like to take up bituminous work after the monsoon season was over as the first layer of BM/DBM would suffer severe damages if there is any rain during or immediately after the laying operation.

c) The petitioner vide its letter dt. 30.07.2015 replied to the letter as issued by respondent no 1 stating that the monsoon was not active and

there is sufficient time in between the rains and it was advised to respondent no 1 to contact the concerned site In-Charge by 05.08.2015 failing which action as deemed fit under clause 5 and other relevant provisions of the agreement shall be initiated. The respondent no 1 was further informed that the letter dated 30.07.2015 was to be treated as a final notice.

d) The respondent no 1 vide its letter dated 11.08.2015 informed to the petitioner that the period w.e.f July upto 15th September is designated as the core monsoon duration in and around Delhi as well as north India. It was further informed that during monsoon season, the quarries did not operate and remain shut down due to which the consistent supply of good quality aggregate cannot be ensured at site. It was further informed that due to the aforesaid reason, the source of material and sample etc. was not submitted. It was further informed that all the related equipments and site office is available within 10 Km radius of the site. It was further informed that for carrying out the bituminous work bone-dry surface is required and maximum 24 hours of time is required from the event of heating the bitumen and its final rolling at the site and that any spell of rain, even a smaller spell, will spoil the material and surface both which would have financial implications and hence such risk is to be avoided.

e) Vide letter dated 13.08.2015, the petitioner denied the averment of the respondent no 1 to the effect that quarries were not functioning during the monsoon season or that the material is unavailable. It was thus stated by the petitioner that the submissions made with respect to non starting of the work were fabricated and are not acceptable to the petitioner.

f) Vide letter dated 22.08.2015, since respondent no 1 failed to carry out the work at site, the petitioner forfeited the performance guarantee of respondent no 1 as furnished for an amount of Rs. 30,64,829/- and the respondent no 1 was restrained from participating in the re-tendering process for the work as awarded to the respondent no 1. Thereafter, the petitioner re-tendered the scheduled work which was awarded to another agency i.e. M/s MIA Construction Pvt. Ltd. with its stipulated date of start as 20.10.2015 and stipulated date of completion as 18.12.2015. The work as awarded to M/s MIA Construction Pvt. Ltd. was completed on 25.02.2016.

g) Aggrieved by the forfeiture of the performance guarantee and termination of the contract, the respondent no 1 invoked the arbitration clause and claimed the following amounts:

Claim No. 1: Refund of security and performance money = 30,64,829/-

Claim No. 2: Claim on account of loss or profit = 6,12,657/- being 10% of the contract value.

Claim No. 3: Interest @ of 18% on claim no. 1 and 2.

Claim No. 4: Cost of arbitration = 5,00,000/-

- h) The petitioner herein filed reply to the claims as preferred by the respondent no 1 herein. As per the said reply to the statement of claim, it was contended by the respondent no 1/petitioner herein that since the claimant did not commence the work despite several letters issued to it by the petitioner herein to start the work and failed to mobilize at site without seeking extension of time, the respondent no 1/petitioner herein was constrained to forfeit the performance guarantee in terms of the conditions of the NIT vide letter dated 22.08.2015. It was further contended by the respondent/petitioner herein that the claimant/respondent herein failed to even take up the pre-requisite work which goes to show that the claimant had no intention to start the work. It was further contended that the respondent herein failed to mobilize its resources and to commence the work despite several warnings having been issued to the respondent no 1 herein. It was thus prayed that the claims as preferred by the claimant/respondent no 1 herein be dismissed.
- i) Ld. Sole Arbitrator vide award dated 08.06.2017 on the basis of MORTH specifications forming part of the contract and the hindrances posed on account of the monsoon period held that the forfeiture of

performance guarantee was not justified and also that the termination of the contract was unlawful.

j) Assailing the said award, the present petition u/s 34 has been filed on the ground that the Ld. Sole Arbitrator failed to appreciate that as per the terms and conditions of the contract since the respondent no 1 failed to commence the work on the stipulated date of start, the petitioner herein was within its right to forfeit the performance guarantee.

k) It is further a ground of the present petition that the Ld. Sole Arbitrator failed to appreciate the conduct of the respondent no 1, who did not take even a single step to commence the work. It is further stated that laying of bituminous work is a much later activity and prior to the same, pre-requisite steps had to be taken which the respondent no 1 failed to take. It is thus submitted that the aforesaid goes to show that the respondent no 1 was not at all interested to commence the work and all throughout frivolous grounds of bad weather had been taken.

l) The petitioner has also taken a ground that the Ld. Sole Arbitrator has wrongfully returned a finding that time was not an essence of the contract, which clearly was of essence since as per Clause 3.1, the respondent no 1 was required to submit detailed program for execution

of the work showing activity distinctly alongwith bar chart/PERT within two weeks from the date of the award of the work.

3. A reply to the present petition has been filed on behalf of the respondent no 1, thereby, contending as follows:

a) That no grounds under Section 34 of The Arbitration & Conciliation Act, 1996 have been urged by the petitioner. It has further been contended that the Court in exercise of powers under Section 34 of The Arbitration & Conciliation Act, 1996 do not act as an Appellate Court and it is the Ld. Sole Arbitrator, who is the master of the quantity as well as quality of evidence. It has further been stated that entire work was a bituminous work for which bone dry surface was required. It is further contended that for bituminous work, 24 hours time period is required from the event of heating of the bituminous and its final rolling at the site. It has further been contended that the weather data report also indicated that from the stipulated date of start of work till 22.08.2015 i.e. the date of forfeiture of performance guarantee, it had rained continuously except on 19 days in stretches of 1 to 3 days. It is further stated that since rain during the period commencing w.e.f the scheduled date of start and till the time of forfeiture of the performance guarantee

was always imminent, the work could not have been executed due to the applicability of MORTH specifications.

b) It has further been contended that the MORTH specifications were part of the contract between the parties, which clearly specifies that during rains or in case of standing water or due to dampness of the base binder bituminous work has to be suspended.

c) It has further been submitted that the time was not the essence of the contract since Clause 5 of the agreement provides for extension of time and levy of compensation. It is thus stated that the Ld. Sole Arbitrator has clearly observed that time was not the essence of the contract between the parties, who accordingly held the forfeiture of the performance guarantee to be unlawful.

d) It has further been submitted that the respondent no 1 vide letter dated 28.07.2015 and other letters had time and again requested the petitioner that on account of the monsoon season, bituminous work cannot be executed which clearly was a hindrance beyond the control of the respondent, who despite the same had chosen to terminate the contract and forfeit the performance bank guarantee without giving any extension of time which was envisaged by the agreement.

e) It is thus contended that the present petition filed under Section 34 being bereft of any merit be dismissed.

4. I have carefully gone through the record and perused the same.

5. The petitioner before this Court has invoked Section 34 of the Act, 1996, to challenge the impugned Award. The relevant portion of the said provision is reproduced hereunder for perusal and consideration:

“Section 34 – Application for setting aside arbitral awards---

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

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

(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that]--

(i) a party was under some incapacity, or (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part;

or (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[(2A) 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.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]..”

6. The law regarding patent illegality, public policy, and fundamental policy of India is no longer res-integra. Section 34 of of The Arbitration & Conciliation Act, 1996 has been well interpreted through various judicial precedents. As per the said precedents, the scope of Section 34

of The Arbitration & Conciliation Act, 1996 being very limited in nature, has been thoroughly explored by the Indian legal system.

7. The challenge of an Award under Section 34 of The Arbitration & Conciliation Act, 1996 arising out of Arbitration proceedings must satisfy the tests laid down by virtue of the provisions of the Arbitration & Conciliation Act, 1996 and the law settled by way of pronouncements by the Hon'ble Supreme Court. The Act, 1996 has been set forth with the intention to limit the interference of the Courts in the arbitral proceedings.
8. The Arbitral Tribunal, who in its wisdom, passes an Award, upon conducting the arbitration proceedings with the participation of parties to the dispute, considering the Statement of Claim and Statement of Defence presented by and on behalf of the parties, the relevant documents placed on record by the parties, is considered as Court for the purposes of adjudicating the dispute before it. An unfettered scope of intervention in its functioning would defeat the spirit and purpose of the Act, 1996. Therefore, the Hon'ble Supreme Court has time and again reiterated that the scope of intervention of the Courts is limited in the cases of challenge under Section 34.
9. The Hon'ble Supreme Court in **Delhi Airport Metro Express (P) Ltd.v.**

DMRC, (2022) 1 SCC 131, has observed as under:

“28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavors made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

x x x

30. Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression “public policy of India” and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.

31. In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , this Court held that the meaning of the expression “fundamental policy of Indian law” would be in accordance with the understanding of this Court in Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] . In Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , this Court observed that violation of the Foreign Exchange Regulation Act, 1973, a statute enacted for the “national economic interest”, and disregarding the superior Courts in India would be antithetical to the fundamental policy of Indian law. Contravention of a statute not linked to public policy or

public interest cannot be a ground to set at naught an arbitral award as being discordant with the fundamental policy of Indian law and neither can it be brought within the confines of “patent illegality” as discussed above. In other words, contravention of a statute only if it is linked to public policy or public interest is cause for setting aside the award as being at odds with the fundamental policy of Indian law. If an arbitral award shocks the conscience of the court, it can be set aside as being in conflict with the most basic notions of justice. The ground of morality in this context has been interpreted by this Court to encompass awards involving elements of sexual morality, such as prostitution, or awards seeking to validate agreements which are not illegal but would not be enforced given the prevailing mores of the day. [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213]”

10. The above-mentioned judgment by the Hon’ble Supreme Court states that the concepts which are to be followed under Section 34 of the Act, 1996 are crystal clear. When a court applies the “public policy” test to an arbitration award, the Court does not function as a court of appeal, and as a result, any mistakes of fact that may have been made, cannot be rectified. This is something that must be recognized very well. Since, the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when delivering his arbitral award, each possible view that the arbitrator may have on the facts needs to pass his approval in order for it to be considered. Therefore, an award that is based on scanty evidence or on evidence that a trained legal mind deems to be of insufficient quality would not be deemed to be invalid on the basis of this criterion. After it has been established that the arbitrator's method is

neither arbitrary nor capricious, then it can be said that he has the final word on the facts. There is also no dispute on the position of law that an Arbitrator being creature of a Contract, has to confine himself to the provisions of the Contract while deciding the dispute.

11. Under Section 34 of the Act 1996, it is a well-settled position that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground as provided under Section 34(2)(b)(ii) of the Act, 1996, i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments in the 1996 Act in 2015, a violation of India public policy in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality and existence of patent illegality in the arbitral award. The concept of the fundamental policy of Indian Law would cover the compliance with the statutes under judicial precedents adopting a judicial approach, compliance with the principles of natural justice, and reasonableness.
12. It is only if one of the conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii) of the Act, 1996, but the said interference does not entail a review of the merits of the dispute as it is limited to the situations where the findings of the arbitration are

arbitrary, capricious, or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with, if the view taken by the Ld arbitrator is a possible view based on the facts.

13. Hence, there is a limitation on the powers of this Court while examining its jurisdiction under Section 34 of the Act, 1996, however, at the same time, if the interpretation put forward by the Arbitral Tribunal, on the face of it is incorrect and rendering a Clause in the Agreement to be redundant, such interpretation cannot be sustained.

14. In the case of **Reliance Infrastructure Ltd. v. State of Goa, 2023 SCC**

OnLine SC 604, wherein, the Hon'ble Supreme Court held as under:

“47. Having regard to the contentions urged and the issues raised, it shall also be apposite to take note of the principles enunciated by this Court in some of the relevant decisions cited by the parties on the scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the Act of 1996.

48. In MMTC Limited (supra), this Court took note of various decisions including that in the case of Associate Builders (supra) and expounded on the limited scope of interference under Section 34 and further narrower scope of appeal under Section 37 of the Act of 1996, particularly when dealing with the concurrent findings (of the Arbitrator and then of the Court).

This Court, inter alia, held as under:—

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b) (ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of

patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and *Wednesbury* [*Associated Provincial Picture Houses v. Wednesbury Corpn.*, [1948] 1 K.B. 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See *Associate Builders v. DDA* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]. Also see *ONGC Ltd. v. Saw Pipes Ltd.* [*ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705]; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation* [*Hindustan Zinc Ltd. v. Friends Coal Carbonisation*, (2006) 4 SCC 445]; and *McDermott International Inc. v. Burn Standard Co. Ltd.* [*McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181]).

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award

has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

15. In the case of **Ssangyong Engg. & Construction Co. Ltd. v. NHAI**, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213, the Hon’ble Supreme Court of India has set out the scope of challenge under Section 34 of the Act of 1996 in further details in the following words:—

“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.

38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

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. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterized as perverse.”

16. The limited scope of challenge under Section 34 of the Act was once again highlighted by Hon’ble Apex Court in the case of **PSA SICAL Terminals Pvt Ltd Vs Board of Trustees of VO (AIR 2021 SC 4661)** which explained the relevant tests as under:

“43. It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a) (iii) of the Arbitration Act would continue to be the grounds of challenge of an award. 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”. It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

44. A decision which is perverse, though would not be a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. However, 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.

45. To understand the test of perversity, it will also be appropriate to refer to paragraph 31 and 32 from the judgment of this Court in Associate Builders (supra), which read thus:

“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.

32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], it was held : (SCC p. 317, para 7)

“7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.””

17. Keeping the principles observed in the foregoing paragraphs, this Court will now examine the present case. The Ld. Sole Arbitrator vide award dated 08.06.2017, has allowed only one claim of the respondent no 1 i.e. directing the refund of the security and performance money. Vide the award dated 08.06.2017, the Ld. Sole Arbitrator has taken due cognizance of the MORTH specifications which were required to followed for road work and for bituminous work in particular. Ld. Sole Arbitrator vide the award dated 08.06.2017, had duly taken into

consideration the weather data report which specifies that w.e.f 04.7.2015 (stipulated date of start) till 22.08.2015 (date of forfeiture of performance guarantee) it had rained almost continuously except on 19 days in stretches of 1-3 days. Ld. Sole Arbitrator has interpreted the same to mean that out of 50 days it had rained on 31 days in this period. It has been held by Ld. Sole Arbitrator that under such circumstances, it was not possible to predict on any date on which the rain would not occur. It has further been held that during such period (monsoon period), rain is always imminent and also the base course may always be damped as it may not dry completely during the short spills of dry days, it will never be advisable to take up bituminous work in such weather conditions in view of MORTH specifications.

18. The Ld. Sole Arbitrator further held that the respondent no 1 had been bringing the hindrance on account of the monsoon period to the knowledge of the petitioner from time to time, who held that the hindrance could be considered and recorded in the hindrance register and reasonable extension of completion of the work could have been granted. It was further held that as per Clause 5 of the agreement, non-filing of the application by the respondent no 1 seeking extension of time/re-scheduling of the mile stone was not a bar for giving a fair and

reasonable extension/re-scheduling of the mile stone by the petitioner, which request as per the Ld. Sole Arbitrator too was made by the respondent no 1 herein vide its letter dated 01.09.2015. Ld. Sole Arbitrator while awarding claim no. 1 i.e. refund of the forfeited amount towards performance guarantee also took into consideration the scheduled date of start of work awarded to another agency to be 20.10.2015 and which work was only completed by the said agency on 25.02.2016. It was thus held by Ld. Sole Arbitrator that in view of the contract providing for extension of time, the stipulated time cannot be said to be an essence of the contract and it was thus held that the termination of the contract was not lawful. Keeping in view the fact that the Ld. Sole Arbitrator returned the said findings based upon the MORTH specifications forming part of the agreement, no interference against the said findings is permissible in view of the settled law stated in the foregoing paras (supra). From the aforesaid, it is clear that the Ld Sole Arbitrator has given reasons for allowing claim no.1 and thus, this Court in the exercise of the powers u/s 34 of The Arbitration and Conciliation Act, 1996 does not act as an appellate court in accordance with the ratio of the judgment passed in the matter of Reliance Infrastructure Ltd Vs State of Goa (Supra) and also in the judgment passed in the matter of

Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213]. The view taken by the Arbitrator is a plausible view, who while passing the award has duly taken into consideration the MORTH specifications forming part of the contract and no illegality/perversity can be said to have crept into the award dated 08.06.2017 as passed by Ld. Sole Arbitrator.

19. Thus, the present petition being bereft of any merit is dismissed.

20. File be consigned to record room after due compliance.

Announced in the open court
on **05.06.2026**

(Sachin Sood)
DJ-01 (Central)
THC, Delhi.