IN THE COURT OF RAJESH TOMAR, DISTRICT JUDGE, MANDI DIVISION, DISTRICT MANDI H.P.

CIS Registration No. : 102 of 2024.
CIS CNR No. : HPMA01-000634-2024
Arbitration Act No. : 102 of 2024
CIS Filing No. : 334 of 2024.
Date of Filing. : 26.02.2024
Date of decision : 07.03.2025

National Highway Authority of India, Project Implementation Unit, VPO Gutkar, Tehsil Sadar, District Mandi, H.P. through its Project Director.

Now though Varun Chari S/o Sh. Suresh Kumar Chari aged 34 years, duly authorized signatory, presently working as Project Director, PIU-Mandi.

Applicant.

Versus

1. Sh. Ram Chand S/o Sh. Mangat Ram, R/o village Takoli, P.O. Nagwain, Tehsil Aut, District Mandi, H.P.
2. Special Land Acquisition Officer -cum- Competent Authority under National Highway Act 1956 -cum- Assistant Commissioner to Deputy Commissioner, Pandoh, District Mandi, H.P.

Respondents.

APPLICATIONS UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996, SEEKING SETTING ASIDE THE IMPUGNED AWARD DATED 30.05.2023 PASSED BY LEARNED ARBITRATOR CUM-DIVISIONAL COMMISSIONER, MANDI, DISTRICT MANDI, H.P.

For the Applicant : Sh. Lokesh Kapoor, Adv.
For Respondent No.1 : Sh. Kirti Thakur, Adv.
For Respondent No.2 : Sh. Vinod Bhardwaj, Ld. DA.

J U D G M E N T

The present application under Section 34 of the

Arbitration and Conciliation Act, 1996 (**hereinafter referred to as "the Act")** has been filed for setting aside the award No.433/2019 dated 30.05.2023, passed by the learned Divisional Commissioner Mandi, exercising the power of Arbitrator under National Highways Act, 1956.

2. The parties shall hereinafter be referred to as **"NHAI", "landowners",** and **"Competent Authority"** for the determination of controversy arising between the parties.

3. Material facts necessary for the disposal of the present application are thus that the Central Government issued notification No. S.O.512(E), dated 16.02.2015 under Sub Section (1) of Section 3A of the National Highway Act, 1956, which was published in Gazette of India on dated 16.02.2015 declaring the intention to acquire the land for building (four-laning etc.) maintenance, management and operation of National Highway-21, in the stretch of land from km.190.000 to 248.000 k.m. in village Takoli/510 from kilometers 242+300 to 243+600, Tehsil Aut District Kullu, H.P. The notification was also published in two daily newspapers i.e. "Hindustan Times" (English) and "Divya Himachal" (Hindi) both dated 27.03.2015, which are widely circulated in the locality. Against the notification mentioned above, the landowners/interested persons file objections and after consideration, the Central Government declared that the land specified in the schedule be acquired for the aforesaid purpose. Notification No.SO 478 (E) under sub section 1 of Section 3D of the NH Act to this effect was published on 15.02.2016 in the official Gazette of India. Further, in pursuance of sub section 2 of section 3D of the Act, the Central Government declared that on publication of notification in the Central Govt. free from all encumbrances and the notification was also published in the daily

newspaper i.e. “Hindustan Times (Hindi) and Punjab Kesari (Hind) dated 03.03.2016. Against this notification 39 objections were received. The notice under sub section 3 of section 3G of the said Act was also published in the daily newspaper “Amar Ujala (Hindi) and The Tribune (English) on 24.08.2016 requiring all the persons interest in the land to be acquired, to submit their claims for compensation with Competent Authority/Land Acquisition Officer Pandoh, Distt. Mandi. The objections received on notification under section 3D and 3G were heard by the Competent Authority at Jhiri. On the basis of directions received through the National Highway Authorities the compensation of the land was announced as per the provisions of section 26 to 30 of RFCTARR, 2013. The Competent Authority opined that the Collector/Circle rates for category-1 land of adjoining village Nagwain/509 in District Mandi through which the proposed four-lane NH would cross is Rs.7768/- per bishwani and the collector circle rates for the next village Jhiri is even lower i.e. 3195/- per bishansi and 1582/- per square meter but an award at the rate of Rs.4758 per meter was prepared for village Jhiri. The Competent Authority found that there was no difference of land and the factor which determined the market rate in village Jhiri and Takoli and those two villages were almost similar and similar type of land in these villagers were acquired. The Competent Authority/LAO awarded the rate of Rs.4758/- per square meters for village Takoli on the pattern of the rates awarded for villages in the vicinity Jhiri, and Hat in the interest of equity justice and beneficial to the affected families. Factor 1 was applied by the competent authority on the market value in view of the notification regarding the factor issued by the Government of HP/ Revenue department bearing No.Rev.B.A.(3)/2014-I and solatium at the rate of 100% of the compensation amount was determined as per section 30(1) of the RFCTLARR Act, 2013.

4. Being aggrieved from and dissatisfied with the award No.111 dated 23.02.2017, passed by the Competent Authority, the landowner filed application under Section 3G(5) of the Act for the determination and enhancement of the amount of compensation payable to the applicant/landowner, before the Learned Arbitrator on the ground that the amount of compensation and price of the land as assessed and determined by the Competent Authority/ Land Acquisition Officer is not acceptable to the applicants because the same is inadequate, unjust, unfair and is against the provisions of Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Re-settlement Act, 2013. Re-determination of the compensation was prayed on the grounds that the market value of the property acquired at the relevant time was more than Rs.3 Crore per bigha. The Award passed by the Competent Authority is unreasonable and is based on assumption, surmises and conjectures and is against the well settled principles of assessment of market value of the property acquired through compulsory acquisition and Act of 2013. The competent authority did not adopt the criteria while assessing and determining the market value of the land of Muhal Takoli, as envisaged under section 26(1) (A) (B) (C) of the Right to Fair Compensation Act, which is fully explained. The LAO/ Competent Authority did not take into consideration the highest average sale price of muhal Nagwain, Pandoh and other adjoining mohals which are equidistant and nearest in vicinity from the acquired land and which have similar potentiality and type of land. It was submitted that the respondent No.1 did not take into consideration

notification No.425(E) dated 09.02.2016 issued by Union of India by exercising the Power under section 113 of the Act of 2013 in giving effect to the provisions of the Act in which the Union Government directed to consider and apply the factor (2) in rural areas as mentioned in 1st Schedule Column No.3. The respondent No.1 i.e. the Competent Authority wrongly and illegally applied and taken into consideration the multiplication factor as specified by the State Government as per notification No. Rev.Stamp(F)6-1/2009-II dated 12.01.2016, which has been issued by Revenue Department of H.P. Government in regard to Stamp and Registration Act and not in the Act of 2013 and ignored the notification No.425(E) issued by the Central Government. It was submitted that the land in muhal Takoli is a gateway to Kullu-Manali valley and tourist are visiting the place and has abundance of tourist activities throughout the year and is also the point of river rafting in the river Beas. It was submitted that the place Takoli is a handicraft and handloom business centre and natural environmental hotels and a nature park. The land and buildings of Takoli has great potentiality from agriculture, horticulture and especially for off season crops, yielding in the muhal. The new varieties of pomegranate, apples kiwi, plum etc. are the best yielding crops and the land of the muhal is very suitable for vegetable production also. It was submitted that the acquired land is situated on the main NH-21 i.e. in between Aut and Bhuntar. It was submitted that the village is a part of highly developed fertile valley and also known for its orchards and off season vegetable which is the main source of livelihood for the applicant and village Takoli is few kilometers from Bhuntar Airport. It was submitted that the applicant is also entitled for compensation on account of severance of land as the left out land, house, shops etc. will be of no use as there is no provisions of ingress to the four land highway from the either side of the remained land. It was submitted that the applicant reserves his right to add, alter, amend or modify his claim and prayed that he may be awarded compensation for the acquired land @10 Lakh per bishwa and an amount of Rs.20 Lakh per bishwa for the damage suffered by him on account of severance of land along with all the monetary and other benefits under the provisions of the Act of 2013 and interest.

5. The application was opposed by filing reply on *inter alia* preliminary objections of maintainability, estoppel, locus standi and limitation. On merits, it was submitted that the land of the applicant has been acquired and compensation has rightly been paid to the applicant. The competent authority has rightly assessed the market value of the acquired land and has rightly awarded the compensation which is just and fair as per the provisions of law. It is admitted that the land of the applicants has been acquired for the construction of four-lane and the competent authority has rightly passed the award after due inquiry. The competent authority visited the spot and called the objections of the aggrieved and were also asked to submit the actual sale deed of the land in question in support of their demands, but no such sale transaction was provided during the inquiry and the compensation has been rightly assessed as er the market value prevailing at the time of passing of the award and multiplier factor has rightly been applied for the same. Remaining contents of the application were denied and it was prayed that application be dismissed.

6. On elucidating the pleadings of the parties, following issues were framed by the learned arbitrator:

1) Whether the compensation of acquired properties, if any, paid by the Competent Authority is inadequate and requires enhancement?

2) If issue No.1 is answered in affirmative, then to what extent and on what basis?

3) Whether the applications of the applicants are not maintainable?

4) Relief.

7. Thereafter, the learned arbitrator called upon the parties to lead their evidence and the applicant/landowner Ram Chand tendered in evidence his affidavit Ext.PW1/A, Copy of award No.111 dated 23.02.2017 of Muhal Takoli Ext.PW1/B. On the other hand, no evidence was led on behalf of the NHAI and it was submitted by counsel for the NHAI that the award passed by the Competent Authority be read in evidence on behalf of the respondent/NHAI.

8. Vide impugned award dated 30.05.2023, the learned arbitrator held and concluded that Section 105 (3) of 2013 Act, categorically mentioned that the Central Government shall, by notification within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the first schedule and rehabilitation and resettlement specified in the second and third schedule, being beneficial to the affected family, shall apply to the cases of land acquisition under the enactment specified in the fourth schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provision of this Act relating to compensation or rehabilitation and resettlement, as may be specified in the notification. Thus, it is clear that provisions of the Right to Fair

Compensation, Rehabilitation and re-settlement Act 2013 can be made applicable to the National Highways Act, 1956, which has been kept in 4th schedule, only if Central Government makes the notification to that effect. As per Government of India letter No.11011/30/2015-LA, Ministry of Road Transport and Highways, the award of compensation made on or before 01.01.2015 for acquisition of land under the NH Act. 1956 will be as per the first schedule to the RFCTLARR Act, 2013. Thus, it is clear that the provisions relating to determination of compensation under the Right to Fair Compensation Act would be applicable for acquisition under the NHAI Act, 1956 only from 01.01.2015. The preliminary notification under section 3A of the NH Act has been published on 16.02.2015 and the same has been announced on 23.02.2017, as such, the compensation in the present case is required to be assessed as per the Act No.30 of 2013. Ld. Arbitrator Ld. Arbitrator after perusing the Award of Muhal Takoli, that the circle rates notified by the District Collector Mandi for village Takoli for the year of 2014-15 is Rs.2,608.69 per biswansi or Rs.1,289.83/- per square meters. The Circle rates for category-1 of adjoining village Nagwain/509 through which the proposed four-lane National Highway would cross is Rs.7,768/- per biswansi which means Rs.3,845/- per square meter. On the other side the adjoining village through which the four-lane National Highway would cross is Hat in District Kullu. The Collector rate for village Hat in Kullu District for the purpose of sale etc. is Rs. 9,515/- per square meter. The applicants had not challenged the circle rate so fixed by the District Collector for revenue village Takoli as such the rate qua this revenue village have attained finality and this Authority does not have the jurisdiction either to hear an objection qua the same or to order a revision of these rates as such this contention of the applicants is rejected after consideration. The applicants have relied upon the sale deeds of Muhal Takoli, Nagwain and Jhiri, Annexure A-3 to Annexure A-10, out of these Annexure A-3 and A-4 have already been considered by the Competent Authority in addition to other sale deeds of this Muhal and average sale price as per section 26(1)(b) comes to Rs.1,499/- per square meters. However, the applicants have not adduced any evidence in support of their contention that some of the sale deeds reckoned are lower than the circle rates. This Authority is also of the considered opinion that in the hilly state of Himachal Pradesh, land holdings are very small and land as such is very valuable and scarce resource thus compensation to be provided to the owners of the land must be adequate, fair and there should be no undue deprivation of the rights of the land owners. This Authority is also of the considered opinion that the market value has to be determined with reference to comparable land and comparable sales if available and instances of sale in respect of similar land in the neighboring village can be taken as guiding factor and there should be uniformity in the grant of the compensation of acquired land to affected persons of the land situated in vicinity. The present Applicants are also entitled to be treated justly at par with the other persons of other revenue estates whose land has been acquired for the same project if acquired land is similar in nature and potentiality therefore this Authority is of the considered opinion that the land of revenue estate Takoli is at par in potentiality if compared with the acquired land revenue estate Jhiri. This Authority has recently, vide its award dated 20.04.2023, in the application No.15/20 and others has enhanced the market value of the Muhal Jhiri to Rs.5,126/- per square meters. Keeping in view the elaborate discussion in the paras supra, this authority by taking judicial notice of the Award of Muhal Jhiri announced by this authority on 20.04.2023, holds that the present applicants are entitled for a compensation of Rs.5,126/- per square meters for their acquired land irrespective of classification and nature instead of what has been assessed by the competent authority. Ld. Arbitrator also held that factor 2 has not been applied in the present case in view of notification No. Rev. B.A.(3)3/2014-1 regarding the applicability of factor issued by the Government of H.P. Ld. Arbitrator further opined that it is clear that the acquired land has vested absolutely in the central government on 15.02.2016 when the notification under section 3D of the NH Act has been published in the Gazetted of India and it is manifest from section 80 of the Act that interest is to be paid to the affected persons @9% per annum only from the date of taking possession, if amount is not deposited or paid to the applicants. Further proviso appended to this section states that if amount of compensation is not paid or deposited within one year from the date of taking possession then interest @15% per annum shall be payable from the date of expiration of one year. Ld. Arbitrator further held that the claim for compensation for trees on account of acquisition has not been supported with any documentary evidence and the applicants have not produced any assessment report of Horticulture or Forest Department regarding the trees claimed to be existing over the acquired land and their market value etc. hence, the same after consideration, is rejected. The claim for compensation for severance of land due to the acquisition has also not been supported with any documentary evidence. The applicants have not produced any spot map or tatima issued by the competent revenue authority to prove that the severance of land has taken place due to acquisition, as such, in the absence of any clear and cogent evidence no amount of compensation can be granted for the same. Ld. Arbitrator partly allowed the applications of the applicants and held that:-

> **(A) The applicants are entitled to the market value of the acquired land at the rate of Rs.5,126/- per square meters instead of what has been assessed by the Competent Authority.**
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> **(b) The applicant shall be entitled to all the statutory benefits contained under section 30(1) and 30(3) of the Act No.30 of 2013 and interest @ 9% for the first year and 15% per annum thereafter as the case may be in accordance with law on the compensation amount.**
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> **(c) Any other relief claimed by the applicants which has not been granted shall be deemed to have been rejected after consideration. Any amount of compensation already paid to the applicants is liable to be set off.**
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> **(d) The applications presented before learned arbitrator are accordingly answered. Compliance of Section 31 (5) of the Arbitration and Conciliation Act, 1996 be also done.**

9. Being aggrieved from and dissatisfied with the impugned award passed by the learned arbitrator, the present application has been filed by the applicant/NHAI submitting that the Ld. Arbitrator wrongly and arbitrarily allowed the application of the landowner and enhanced the amount of compensation from Rs.4,758/- per sqr. meter to Rs.5,126/- per square meter in compete ignorance of the substantive law. It was submitted that the award passed by the Ld. Arbitrator is vitiated by patent illegality and is in conflict with the public policy of India and therefore, liable to be set aside in view of section 34(2)(a)(iv),

34(2)(b)(ii) and section 34(2-A) of the Arbitration and Conciliation Act, 1996. It was submitted that the Ld. Arbitrator has grossly erred in acting beyond its powers under the NH Act,1956 and against the substantive law in force in India, thus, rendering the award against the public policy in India. It was submitted that the Ld. Arbitrator erroneously relied upon the amount of compensation awarded to the village Jhiri while ignoring the sale deeds on record pertaining to the same village in contravention to section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It was submitted that Ld. Arbitrator has passed the award dated 30.05.2023 claiming that the land acquired in revenue estate Takoli is similar and comparable to the lands acquired in revenue village Jhiri, the entire award is wrong, perverse, against the substantive law and public policy of India and thus liable to be set aside in toto on the grounds that Section 26(1)(b) of the Act of 2013 provides that the Collector for the purpose of determination of the market value of the land can adopt the average sale price of a similar type of land situated in the nearest village or nearest vicinity. It was submitted that admittedly the sale deeds produced by the respondent reflected a value much lower than the compensation already awarded by the Competent Authority and there is no sale deed on record reflecting a higher average sale price which could have been taken into consideration by the Ld. Arbitrator. Hence, the award of the Arbitrator is patently illegal as the same is in violation of statutory provisions of sections 28(1)(a) of the Arbitration and Conciliation Act, 1996, as per which the Arbitral Tribunal is bound to take into consideration the substantive law for the time being in force in India. It was submitted that the Ld. Arbitrator while enhancing the compensation on his own had relied upon the compensation granted by the Competent Authority for the village Jhiri vide award dated 18.01.2017, which award shows that the compensation was not determined as per the provisions of section 26 of the LARR Act, 2013. It was submitted that the Ld. Arbitrator failed to take into consideration that in the Award of village Jhiri, the Competent Authority had specifically recorded that there was a huge difference between the rates fixed by the Collector Mandi for Villages Takoli, Jhiri and Hat. Therefore, these villages cannot be termed as similar type of land, hence, the award suffers from patently illegality and liable to be set aside. The Ld. Arbitrator failed to appreciate that the award passed for village Jhiri cannot be relied upon as the same pertains to a different village and is based upon a different nature of land. Similarly, in the present case, neither any site plan was produced to show the distance between the acquired land and the land mentioned in the sale deed nor any evidence was produced by the respondent to establish that his land was similarly situated to the land of village Jhiri. It was submitted that the award lacks reasoning as to how the land are comparable in nature. It was submitted that the Ld. Arbitrator has erroneously enhanced the compensation and held the landowner to be entitled to the market value of Rs.5,126/- per square meters for all types of land without taking into consideration the nature of the land acquired. It was submitted that the market value is required to be ascertained as of the date of notification under section 3A of the NH Act, 1956, but the Ld. Arbitrator erred in enhancing the compensation on the basis of some potentiality of the land instead of the actual value as on the date of notification in contravention of the explicit provisions of law, as such the award is liable to be set aside. It was submitted that the Ld. Arbitrator did not take into consideration that in view of section 105 of the Act of 2013, the compensation of the acquired land is to be determined as per the factors enumerated in section 26 of the Act of 2013. It was submitted that the Ld. Arbitrator failed to appreciate or consider that the landowner failed to produce 50% highest sale deeds of revenue estate Takoli in order to prove the market value of the acquired land in support of his claim for enhanced compensation. It was submitted that the Ld. Arbitrator wrongly and illegally awarded interest @9% for the first year and 15% per annum thereafter on the amount of compensation determined by the Competent Authority in accordance with law on the amount of compensation. Ld. Arbitrator has wrongly awarded interest under section 80 of the Act of 2013 in utter violation of law. It was submitted that the NH Act 1956 is a complete code in itself and there are specific provisions for expeditious acquisition of the land required for public infrastructure and the RFCTLARR Act, 2013 is not ipso facto applicable to the NH Act, 1956. A perusal of the First Schedule shows that only provisions of Sections 26 & 29 and solatium @ 100% of the RFCTLARR Act, 2013 have been made applicable to the acquisition under the NH Act, 1956. It was submitted that in NHAI v. P Nagaraju @ Cheluvaiah, it has been held by Hon'ble Supreme Court that the provisions of the RFCTLARR Act, 2013 have very limited applicability on the acquisition made under the NH Act, 1956. It has been observed by the Hon'ble Supreme Court that only the provisions enshrined under sections 26 to 28 of the RFCTLARR Act, 2013 have to be taken into consideration for determination of compensation for the acquisition made under the NH Act, 1956. It was submitted that similar issue related to the relief under section 80 of the Act of

2013 is pending adjudication before Hon'ble High Court of Punjab and Haryana at Chandigarh in LPA No.883 of 2021 titled as NHAI v. Mahender & Ors. It was submitted that the Ld. Arbitrator granted interest without framing any issue with respect to the grant of interest to the respondent. It was submitted that the grant of interest is not mandatory but is the discretionary power granted to the Ld. Arbitrator and in case the same has to be awarded then a specific issue with respect to the grant of interest ought to have been framed. It was submitted that the Ld. Arbitrator wrongly and illegally held that the respondent is entitled to the interest under section 80 from the date of issuance of notification under section 3D of the NH Act, 1956. It was submitted that the Ld. Arbitrator in order to give undue benefits completely ignored the statutory provisions of the NH Act, 1956 i.e. Section 3H(1) read with section 3 E of the NH Act, 1956 and the award of the Competent Authority. It was submitted that Ld. Arbitrator erred in not taking into consideration the mandatory provisions of Section 28(1)(a) of the Act of 1996, which mandates that while deciding the dispute between the parties, the arbitral tribunal is bound to take into consideration the substantive law for the time being in force in India. It was submitted that no evidence was led by the respondent to show that the compensation was not paid by the Competent Authority or deposited by the petitioner before taking possession of the land. No opportunity to rebut the same was afforded to the applicant, thus, the impugned award is patently illegal and is liable to be set aside. It was submitted that the impugned award has been passed without taking into consideration the averments made by the applicant, relevant proposition law applicable thereto and beyond the pleadings and evidence of the parties. The award is in conflict with the fundamental policy and is liable to be set aside. The cause of action arose in favour of the petitioner on 29.11.2023 when the impugned award dated 30.05.2023 passed by the Ld. Arbitrator was received by the applicant. It was submitted that the present petition is within limitation. With these averments, it is prayed that the impugned awarded dated 30.05.2023 be set aside.

10. The lis was hotly resisted and contested by respondent No.1 by filing reply on *inter-alia* preliminary objection of maintainability on the ground that the applicant unable to cull out any ground envisaged in section 34(2) (b)(ii) of the Act of 1996 and also not complied with the mandatory provisions of section 34(5) of the Act and has also failed to issue any prior notice to the respondent. On merits, it was submitted that the impugned award is based on law legally acceptable principle of law and in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the same is not in contravention of substantive law and not against the public policy of India. It was submitted that the Ld. Arbitrator rightly relied upon the amount of compensation awarded to the village Jhiri because village Jhiri is adjacent to revenue village Takoli and the potential and geographical situation of both the villages are same. It was further submitted that the Ld. Arbitrator below rightly enhanced the compensation since the land acquired in both the muhal for one project on principle of one project one compensation and land owner of one muhal were entitled to get equal compensation at the same rate as compared to the land of an another muhal, as held by Hon’ble Patna High Court in Civil Writ Petition No.4562 of 2022 titled as Lalita Devi v. State of Bihar. In reply to the grounds

of application, it was submitted that the Ld. Arbitrator rightly enhanced the compensation by relying the compensation of village Jhiri and the award is reasonable one. It was submitted that the case laws and authorities cited by the applicant are not applicable in the present case. It was submitted that the applicant misunderstood and misinterpreted the provisions of law and the Ld. Arbitrator is competent to enhance the award. It was submitted that the Hon'ble Supreme Court of India held in AIR 2003 SC 4382 held that the best method would be to look at the earlier judgments and award and not the sale instances therefore, the award of the Ld. Arbitrator is legal and valid. It was submitted that the Ld. Arbitrator rightly took into consideration section 105 of the Act of 2013 since the Act is beneficial to the affected families and even the Central Government cannot reduce the compensation or cannot dilute the provisions of the Act of 2013 while amending or altering any provisions of this Act. It was submitted that the Ld. Arbitrator rightly provided interest @9% and 15% under section 80 of the Act of 2013. It was prayed that the application be dismissed.

11. No rejoinders were filed.

12. The following points arise before me for final determination:

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1) **Whether the impugned award passed by the learned arbitrator is sustainable in the eyes of law?**

2) **Whether the impugned award suffers from any infirmity and illegality and the same is liable to be quashed?**

3) **Final order.**

13. For the reasons to be recorded hereinafter while discussing the aforesaid points, my point-wise findings are as under:-

Point No.1	**:**	**Yes.**
Point No.2	**:**	**No.**
Final Order	**:**	**The application is dismissed as per operative part of the judgment.**

REASONS FOR FINDINGS

POINTS NO. 1 & 2:

14. At the very inception, both the points being interlinked and interconnected, are taken up together for adjudication for avoiding repetition as there are similar set of oral and documentary evidence led from the side of the parties.

15. I have heard Sh. Lokesh Kapoor, Ld. Counsel for the applicant/NHAI, Sh. Kirti Thakur, learned Counsel for the NHAI and Sh. Vinod Bhardwaj Ld. D.A. for the LAO/Competent Authority.

16. Sh. Lokesh Kapoor learned counsel for the applicants argued that that the award passed by the Ld. Arbitrator is vitiated by patent illegality and is in conflict with the public policy of India and therefore, liable to be set aside in view of section 34(2)(a)(iv), 34(2)(b)(ii) and section 34(2-A) of the Arbitration and Conciliation Act, 1996. It is contended that the award passed by Ld. Arbitrator is in conflict with the fundamental policy and is liable to be set aside.

17. Per contra, Sh. Kirti Thakur, Ld. Counsel appearing for the landowner duly supported the award passed by the Ld. Arbitrator and argued that Ld. Arbitrator rightly enhanced the compensation and has rightly given statutory benefits and interest at the rate of 9% for the first year and 15% per annum thereafter and prayed that the award does not require any interference.

18. I have given my best anxious considerable thought to the rival contentions raised at the bar by the learned counsel for the parties and also scrutinized the entire case record with minute care, caution and circumspection.

19. Before proceeding any further, it would be appropriate to reproduce the provision of Section 34 of Arbitration and Conciliation Act 1996, which reads as under:-

"34. Application for setting aside arbitral award:-

(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]—
1. (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.

1 [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,—
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.]
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> (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.
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> (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.
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> [(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.]

20. It is well recognized principle of law that, challenge cannot be laid to the Award only on the ground that the Arbitrator has drawn his own conclusion or failed to appreciate the relevant facts. Nor can the Court substitute its own view on the conclusion of law or facts as against those drawn by the Arbitrator, as if it is

sitting in appeal. As long as the Arbitrator has taken a possible view, which may be a plausible view, simply because a different view from that taken in the Award, is possible based on the same evidence, would also not be a ground to interfere in the Award.

21. So, Arbitrator is the final arbiter of disputes between parties and it is not open to party to challenge award on the ground that he has drawn his own conclusions or failed to appreciate certain facts. It is beyond the jurisdiction of this Court to take a different view on appreciating the evidence to arrive at a different conclusion. Their lordships of Hon'ble Supreme Court of India in case **Atlanta Limited through its Managing Director v. Union of India represented by Chief Engineer Military Engineering Service 2022(2)RCR (Civil)1** as under:

> **9. We have heard the arguments advanced by learned counsel for the parties and carefully perused the records. Before dealing with the submissions made on behalf of the parties, it is considered apposite to examine the scope of interference by courts in arbitral Awards passed under the Arbitration Act, 1940.**
>
> **10. The consistent view taken in several judicial pronouncements is that the Court does not sit in appeal over an Award passed by an Arbitrator and the only grounds on which it can be challenged are those that have been specified in Section 30 & 33 of the Arbitration Act, namely, when there is an error on the face of the Award or when the learned Arbitrator has misconducted himself or the proceedings. In this context, we may usefully refer to Kwality Manufacturing Corporation v. Central Warehousing Corporation, where it has been observed as follows:**
>
>> **"10. At the outset, it should be noted that the scope of interference by courts in regard to arbitral Awards is limited. A court considering an application under Section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator.**

> Nor can it reassess or re-appreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Section 30 and 33 of the Act. Therefore, on the contentions urged, the only question that arose for consideration before the High Court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings." [emphasis added]

11. In Assam State Electricity Board and Others v. Buildworth Private Limited, (2017) 8 SCC 146, where the Ld. Arbitrator has taken a particular view on the construction of the provisions of the contract, the Court had held as below:

> "13. The arbitrator has taken the view that the provision for price escalation would not bind the claimant beyond the scheduled date of completion. This view of the arbitrator is based on a construction of the provisions of the contract, the correspondence between the parties and the conduct of the Board in allowing the completion of the contract even beyond the formal extended date of 6-9-1983 up to 31-1-1986. Matters relating to the construction of a contract lie within the province of the Arbitral Tribunal. Moreover, in the present case, the view which has been adopted by the arbitrator is based on evidentiary material which was relevant to the decision. There is no error apparent on the face of the record which could have warranted the interference of the court within the parameters available under the Arbitration Act, 1940. The arbitrator has neither misconducted himself in the proceedings nor is the awarded otherwise invalid." [emphasis added]

12. It is also a well-settled principle of law that challenge cannot be laid to the Award only on the ground that the Arbitrator has drawn his own conclusion or failed to appreciate the relevant facts. Nor can the Court substitute its own view on the conclusion of law or facts as against those drawn by the Arbitrator, as if it is sitting in appeal. This aspect has been highlighted in State of Rajasthan v. Puri Construction Co. Ltd. & Another, (1994) 6 SCC 485, where it has been observed thus:

> "26. The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In Sudarsan Trading Co. v. State of Kerala [Sudarsan Trading Co. v. State of Kerala, (1989) 2 SCC 38] it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the

> arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a Judge on the evidence before the arbitrator." [emphasis added]

13. As long as the Arbitrator has taken a possible view, which may be a plausible view, simply because a different view from that taken in the Award, is possible based on the same evidence, would also not be a ground to interfere in the Award. In Arosan Enterprises Ltd. v. Union of India & Another (1999) 9 SCC 449, this Court has held as follows:

> "36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under ?Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award." (Also refer Municipal Corporation of Delhi v. Jagan Nath Ashok Kumar and Another, (1987) 4 SCC 497).

14. In Rajasthan State Mines & Minerals Ltd. (supra), relied on by the respondent – Union of

India, on a conspectus of the case law relating to an Award made under the Arbitration Act, 1940 and the scope of interference by courts in such an arbitral Award, the legal position was summarized by the court in the following words :

> "44. From the resume of the aforesaid decisions, it can be stated that:
>
> (a) it is not open to the court to speculate, where no reasons are given by the arbitrator, as to what impelled arbitrator to arrive at his conclusion.
>
> (b) It is not open to the court to admit to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the Award.
>
> (c) If the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the Court cannot interfere.
>
> (d) If no specific question of law is referred, the decision of the arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the parties, then the finding of the arbitrator on the said question between the parties may be binding.
>
> (e) In a case of non-speaking Award, the jurisdiction of the court is limited. The Award can be set aside if the arbitrator acts beyond his jurisdiction.
>
> (f) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be

necessary to consider the agreement between the parties containing the arbitration clause. The arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the Award.

(g) In order to determine whether arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the arbitrator. If there is a specific term in the contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim then the Award passed by the arbitrator in respect thereof would be in excess of jurisdiction.

(h) The Award made by the Arbitrator disregarding the terms of the reference or the arbitration agreement or the terms of the contract would be a jurisdictional error which requires ultimately to be decided by the Court. He cannot Award an amount which is ruled out or prohibited by the terms of the agreement. Because of specific bar stipulated by the parties in the agreement, that claim could not be raised. Even if it is raised and referred to arbitration because of wider arbitration clause such claim amount cannot be awarded as agreement is binding between the parties and the arbitrator has to adjudicate as per the agreement.

(i) The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract. A deliberate departure or conscious disregard of the contract not only manifests the disregard of his authority or misconduct on his part but it may tantamount to mala fide action.

(j) The arbitrator is not a conciliator and

> **cannot ignore the law or misapply it in order to do what he thinks just and reasonable; the arbitrator is a tribunal selected by the parties to decide the disputes according to law."**

> **15. In a recent ruling in NTPC (supra), decided by a three Judge Bench of this Court, drawing strength from the decision in Kwality Manufacturing Corporation (supra), it has been held thus:**
>
> **"13. From the above pronouncements, and from a catena of other judgments of this Court, it is clear that for the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the Court [See State of U.P. v. Allied Constructions, (2003) 7 SCC 396; Ravinder Kumar Gupta and Company v. Union of India (2010) 1 SCC 409; Oswal Woollen Mills Limited v. Oswal Agro Mills Limited, (2018) 16 SCC 219]." [emphasis added]**

22. Learned counsel for the applicant contended that the facts and the evidence led before the learned arbitrator did not justify his conclusions regarding the enhancement of the compensation of the acquired land and is in complete ignorance of the evidence on record. It appears from this submission that the landowner aggrieved from the finding of facts recorded by the learned arbitrator and wants this court to re-appreciate the evidence to determine whether the learned arbitrator had drawn the correct conclusions or not. This is not permissible. It was laid down by the Hon'ble High Court in ***Himachal Pradesh Electricity Board vs SAB Industries 2019 (1) Him. L.R. (HC) 450 (HC)*** that the scope of interference by the court with the award of the

arbitrator is very limited. It cannot sit as an appellate Court over the findings recorded by the arbitrator. It was observed as under:

> 13. It is quite apparent from the aforesaid exposition of law that the scope of interference by the Court is very limited while considering objections having been filed by the aggrieved party under S.34 of the Act. Award passed by the learned Arbitrator can be interfered with in case of fraud or bias or violation of principles of natural justice. Interference, if any, on the ground of 'patent illegality is only permissible, if the same goes to the root of the case.
>
> Violation should be so unfair and unreasonable as to shock the conscience of the Court. In the judgment referred hereinabove, it has been held by the Hon'ble Apex Court that what is to be constituted as 'public policy is a matter dependent upon the transaction and nature of the statute, but the same should be so unfair and unreasonable as to shock the conscience of the Court, as has been observed hereinabove.
>
> 14. *Similarly, there can not be any dispute, as has been repeatedly held by the Hon'ble Apex Court as well as this Court that the court, while deciding objections, if any, filed by the aggrieved party under S.34 of the Act, against the Award passed by an Arbitrator, does not sit in appeal over the findings returned by the learned Arbitrator and there can not be any reappraisal of evidence on the basis of which learned Arbitrator has passed the Award.* Otherwise also, in terms of S. 34 of the Act, objections, if any, filed by the aggrieved party can be considered by the Court if the Award is in any manner against the public policy, which certainly has to be liberally interpreted in view of the facts of the case. (Emphasis supplied).

23. Admittedly, the very intent and purpose, as well as nature and scope of interference with the arbitration award by the Court was extensively considered by the Hon'ble Supreme Court in ***Delhi Airport Metro Express Private Ltd. vs. Delhi Metro Rail Corporation 2021 (1) SCC 131*** and it was held:

22. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or re-appreciation of matters of fact as well as law. (See: *Uttarakhand Purv Sainik Kalyan Nigam Limited, v. Northern Coal Field Limited., (2020) 2 SCC 455, Bhaven Construction Through Authorised Signatory Premjibhai K. Shah v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. and Another, 2021 SCC OnLine SC 8 and Rashtriya Ispat Nigam Limited v. Dewan Chand Ram Saran, (2012) 5 SCC 306)*.

23. For a better understanding of the role ascribed to courts in reviewing arbitral awards while considering applications filed under Section 34 of the 1996 Act, it would be relevant to refer to a judgment of this Court in *Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI), (2019) 15 SCC 131* wherein R.F. Nariman, J. has in clear terms delineated the limited area for judicial interference, taking into account the amendments brought about by the 2015 Amendment Act. The relevant passages of the judgment in *Ssangyong (supra)* are noted as under: -

> "34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of Associate Builders [*Associate Builders v. DDA, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204*] i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that *Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12]* expansion has been done away with. In short, *Western Geco [ONGC v. Western*

Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], as explained in paras 28 and 29 of *Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]*, would no longer obtain, as, under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2) (a)(iii) of the 1996 Act, these continue to be grounds of the challenge of an award, as is contained in para 30 of *Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]*.

35. It is important to notice that the ground for interference insofar as it concerns the "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of *Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]*, as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders *[Associate Builders v. DDA, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204]*, or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of *Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]*. Explanation 2 to Section 34(2) (b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that

Western Geco [ONGC v. Western Geco International Ltd.,(2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], as understood in *Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]*, and paras 28 and 29 in particular, is now done away with.

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

24. 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 the 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 endeavours 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.

25. Patent illegality should be illegality, which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression 'patent illegality. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator, which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents, which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality.

26. 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 the 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 the 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. In *Ssangyong (supra)*, 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., 1994 Supp (1) SCC 644* In *Renusagar (supra)*, 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 nought 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 (supra)]*

24. Their Lordships of Hon'ble Supreme Court in case titled ***The Project Director National Highways no. 45E and 220, National Highways Authority of India vs. M. Hakeem 2021 (9)***

SCC 1 that an arbitration award cannot be challenged on merits. It was observed as under:

> **21. It is settled law that a Section 34 proceeding does not contain any challenge on the merits of the award. This has been decided in *MMTC Ltd. vs. Vedanta Ltd., (2019) 4 SCC 163, at 167* as follows:**
>
>> **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.**
>
> 22. **Likewise, in *Ssangyong Engg. & Construction Co. Ltd. vs. NHAI, (2019) 15 SCC 131*, this Court under the caption "Section 34(2)(a) does not entail a challenge to an arbitral award on merits" referred to this Court's judgment in *Renusagar Power Co. Ltd. vs. General Electric Co., 1994 Supp (1) SCC 644*, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 [the "New York Convention"] and various other authorities to conclude that there could be no challenge on merits under the grounds mentioned in Section 34 - (see paras 34 to 48). This Court also held, in *Maharashtra State Electricity Distribution Co. Ltd. vs. Datar Switchgear Ltd., (2018) 3 SCC 133 (at 170),* that the court hearing a Section 34 petition does not sit in appeal (see para 51).**

25. Their Lordship of Hon'ble High Court of Judicature at Allahabad also held in ***Nathu Ram Sahu vs. Arbitrator/ Collector and 2 others 2018(5) All. LJ 224*** the award was challenged on the

ground that the objector had not received proper compensation and the compensation was awarded by treating the land to be agricultural in nature even though it was in use for residential/commercial purposes. It was held that this challenge did not fall within the purview of section 34 of the Arbitration and Conciliation Act. It was observed:

> **10. A simple reading of the aforesaid provision reveals that the award of the Arbitration can be set aside only on the following grounds:**
>
> > **1. if the party was under some incapacity;**
> >
> > **2. the arbitration agreement is not valid in law;**
> >
> > **3. the party was not given proper notice of the appointment of arbitrator or arbitral proceedings or otherwise, he was unable to present his case;**
> >
> > **4. the arbitral award deals with a dispute not contemplated by the terms of arbitration, or it decides matters beyond the scope of arbitration;**
> >
> > **5. the composition of the arbitral tribunal or the procedure followed by it was not in accordance with the agreement of the parties;**
> >
> > **6. if the court finds that the dispute is not capable of settlement by arbitration under the existing law;**
> >
> > **7. the arbitral award is in conflict with the public policy of India; and**
> >
> > **8. if there is patent illegality on the face of the award but not on an erroneous application of law or by re-appreciation of evidence.**
>
> **11. The challenge to the arbitral award as made under Section 34 of the Act does not appear to be covered by any of the grounds referred to above. It is for this reason that the District Judge rejected the motion under Section 34 of the Act.**

26. Hon'ble Bombay High Court reiterated the position in case ***Rishabh Kumar Secretary to the Govt. of India, NHAI 2021 LawSuit (Bom.) 1296*** wherein it was observed:

> On the other hand, the caution to be exercised under Section 34 of the Act of 1996 as laid down in Associate Builders (supra) is not to act as a Court of appeal and correct errors of fact. It has to be kept in mind that the arbitrator is the ultimate master of the quality and quantity of evidence to be relied upon in the proceedings. An award could be based upon little evidence or evidence which does not measure up in quality to a trained legal mind. Dissecting and re-assessing factual aspects of the case to come to a conclusion that the award needs intervention and thereafter dubbing the award to be vitiated by perversity or patent illegality has to be avoided as observed in *Delhi Airport Metro Express Pvt. Ltd. (supra)*. It is not enough that the Court thinks that the award is unjust on facts and then seeks to substitute its view for that of the arbitrator to do what it considers to be 'justice' as held in *Sutlej Construction Limited (supra)*. The perversity in the award ought to be unpardonable as can be seen from the observations in *Dyna Technologies Pvt. Ltd. (supra)* wherein the Hon'ble Supreme Court held that 'the Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

27. Similar is the judgment in ***Haryana Tourism vs. Kandhari Beverages 2022 (1) SCALE 346*** wherein it was observed:

> 8. As per the settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to, (a) fundamental

> **policy of Indian Law; (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial Court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable.**

28. Therefore, as a cumulative effect, in view of the binding precedents of the Hon'ble Supreme Court as well as the High Court, it is not at all permissible for this court to re-appreciate the evidence led before the learned arbitrator to determine whether his conclusions are correct or not. The legislature has made the arbitrator a final court on facts and it is not permissible to re-appreciate the evidence led before him unless there is a clear cut evidence or pleadings regarding patent illegality crept there in the award. No case of patent illegality was made out in the application; therefore, the award of the learned arbitrator on facts has to be treated as final.

29. It was next contended by Ld. Counsel for the applicants that the award is against public policy because the arbitrator was bound to consider the substantive law. Violation of Section 28(1) of the Arbitration and Conciliation Act will amount to a violation of public policy. Reliance was placed upon the judgment of **Renusagar Power Co Ltd. V. General Electric Co. 1994 Supp(1) SCC 644, ONGC V. Saw Pipes Ltd. 2003 (5) SCC 705 and Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49.** The judgment of ***Saw Pipes (supra)*** was

considered by the Hon'ble Supreme Court in ***Patel Engineering Ltd. Versus North Eastern Electric Power Corporation Ltd. (NEEPCO) 2020 (7) SCC 167*** and it was held that the exhaustive definition given to the term public policy of India has been done away with after the amendment of the Arbitration and Conciliation Act. It was observed:

> **20. In *Ssangyong Engineering and Construction Company Limited[Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI) (2019) 15 SCC 131]*, this Court was considering a challenge to an award passed in international commercial arbitration, between the Appellant - company a foreign entity registered under the laws of Korea, and the Respondent, a Government of India undertaking. In paragraph (19) of the judgment, this Court noted that the expansive interpretation given to "public policy of India" in the *Saw Pipes (supra)* and *Western Geco International Limited Oil & Natural Gas Corporation Ltd. vs. Western Geco International Limited (2014) 9 SCC 263* cases, which had been done away with, and a new ground of "patent illegality" was introduced which would apply to applications under Section 34 made on or after 23.10.2015. In paragraphs (36) and (37) of the judgment, this Court held that insofar as domestic awards are concerned, the additional ground of patent illegality was now available under sub-section (2A) to Section 34. However, re-appreciation of evidence was not permitted under the ground of "patent illegality" appearing on the face of the award.**
>
> **21. In paragraphs (39) and (40) of *Ssangyong Engineering (supra)*, the Court reiterated paragraphs (42.2) and (42.3) of *Associate Builders (supra)* wherein, it was held that the construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes a contract in a manner which no fair-minded or reasonable person would take i.e. if the view taken by the arbitrator is not even a possible view to take. In paragraphs (39) and (40), the Supreme Court held as under:-**

> **"39. To elucidate, para 42.1 of *Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49*, 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 vs. Delhi Development Authority (2015) 3 SCC 49*, 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 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 vs. Delhi Development Authority (2015) 3 SCC 49*. 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)."**

30. The judgment of Oil and Natural Gas Corporation Ltd. cited supra was also considered by the Hon'ble Supreme Court in ***Ssangyong Engineering and Construction Co.Ltd. Versus National Highways Authority of India (NHAI) 2019 (15) SCC 131*** and it was held that after the amendment of Arbitration and Conciliation Act, in the year 2015, fundamental changes have been made in the law. It was observed:

> **"12. There is no doubt that in the present case, fundamental changes have been made in the law. The expansion of "public policy of India" in *ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705 ["Saw Pipes"]* and *ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 ["Western Geco"]* has been done**

> **away with, and a new ground of “patent illegality”, with inbuilt exceptions, has been introduced. Given this, we declare that Section 34, as amended, will apply only to Section 34 applications that have been made to the Court on or after 23.10.2015, irrespective of the fact that the arbitration proceedings may have commenced prior to that date.”**

31. Furthermore, Their Lordship of Hon’ble Supreme Court discussed the law regarding setting aside an award, if it is in conflict with the public policy of India and held that the earlier interpretation that court can interfere with an award where the arbitrator has not adopted a judicial approach has been done away with. It was observed:

> **“23. What is clear, therefore, is that the expression “public policy of India”, whether contained in Section 34 or in Section 48, would now mean the “fundamental policy of Indian law” as explained in paragraphs 18 and 27 of *Associate Builders (supra)*, i.e., the fundamental policy of Indian law would be relegated to the *“Renusagar”* understanding of this expression. This would necessarily mean that the *Western Geco (supra)* expansion has been done away with. In short, *Western Geco (supra)*, as explained in paragraphs 28 and 29 of *Associate Builders (supra)*, would no longer obtain, as, under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court’s intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of the challenge of an award, as is contained in paragraph 30 of *Associate Builders (supra)*.**
>
> **24. It is important to notice that the ground for interference insofar as it concerns the “interest of India” has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or**

morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paragraphs 36 to 39 of *Associate Builders (supra)*, as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

25. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of Associate Builders (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of *Associate Builders (supra)*. Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that *Western Geco (supra)*, as understood in *Associate Builders (supra)*, and paragraphs 28 and 29 in particular, is now done away with.

26. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), 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 the 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 the public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

27. Secondly, it is also made clear that re-appreciation 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.

28. To elucidate, paragraph 42.1 of *Associate Builders (supra)*, namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of *Associate Builders (supra)*, 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 patent illegality on the face of the award.

29. The change made in Section 28(3) by the Amendment Act really follows what is stated in paragraphs 42.3 to 45 in *Associate Builders (supra)*, 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.

30. 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(2A).

31. What is important to note is that a decision, which is perverse, as understood in paragraphs 31 and 32 of *Associate Builders (supra)*, while no longer being a ground for challenge under "public policy of India", would certainly amount to patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award, which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."

32. It was laid down by the Hon'ble Supreme Court of India in ***Welspun Specialty Solutions Limited (Formerly known as Remi Metals Gujarat Limited vs. Oil and Natural Gas Corporation Limited 2022 (2) (SC) 382,*** that the phrase 'public policy' does not indicate 'a catch-all provision' to challenge awards before an appellate forum on infinite grounds. It was observed:

The limited grounds provided under Section 34 of the Act, has been interpreted by this Court on numerous occasions. In this case at hand, the challenge of the award is based on the fact that the same is against public policy and patent illegality. Public policy as a ground of challenge has always been met with a certain scepticism. The phrase 'public policy' does not indicate 'a catch-all provision' to challenge awards before an appellate forum on infinite grounds. However, the ambit of the same is so diversely interpreted that in some cases, the purpose of limiting the Section 34 jurisdiction is lost. This Court's jurisprudence also shows that Section 34(2)(b) has undergone a lot of churning and continues to evolve. The purpose of Section 34 is to strike a balance between the Court's appellate powers and the integrity of the arbitral process.

24. The first case, which expounded on the scope of 'public policy' was *Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp1 SCC 644*, which inter alia provided that a foreign award may not be enforced under the said Act if the court dealing with the case is satisfied that the enforcement of the award will be contrary to the public policy. After elaborate discussion, the Court arrived at the conclusion that public policy comprehended in Section 7(1)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act, 1961 is the "public policy of India" and does not cover the public policy of any other country. For giving meaning to the term "public policy", the Court observed thus:

> "66. Article V(2)(b) of the New York Convention of 1958 and Section 7(1)(b)(ii) of the Foreign Awards Act do not postulate refusal of recognition and enforcement of a foreign award on the ground that it is contrary to the law of the country of enforcement and the ground of challenge is confined to the recognition and enforcement being contrary to the public policy of the country in which the award is set to be enforced. There is nothing to indicate that the expression 'public policy' in Article V(2)(b) of the New York Convention and Section 7(1)(b)(ii) of the Foreign Awards Act is not used in the same sense in which it was used in Article I(c) of the Geneva Convention of 1927 and Section 7(1) of the Protocol and Con-

> vention Act of 1937. This would mean that 'public policy' in Section 7(1)(b)(ii) has been used in a narrower sense and in order to attract the bar of public policy the enforcement of the award must invoke something more than the violation of the law of India. Since the Foreign Awards Act is concerned with the recognition and enforcement of foreign awards which are governed by the principles of private international law, the expression 'public policy' in Section 7(1)(b)(ii) of the Foreign Awards Act must necessarily be construed in the sense the doctrine of public policy is applied in the field of private international law. Applying the said criteria it must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to (i) the fundamental policy of Indian law, or (ii) the interests of India; or (iii) justice or morality."

In *ONGC Ltd. v. Saw Pipes Ltd., 2003 (5) SCC 705*, the scope of Section 34 was expanded to include patent illegality as a ground for challenging the award and held as under :

> "31. Therefore, in our view, the phrase 'public policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns the public good and the public interest. What is for the public good or in the public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in the public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to the narrower meaning given to the term 'public policy' in the *Renusagar case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644]* it is required to be held that the award could be set aside if it is patently illegal. The result would be-award could be set aside if it is contrary to:

(a) the fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality, or

(d) in addition, if it is patently illegal. Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that the award is against public policy. The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such an award is opposed to public policy and is required to be adjudged void.

74. In the result, it is held that:

(A)(1) The court can set aside the arbitral award under Section 34(2) of the Act if the party making the application furnishes proof 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.

(2) The court may set aside the award:

(i)(a) if the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties,

(b) failing such agreement, the composition of the Arbitral Tribunal was not in accordance with Part I of the Act,

(ii) if the arbitral procedure was not in accordance with:

(a) the agreement of the parties, or

(b) failing such an agreement, the arbitral procedure was not in accordance with Part I of the Act. However, the exception for setting aside the award on the ground of composition of the Arbitral Tribunal or illegality of arbitral procedure is that the agreement should not be in conflict with the provisions of Part I of the Act from which parties cannot derogate.

(c) If the award passed by the Arbitral Tribunal is in contravention of the provisions of the Act or any other substantive law governing the parties or is against the terms of the contract.

(3) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to:

(a) the fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality; or

(d) if it is patently illegal.

(4) It could be challenged:

(a) as provided under Section 13(5); and

(b) Section 16(6) of the Act.

Eventually, a three-Judge Bench in *ONGC Ltd. v. Western Geco International Limited, 2014 (9) SCC 263*, while upholding Saw Pipes case (supra), noted that the 'illegality' of the award must go to the root of the matter. The illegality of a trivial nature could not be held to violate public policy.

25. In *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd., 2019 (20) SCC 1*, this Court held:

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should

> **not be interfered with in a casual and cavalier manner unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.**
>
> **25. Moreover, umpteen number of judgments of this Court have categorically held that the Courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."**

33. Therefore, in view of the subsequent judgments of the Hon'ble Supreme Court, the interpretation of the public policy of India made in ***Saw Pipes Ltd. (supra),*** no longer exists and the court cannot set aside the award on the basis of violation of the public policy of India by re-appreciating the evidence to find some illegality in it.

34. A heavy reliance was placed upon the following observations of the Hon'ble Supreme Court in ***Patel Engineering Ltd. (supra)***:

> **25. The High Court in paragraph (52) came to the finding that the findings in the award suffer from the**

vice of irrationality and perversity, and held as follows:-

> "52. The Arbitral Awards and the findings of the learned Arbitrator suffer from the vice of perversity. The learned Arbitrator has taken into account various factors irrelevant in coming to the decision and has ignored vital clauses of the tender documents like Clause 2 and various Sub-clauses i.e. Sub-clauses 2.1 to 2.8.7 under Clause 2 and Clause 3 and various Sub-Clauses i.e. Sub-clauses 3.1 to 3.7 under Clause 3 of the BoQ, Clause 2 and various Sub-clauses i.e. Sub-clause 2.1 to 2.17.7 under Clause 2 and Clause 3 and various Sub-clauses i.e. Sub-clause 3.1 to 3.10.5 under Clause 3 of "Particular Technical Specifications", Vol. 2, Part II. The learned Arbitrator has taken into consideration an irrelevant fact that while making provisional payment, the initial lead of 3.0 km has been deducted and that this shows that Clause 2.7 and 3.4 of the BoQ are applicable. The provisional payment was an interim arrangement and was preceded by meetings dated 07.12.2012 and 08.12.2012 wherein it was specifically agreed between the parties that HoP, NEEPCO would take steps for referring the dispute to arbitration and that till the arbitral award, the payment would be made as per the prevailing provisional rate without any escalation and that final rate payable for transportation of sand and boulder shall be done on implementation of the arbitral award. As such the fact that provisional payment was made by deducting the initial lead of 3.0 km was an irrelevant fact for deciding the issue. The findings of the learned Arbitrator having been arrived at by taking into account irrelevant factors and by ignoring vital clauses, the same suffers from the vice of irrationality and perversity. It must be borne in mind that the Arbitral Awards in question are Declaratory Arbitral Awards and involve the interpretation of Clauses 2.7 and 3.4 of the BoQ and Clauses 32(ii)(a) and 33(iii) of the Conditions of Contract

> and the learned arbitrator was required to interpret the same in accordance with the established rules of interpretation. The findings of the learned Additional Deputy Commissioner (Judicial), Shillong while upholding the arbitral awards of the learned Arbitrator also suffer from a similar vice. We are, therefore, of the considered view that the common order dated 27.04.2018 passed by the learned Additional Deputy Commissioner (Judicial), Shillong in Arbitration Case No. 5 (T) 2016, Arbitration Case No. 6 (T) 2016 and Arbitration Case No. 7 (T) 2016 as well as the 3 (three) Arbitral Awards dated 29.03.2016 passed by the learned Arbitrator warrant interference in these appeals under Sec. 37 of the Arbitration and Conciliation Act, 1996.

53. There are additional reasons for interfering with the order dated 27.04.2018 passed by the learned Additional Deputy Commissioner (Judicial), Shillong and the Arbitral Awards dated 29.03.2016 passed by the learned Arbitrator. As the learned counsel for the appellant has submitted, the potential effect of the Arbitral Award on the public exchequer is that the appellant, which is a public sector undertaking, will have to pay a sum of about ₹ 3.56 Lakh for every truckload of 10 cubic metres of sand or boulder (travelling for 100 km) and the total potential effect would be about ₹ 1.000 Crore. We are of the considered view that payment of ₹ 3.56 Lakh per truck (10 Cubic Metre) of sand or boulder (100 km distance) is definitely a case of unjust enrichment which is contrary to the Fundamental Policy of Indian Law. Unjust enrichment being contrary to the Fundamental Policy of Indian Law is a ground for interference with an Arbitral Award under Sec. 34(2) of the Act. The Bombay High Court in *Angerlehner Structural and Civil Engineering co. v. Municipal Corporation of Greater Mumbai* has recognized the unjust enrichment of a party at the cost of the public exchequer as being against the fundamental policy of Indian law. The Bombay High Court has held:

> "If the argument of the Contractors is accepted, it leads to them blatantly enriching themselves

> **over and above what they are entitled. Such completely unjust enrichment, that too at the cost of public funds, is abhorrent under the fundamental policy of Indian Law. The award in AJECT, which permits such blatant enrichment is, therefore, is also vitiated on the ground that it is against the fundamental policy of Indian Law."**

> **We are also of the considered view that the Arbitral Award, which would potentially result in unjust enrichment of the respondent to the extent of about ₹ 1,000 Crores is against the fundamental policy of Indian law and, therefore, warrants interference on this count as well.**

> **Though this court is not sitting in appeal over the award of the arbitral tribunal, the presence of grounds under Section 34[2] of the Act and the satisfaction arrived at by this Court in this regard, warrants interference more so, as the Arbitral Awards in question are Declaratory Arbitral Awards and involved interpretation of Clauses 2.7 and 3.4 of the BoQ and Clauses 32(H)(a) and 33(iii) of the Conditions of Contract and the learned arbitrator was required to interpret the same in accordance with the established rules of interpretation and in line with the fundamental policy of Indian law."**

35. These observations were quoted by the Hon'ble Supreme Court from the judgment of the Hon'ble Bombay High Court. The Hon'ble Supreme Court held that the case was decided on the ground that the arbitral award is perverse and on a holistic reading of all the terms and conditions of the contract, the view taken by the arbitrator was not even a possible view. It was held:

> **26. Even though the High Court in paragraph (44) of the judgment referred to various judgments, including *Western Geco (supra)* [which is now no longer good law], the case has been decided on the ground that the arbitral award is a perverse award and on a holistic reading of all the terms and conditions of the contract, the view taken by the arbitrator is not even a possible**

> **view. The High Court has rightly followed the test set out in paragraph (42.3) of *Associate Builders (supra)*, which was reiterated in paragraph (40) of the *Ssangyong Engineering judgment (supra)*."**

36. It was noticed by the Hon'ble Supreme Court that the award can only be set-aside if it is found to be perverse or irrational that no reasonable person would have arrived at the same. It was observed:

> **"22. The present case arises out of a domestic award between two Indian entities. The ground of patent illegality is a ground available under the statute 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 the same; 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."**

37. In all fairness, the applicant has also averred that no relevant evidence was produced before the competent authority for seeking higher compensation during the spot inspection. If the party had not filed the evidence before the competent authority, it is not precluded from producing the evidence before the arbitrator. Section 3G(5) of the National Highways Act, 1956 provides that if the amount determined by the competent authority is not acceptable to either of the parties, the amount shall be determined by the arbitrator to be appointed by the Central Government. This clearly shows that an aggrieved party has a right to produce the relevant material before the arbitrator to show that the compensation determined by the competent authority is not correct. Therefore, the grievance of the applicant that the arbitrator had erred in relying upon the evidence, which was not produced before the competent authority at the spot is not justified. Section 3G(7)(A) of the National Highways Act, 1956

provides that while determining the compensation, the arbitrator shall determine the market value of the land on the date of publication, damage to the land, damage sustained by a person injuriously affecting his other property and reasonable expenses for change of residence. The learned arbitrator had taken the award in respect of comparable land for determining the market value. The award is the best evidence of the rate on which a willing purchaser will buy the land from a willing seller and it has been considered to be a safe basis for awarding compensation in land acquisition cases. Thus, the reliance placed upon the award by the arbitrator is not bad.

38. Further, Ld. Arbitrator in the impugned award after considering the sale deeds and after comparing the circle rates of muhal Takoli has given specific findings the average market value of land on the basis of sale transactions of three years immediately proceedings the notification under section 3A of NH Act were not commensurate with the actual market value of the land and the applicants are to be treated justly at par with the other persons of the other revenue estate whose land has been acquired for the same project if acquired land is similar in nature and potentiality and made comparison of the land of revenue estate Takoli and revenue estate Jhiri and concluded that both the revenue estates are situated in close proximity to each other. This was a relevant consideration and in absence of any evidence of the market value of the acquired land/sale deed in muhal Takoli. Therefore, it cannot be said that the Ld. Arbitrator had taken any perverse view and the award does not suffer from any patient illegality.

39. It was contended on behalf of the NHAI that 9%

interest for the first year and 15% thereafter was awarded without any justification and without mentioning the provision of law and further no issue was framed by the Ld. Arbitrator to award interest under section 80 of the Act of 2013. It is argued the interest as provided under section 80 of the RFCTLARR Act, 2013 has not been made applicable.

40. Perusal of the award shows that specific issue regarding entitlement of applicant for compensation and other statutory benefits has already been framed and the interest part has already been covered under all the statutory reliefs.

41. It was next contended by Ld. Counsel for the applicant that in **NHAI v. P. Nagaraju @ Cheluvaiah,** it has been held by their Lordships of Hon'ble Supreme Court that the provisions of the RFCTLARR Act, 2013 have very limited applicability on the acquisition made under the NH Act, 1956 and only the provisions enshrined under sections 26 to 28 of the RFCTLARR Act, 2013 have to be taken into consideration for determination of compensation for the acquisition made under the NH Act, 1956. Ld. Arbitrator in the impugned award has specifically held that though the specific date of taking possession by the NHAI has not been mentioned by the applicants however, it is the statutory right of the applicants to get the interest on the compensation amount and specific date from which the applicant shall be entitled for interest is the date of taking possession. The applicants shall have statutory right to get the interest on the compensation amount and it is not at the discretion of the Competent Authority or the NHAI to grant or not. Moreover, the interest being part of compensation, the more beneficial provision of 2013 Act relating to the interest i.e. section 80 on the amount of determined in the First instance would

undoubtedly apply to the acquisition made under the NH Act.

42. This also expressly flows from the mandate of sub-section (3) of Section 105 which stipulates that while making applicable the provisions relating to compensation, rehabilitation and resettlement under the Act of 2013 to acquisitions made under various Acts specified in Schedule-1, the only exception or modification permissible would be such as would not reduce the compensation or dilute the provisions of the Act, 2013. The judgment cited on behalf of the applicant does not bar the arbitrator or court to award interest on the compensation.

43. Their Lordships of Hon'ble Allahabad High Court in case titled **Balwan Singh And Another v. National Highway Authority of India 2024(1)ALJ 630** has held as under:

> **15. In para 41 of the judgment, the Supreme Court held that the provision relating to solatium and interest would also be applicable to cases that arise between 1997-2015. Accordingly, Section 23(1-A) and (2) and interest payable in terms of proviso to Section 28 of the old Act has been held to be applicable to acquisitions made under the NH Act. Para 41 is extracted below:**
>
> **"41. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea, but given the fact that the Government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such**

> orders, given our discretionary jurisdiction under article 136of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of Section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, Appeal @ SLP (C) No. 9599/2019 is dismissed."
>
> 16. Applying the principles enunciated in Tarsem Singh (supra), we are of considered opinion that provision relating to interest i.e. Section 80 of the Act 2013 being a more beneficial provision would apply to acquisitions made under the NH Act. This also expressly flows from the mandate of sub-section (3) of Section 105 which stipulates that while making applicable the provisions relating to compensation, rehabilitation and resettlement under the Act of 2013 to acquisitions made under various Acts specified in Schedule-1, the only exception or modification permissible would be such as would not reduce the compensation or dilute the provisions of the Act, 2013.
>
> 17. As already noted, the interest being part of compensation, the more beneficial provision of 2013, Act relating to interest i.e. Section 80 on the amount determined in the first instance (by Competent Authority under NH Act) would undoubtedly apply to the acquisitions made under the NH Act.

44. Their Lordship of Hon'ble Supreme Court of India in ***National Highways Authority of India (supra)*** further held that the court can only set aside the award under section 34 of the Act and it has no power to modify it. It was observed:

> 39. As has been pointed out by us hereinabove, *McDermott (supra)* has been followed by this Court in *Kinnari Mullick (supra). Also, in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd., 2021 SCC OnLine SC 157*, a recent judgment of this Court also followed *McDermott (supra)* stating that

there is no power to modify an arbitral award under Section 34 as follows: -

> (f) In law, where the Court sets aside the award passed by the majority members of the tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding.
>
> Under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award.

40. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the 'limited remedy' under Section 34 is co-terminus with the 'limited right', namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.

41. A look at the Arbitration Acts of England, the United States, Canada, Australia and Singapore also lead to the same conclusion. In each of those legislative measures, there are express provisions, which permit the varying of an award, unlike Section 34 of the present Act. In para 51, the learned Single Judge then refers to recourse to a court against an arbitral award and argues that a statute cannot be interpreted in such a manner as to make the remedy worse than the disease. As has been pointed out by us, the "disease" can only be cured in very limited circumstances thus limiting the remedy as well. Also,

> **to assimilate the Section 34 jurisdiction with the revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 [the "CPC"], is again fallacious. Section 115 of the CPC expressly sets out the three grounds on which a revision may be entertained and then states that the High Court may make 'such order as it thinks fit. These latter words are missing in Section 34, given the legislative scheme of the Arbitration Act, 1996. For all the aforesaid reasons, with great respect to the learned Single Judge, it is not correct in law and therefore stands overruled."**

45. Therefore, in view of the binding precedent of the Hon'ble Supreme Court of India, the court cannot modify the award and it is not permissible to enhance the compensation awarded by the learned arbitrator.

46. Their Lordships of Hon'ble Supreme Court of India in case titled as <u>Dyna Technologies (P) Ltd. vs. Crompton Greaves Ltd. (2019) 20 SCC 1</u> has observed as under:-

> **26. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.**

27. Moreover, umpteen number of judgments of this Court have categorically held that the Courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.

28. Having established the basic jurisprudence behind Section 34 of the Arbitration Act, we must focus on the analysis of the case. The primary contention of the learned counsel appearing on behalf of the appellant is that the award by the learned Tribunal was perverse for want of reasons. The necessity of providing reasons has been provided under Section 31 of the Arbitration Act, which reads as under:

> "31. Form and contents of arbitral award.
>
> (3) <u>The arbitral award shall state the reasons</u> <u>upon which it is based</u>, unless—
>
> a the parties have agreed that no reasons are to be given, or
>
> b the award is an arbitral award on agreed terms under section 30."
>
> (emphasis supplied)

Under the UNCITRAL Model Law the aforesaid provision is provided as under:

> "(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30."

29.Similar to the position under the Model Law, India also adopts a default rule to provide for reasons unless the parties agree otherwise. As with most countries like England, America and Model Law, Indian law recognizes enforcement of the reason less award if it has been so agreed between the parties.

30. There is no gainsaying that arbitration proceedings are not *per se* comparable to judicial proceedings before the Court. A party under Indian Arbitration Law can opt for an arbitration before any person, even those who do not have prior legal experience as well. In this regard, we need to understand that the intention of the legislature to provide for a default rule, should be given rational meaning in light of commercial wisdom inherent in the choice of arbitration.

31 A five-Judge Constitution Bench of this Court in the case of *Raipur Development Authority v. Chokhamal Contractors*, AIR 1990 SC 1426, considered the scope of Section 30 of the Arbitration Act, 1940 and held as under:

"It is now well settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the court has directed in any order such as the one made Under Section 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so."

32 A three-Judge Bench of this Court in another case of *S. Harcharan Singh v. Union of India*, (1990) 4 SCC 647, reiterated its earlier

view that the arbitrator's adjudication is generally considered binding between the parties for he is a Tribunal selected by the parties and the power of the Court to set aside the award is restricted to cases set out in Section 30 of the Arbitration Act, 1940. However, the ratio of *Chokhamal* case (*supra*) has not found favour of the Legislature, and accordingly Section 31(3) has been enacted in the Arbitration Act. This Court in *Som Datt Builders Ltd. v. State of Kerala*, (2009) 4 ARB LR 13 SC, a Division Bench of this Court has indicated that passing of a reasoned award is not an empty formulation under the Arbitration Act.

33 It may be relevant to note *Russell on Arbitration*, 23rd edn. (2007), wherein he notes that:

"If the Court can deduce from the award and the materials before it, which may include extracts from evidence and the transcript of hearing, the thrust of the tribunal's reasoning then no irregularity will be found....Equally, the court should bear in mind that when considering award produced by non lawyer arbitrators, the court should look at the substance of such findings, rather than their form, and that one should approach a reading of the award in a fair, and not in any unduly literal way."

(emphasis supplied)

34 The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the Courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regards to the speedy resolution of dispute.

35 When we consider the requirement of a reasoned order three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decisionmaking process. If the

challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

36 At this juncture it must be noted that the legislative intention of providing Section 34 (4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits. In case of absence of reasoning the utility has been provided under of Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34 (4) of the Arbitration Act to cure

> **defects can be utilized in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced.**
>
> **37 It may be noted that when the High Court concluded that there was no reasoned award, then the award ceased to exist and the Court was *functus officio* under Section 34 of the Arbitration Act for hearing the challenge to the award under the provisions of Section 34 and come to a conclusion that the arbitration award was not in terms of the agreement. In such case, the High Court ought to have considered remanding the matter to the Tribunal in the usual course. However, the High Court analyzed the case on merits, but, for different reasons and we need not go into the validity of High Court's interference."**

47. Their Lordships of Hon'ble Supreme Court of India in case titled as **National Highways Authority of India Vs. P. Nagaraju and Ors., (2022) 15 SCC 1,** has observed as under:

> **"23. Having taken note of the rival contentions and while examining the scope available under Section 34 of Act 1996 in the backdrop of the precedents, what is also to be kept in perspective is the decision referred to in the case of NHAI vs. Sayedabad Tea Company Ltd. (2020) 15 SCC 16. In the said case, this Court while examining the question as to whether the land loser can seek the appointment of an Arbitrator in terms of Section 11 of Act, 1996, it was noted that such power**

would not be available in view of the provisions contained in Section 3G(5) of NH Act since Arbitrator is to be appointed by the Central Government to discharge its functions as per the provisions of the Arbitration and Conciliation Act. Having taken note of the said decision, though it is seen that it was held so while considering the maintainability of petition under Section 11 of the Act, 1996 to exclude the right of the land loser to seek the appointment of an Arbitrator keeping in view the statutory provision in the NH Act, the larger perspective of such limited right to the land loser in the process of arbitration is also to be kept in view. Unlike the arbitration in a contractual matter where the parties from the very inception at the stage of entering into a contract would mutually agree to refer any future dispute to an arbitrator, at that very stage are aware that in the event of any dispute arising between the parties the contours of the right, remedy, and scope from the commencement of the arbitration up to the conclusion through the judicial process. The terms of arbitration and the rights and obligations will also be a part of the agreement and a reference to the same in the award will constitute sufficient reasons for sustaining the award in terms of Section 31(3) of Act, 1996. Whereas, in the arbitration proceedings relating to NH Act, the parties are not governed by an agreement to regulate the process of arbitration. However, in the process of determination of just and fair compensation, the provisions in Section 26 to 28 of RFCTLARR Act, 2013 will be the guiding factor. The requirement therein being adverted to, should be demonstrated in the award to satisfy that Section 28(2) and 31(3) of Act, 1996 is complied. Therefore, what is also to be kept in perspective while noticing the validity or otherwise of an award regarding which the non-furnishing of reasons is contended as patent illegality is the reason assigned for determining just compensation in terms thereof. The situation which may arise in cases when a lesser compensation is determined in the arbitration proceedings and the land loser is complaining of the award is also to be kept in perspective since the requirement of reasons to be given by the learned Arbitrator in cases for determination of market value and compensation should indicate reasons since the same will have to be arrived at on a comparative analysis for which the reasons should be recorded and Section 26 to 28 of RFCTLARR Act will be relevant. Neither the land loser nor the exchequer should suffer in the matter of just and fair compensation. Hence the reasons under Section 31(3) is to be expected in that manner, the absence of which will call for interference under Section 34 of Act, 1996.

24. Leaving aside the facts in the instant case for a while, if in a matter as against the determination of the market value by the SLAO, the land loser had referred to the exemplar sale deeds and seeks higher compensation than prescribed in the guidance value, and in that circumstance, if no reasons are assigned by the learned Arbitrator for such determination and either approves the SLAO award or awards a lesser amount than the actual entitlement, in such circumstance the arbitration process which is thrust on the land loser should not be an impediment and limited interference should not be a reason to deny the just and fair compensation. In such cases while examining the award in the limited scope under Section 34 of Act, 1996, the Court is required to take note as to whether the evidence available on record has been adverted to and has been taken note by the Arbitrator in determining the just compensation failing which it will fall foul of Section 31(3) and amount to patent illegality. Therefore, while examining the award within the parameters permissible under Section 34 of Act, 1996 and while examining the determination of compensation as provided under Sections 26 and 28 of the RFCTLARR Act, 2013, the concept of just

compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the award for the ultimate conclusion. In such event an error if found, though it would not be possible for the Court entertaining the petition under Section 34 or for the appellate court under Section 37 of Act 1996 to modify the award and alter the compensation as it was open to the court in the reference proceedings under Section 18 of the old Land Acquisition Act or an appeal under Section 54 of that act, it should certainly be open to the court exercising power under Section 34 of Act, 1996 to set aside the award by indicating reasons and remitting the matter to the Arbitrator to reconsider the same in accordance with law. The said exercise can be undertaken to the limited extent without entering into merits where it is seen that the Arbitrator has on the face of the award not appropriately considered the material on record or has not recorded reasons for placing reliance on materials available on record in the background of requirement under RFCTLARR Act, 2013.

25. In that context it will be apposite to note the decision relied on by the learned Additional Solicitor General in Dyna Technologies (P) Ltd. vs. Crompton Greaves Ltd. (2019) 20 SCC 1 wherein *inter alia,* it is held as under:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.
>
> 35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making

process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

36. At this juncture it must be noted that the legislative intention of providing Section 34(4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits.

37. In case of absence of reasoning the utility

has been provided under Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34(4) of the Arbitration Act to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced.

42. From the facts, we can only state that from a perusal of the award, in the facts and circumstances of the case, it has been rendered without reasons. However, the muddled and confused form of the award has invited the High Court to state that the arbitrator has merely restated the contentions of both parties. From a perusal of the award, the inadequate reasoning and basing the award on the approval of the respondent herein cannot be stated to be appropriate considering the complexity of the issue involved herein, and accordingly the award is unintelligible and cannot be sustained."

26. Under the scheme of the Act 1996 it would not be permissible to modify the award passed by the learned Arbitrator to enhance or reduce the compensation based on the material available on record in proceeding emanating from Section 34 of Act, 1996. The option would be to set aside the award and remand the matter. In this regard it would be apposite to take note of the observation in *M. Hakeem* (supra), as hereunder:-

> **"42. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."**

48. Recently, Their Lordships of Hon'ble Supreme Court in **Punjab State Civil Supplies Corporation Limited v. M/s. Sanman Rice Mills SC 4856 AIROnline 2024 SC 643** held as under:

> **19. In Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani, a Division Bench of this Court followed and reiterated the principle laid down in the case of MMTC Limited (supra) and UHL Power Company Limited v. State of Himachal Pradesh. It quoted and highlighted paragraph 16 of the latter judgment which extensively relies upon MMTC Limited (supra). It reads as under:**
>
> **"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163: (2019) 2 SCC (Civ)**

293], the 11 reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words: (SCC pp. 166- 67, para 11).

"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 Ltd. 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."

CONCLUSION:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed

> **to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.**

49. It was held that if the award was found to be not against public policy of India or the fundamental policy of Indian law or in conflict with the most basic notions of morality and justice, the award must not be disturbed.

50. This Court had an occasion to go through the entire case record. It is revealed from the impugned award that the arbitrator while passing award dated 30.05.2023 had discussed the brief facts of the case, documents, contentions and all relevant material before passing the award.

51. The learned arbitrator had not taken any perverse or contrary view. He had considered the award for determining the market value, which is a relevant consideration. Any reasonable person would have taken it for consideration for determining the market value in view of the judgments of the Hon'ble Supreme Court. The award passed by the Ld. Arbitrator is well reasoned award. Therefore, it cannot be said that the arbitral award is a perverse award and the arbitrator had taken a contrary view, which was not even a possible view.

52. Thus, from a careful perusal of the Arbitral proceedings, it is shown that the arbitrator sent the notices to the concerned parties. The contentions raised by the objectors were

duly addressed. Accordingly, in view of the above, in considered opinion of the Court and in the given facts and circumstances of the case, it could be legitimately concluded that the arbitrator had considered all the contentions and passed the award appropriately

53. Conclusively, it is nowhere established from the attending facts and circumstances and evidence on record that the award was induced or effectuated by fraud or corruption or that award is in sheer contravention with the fundamental policy of Indian Law or that principles of natural justice were not followed or that the composition of the Arbitral proceeding was not proper or that the Arbitral procedure or that the proceedings were not in accordance with law or that the Award suffers from any ambiguity and illegality. As per record, the petitioner has miserably failed to show anything favourable or concrete on record as to how and why the Arbitrator was biased against him for that the Arbitral proceedings were not in accordance with law or that he was not given proper notice of Arbitral proceedings or that the Arbitral proceedings dealt with a dispute which is not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of submission to arbitration or that the composition of the Arbitral proceedings or the Arbitral procedure were not in accordance with the law.

54. The applicant/NHAI has also miserably failed to establish that the award is in contravention with the fundamental policy of Indian Law or it is in conflict with the justice or that there is contravention of fundamental policy of Indian Law or that the procedure of natural justice and the same is vitiated by patent illegality.

55. For the forgoing reasons, in the attendant facts, circumstances and evidence on record vis-a-vis bearing in mind the ratio of authorities cited supra, I arrive at an inescapable conclusion that the learned Arbitrator has rightly appreciated the evidence in its true perspective. The impugned award is based on sound footings as well as proper appreciation of facts and law and do not suffer from any propriety, illegality or irregularity.

56. For the foregoing reasons, all the grounds mentioned there in the application under section 34 of the Arbitration and Conciliation Act, instituted on behalf of the landowners and NHAI, in order to ascertain the patent illegality crept therein, as a result of which, the award passed by the Ld. Arbitrator are liable to be set-aside. Neither the landowners nor the NHAI succeeded in proving that there is gross miscarriage of justice by passing the impugned award and Ld. Arbitrator thereby committed patent illegality in passing the impugned order. So in the absence of cogent, clinching and convincing proof to the said fact, merits of all the applications deserve dismissal and the same are also dismissed. Hence, both these points are answered accordingly.

57. No other point was urged or contended before me.

<u>FINAL ORDER</u>

58. As sequitur, judged in the light of aforesaid facts and circumstances of the case and in my considered opinion on points No.1 and 2, the application is **Dismissed**. Memo of costs be prepared. However, the parties are left to bear their respective costs. Pending application(s), if any, stands disposed off, being rendered infructuous.

59. Record of Ld. Arbitrator along with attested copy of

this judgment shall be communicated and transmitted to the learned Arbitrator. The record of this Court be consigned to the Record Room after its due completion.

Announced in the open Court today on this 7th day of March, 2025.

(Rajesh Tomar)
District Judge
Mandi Division Mandi (HP).

Certified that I have signed the Page Nos. 1 to 75 of the Judgment.

(Rajesh Tomar)
District Judge
Mandi Division Mandi (HP).

/sanjeev/