

**IN THE COURT OF SH. PULASTYA PRAMACHALA
DISTRICT JUDGE, (COMMERCIAL COURT)-01,
PATIALA HOUSE COURT, NEW DELHI**

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OMP (COMM) No.240/2019

In the matter of: -

**Prasar Bharati, Broadcasting Corporation
of India through The Chief Engineer (NZ),
All India Radio and Doordarshan
Jamnagar House, Shahjahan Road,
New Delhi-110011 .**

...Petitioner

Versus

M/s Aplab Limited
Plot No. 170, 1st floor, FIE,
Patparganj Industrial Area,
New Delhi-110092
Through its authorized representative
Mr. Uday Singh
Regional Director, M/s Aplab Limited.

... Respondent

Date of Institution	:	23.12.2019
Arguments heard on	:	31.01.2026
Decided on	:	09.02.2026
Decision	:	Petition is dismissed.

JUDGMENT

DESCRIPTION OF THE CASE

1. Petitioner has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') challenging the arbitral award dated 15.07.2019 as passed by Ld. Sole Arbitrator.

BRIEF FACTS OF THE CASE

2. Briefly stated, petitioner issued a request for proposal dated 19.12.2007 inviting bids for supply, installation, testing and commissioning of 20 KVA UPS systems along with batteries at

DD-1, Tithwal; DD-1, Gurej; DD News Gurej; DD-1 Leh and DD News Jammu. The bid submitted by the respondent was accepted and a Letter of Intent dated 10.11.2008 was issued in its favour, followed by a purchase order dated 03.12.2008 for a total consideration of Rs.30,86,760/-. In terms of the tender conditions, the respondent was required to deposit earnest money and performance security, pursuant to which an amount of Rs.3,08,676/- was deposited.

3. It is the case of petitioner that despite repeated requests, respondent failed to replace/repair the defective UPS systems so as to ensure uninterrupted satellite transmission at the Kendra, thereby violating the warranty and guarantee clauses of the tender documents. It is alleged that due to non-functional UPS systems and batteries, several broadcast services were disrupted, resulting in interruption of national interest programs. Petitioner contends that the performance security was liable to be released only upon due compliance with the warranty and guarantee obligations. Since the respondent failed to adhere to Clause 6(b) of the tender conditions, the security deposit was not released.
4. Thereafter, the respondent invoked the arbitration clause. Vide order dated 05.10.2016, Hon'ble High Court of Delhi referred the disputes to the Delhi International Arbitration Centre (DIAC), pursuant to which Id. Sole Arbitrator was appointed. Six separate claims were filed by respondent, on the basis separate purchase orders placed by petitioner. Terms and conditions of each purchase order were same. Id. Arbitrator adjudicated all six claim petitions by way of a common award dated 15.07.2019.

GROUND OF CHALLENGE

5. Aggrieved by the impugned arbitral award dated 15.07.2019, petitioner has preferred the present petition along with similar other petitions on the basis of different purchase orders, inter alia, on the following relevant grounds: -
- i. That the impugned award is perverse, arbitrary, capricious, unreasonable and contrary to settled principles of law.
 - ii. That Id. Arbitrator has gravely erred in directing release of Rs.3,08,676/- in favour of the respondent towards security deposit, despite the respondent having failed to complete the work in terms of the contract.
 - iii. That Id. Arbitrator failed to appreciate that the respondent's claim itself was not maintainable, and consequently, the respondent was not entitled to any interest at the rate of 12% or 15% on account of alleged delay in refund of the security deposit.
 - iv. That Id. Arbitrator has acted de hors the contract and law, exceeded the scope of the agreement, and exercised jurisdiction in an arbitrary and unreasonable manner.

REPLY OF THE RESPONDENT

6. Respondent filed its reply denying all averments made in the petition and seeking dismissal thereof. It is contended that the present petition is barred under Order XXIII Rules 1(3) and 1(4) CPC read with Sections 10 and 16 of the Commercial Courts Act, on the ground that Petitioner had filed six objection petitions challenging the same award dated 15.07.2019 on the same cause of action, thereby resulting in multiplicity of proceedings.
7. It is further pleaded that petitioner has failed to disclose any valid ground under Section 34 of the Act for setting aside the award. The respondent asserts that the scope of interference with arbitral

awards is extremely limited and that petitioner is, in effect, seeking re-appreciation of evidence, which is impermissible under Section 34 of the Act.

ARGUMENTS OF PETITIONER

8. Ld. counsel for petitioner submitted that ld. Arbitrator erred in holding that there was no material on record to establish objections regarding the functioning of the UPS systems/generators. It was argued that although the Arbitrator observed that written communications were beyond the period of two years, but petitioner's officers remained in continuous oral communication with the respondent. It was further submitted that a meeting was ultimately held on 15.07.2014, pursuant to which a notice was issued. It was contended that the finding of the Arbitral Tribunal that petitioner failed to produce any material showing objections, is erroneous and contrary to the record. Ld. counsel further argued that the award of interest at the rate of 12% per annum with effect from 29.06.2011 till the date of award, and further interest at 15%, is excessive, arbitrary, and unsustainable in law. Same contentions have made in the written submissions.

ARGUMENTS OF RESPONDENT

9. Per contra, ld. counsel for the respondent submitted that sufficient evidence was led in support of all the claims. It was argued that the impugned award is a common award dealing with six claim petitions arising out of similar facts and transactions.
10. In the written submissions filed on behalf of respondent, it has been pleaded that on 30.11.2019, petitioner herein filed six

objection petitions before Id. District Judge, Commercial-2 challenging the Award dated 15.07.2019 under Section 34 of the Arbitration Act, 1996. Said six petitions challenged six claim petitions (of the Respondent) adjudicated vide the same singular Arbitral Award dated 15.07.2019. The said petitions were numbered as OMP (COMM) 213/2019, OMP (COMM) 214/2019, OMP (COMM) 215/2019, OMP (COMM) 216/2019, OMP (COMM) 217/2019 and OMP (COMM) 218/2019. It has been pleaded that OMP (COMM) 215/2019, OMP (COMM) 216/2019, OMP (COMM) 217/2019 and OMP (COMM) 218/2019, were dismissed as withdrawn vide order dated 20.02.2021, without any liberty to pursue fresh proceedings in respect of the same cause of action i.e. challenge to the impugned award dated 15.07.2019. It has been further pleaded that cause of action of the earlier petitions (which were dismissed as withdrawn without liberty) and the subsequently filed petitions is the same, which is apparent from the following details: -

- (a) The part of the Award dated 15.07.2019 (allowing the Respondent's Arbitration Petition No.545/2016) challenged in OMP (COMM) 215 /2019 was again challenged in OMP (COMM) 240/2019.
- (b) The part of the Award dated 15.07.2019 (allowing the Respondent's Arbitration Petition No.347/2016) challenged in OMP (COMM) 216/2019 was again challenged in OMP (COMM) 237/2019.
- (c) The part of the Award dated 15.07.2019 (allowing the Respondent's Arbitration Petition No.548/2016) challenged in

OMP (COMM) 217/2019 was again challenged in OMP (COMM) 239/2019.

- (d) The part of the Award dated 15.07.2019 (allowing the Respondent's Arbitration Petition No.551/2016) challenged in OMP (COMM) 218 /2019 was again challenged in OMP (COMM) 238/2019.

11. In the written submissions, it has been further pleaded that in order to mislead this court, petitioner has deliberately concealed the fact of filing of OMP (COMM) 215/2019, OMP (COMM) 216/2019, OMP (COMM) 217/2019 and OMP (COMM) 218/2019 in OMP (COMM) 237/2019; OMP (COMM) 238/2019; OMP (COMM) 239/2019 and OMP (COMM) 240/2019. It has been further pleaded that a false statement has been made in each petition bearing no. OMP (COMM) 237/2019; OMP (COMM) 238/2019; OMP (COMM) 239/2019 and OMP (COMM) 240 /2019 that no similar petition has been filed by petitioner. It has been further pleaded that OMP (COMM) 237/2019, OMP (COMM) 238/2019, OMP (COMM) 239/2019 and OMP (COMM) 240/2019 are barred owing to the provisions Order 23 Rule 1 sub-rule 3 & 4 of the Civil Procedure Code. It has been further pleaded that the subject matter of the disputes between the parties is commercial in nature and thus, the present objection petitions ought to have been filed as per the Commercial Courts Act. All the captioned objection petitions have been filed by petitioner without any statement of truth, without any Arbitral Record (except the Award) and without any identification of petitioner's signature by the Advocate on the

vakalatnama and in complete violation of the provisions of the Commercial Courts Act. It has been further pleaded that each of the aforesaid petition are improperly filed petitions and are thus, defective/non-est in the eyes of law. It has been further pleaded that present objection petitions are not a properly filed petitions and are not maintainable and are thus, liable to be dismissed, since the same have not been filed in accordance with the mandatory provisions of the Commercial Courts Act. It has been further pleaded that petitioner by way of the present petitions seeks re-appreciation of evidence, contractual provisions and legal provisions, which have already been thoroughly analyzed and reasoned by Id. Arbitrator. It has been further pleaded that the court under Section 34 of the Act does not act as a court of appeal and consequently, it is not permissible to re-appreciate evidence, facts or re-interpret contractual/legal provisions, which have already been analysed and discussed by Id. Arbitrator, even if the Court may have come to a different conclusion. It has been further pleaded that even a possible view taken by Id. Arbitrator cannot be interfered with as the Arbitrator is the ultimate master of the quantity and quality of evidence, interpretation of the contractual provisions and factual findings.

12. In the reply filed on behalf of respondent, it has been further pleaded that award in question is a well-reasoned award passed by Id. Arbitrator after giving due regard to the provisions of the contract between the parties. It is settled law that construction of the terms of the contract is primarily for the arbitrator to decide and unless the arbitrator construes the contract in a manner that no fair minded or reasonable person would or the view of the

arbitrator is not even a possible view to take, interference is not warranted. It has been further pleaded that petitioner in paragraph 3 (R) of each petition had alleged that: -

“The National interest was defeated because of faulty UPS were installed by Aplab which were required for Border area near LOC, J&K on strategic location for TV transmitters. Because of faulty UPS many important broadcast services were interrupted resultantly the national interest programmes were interrupted. The same is a serious matter as far as the national interest is concerned. In view of that Petitioner was compelled to delete the main programmes, which is not in national interest.”

13. It has been further pleaded in the written submissions that the said allegations are wrong and malicious and accordingly were denied by respondent in its respective replies to petitioner's petitions. It is important to note that petitioner failed to even plead anything in this regard in the Arbitration proceedings let alone leading any evidence to that effect. It has been further pleaded that respondent never even got the opportunity to refute the said contentions as the same were never pleaded before the Id. Arbitrator and are being raised for the very first time, and therefore, same cannot be relied upon for any purpose.

APPRECIATION OF ARGUMENTS, FACTS & LAW

14. The scope of enquiry under section 34 is restricted to consideration whether any one of the grounds mentioned in section 34 exists for setting-aside the award. Section 34 of the Act 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 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;

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only That part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the court finds That-

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

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

Explanation 1 - For the avoidance of any doubt, it is clarified That an award is in conflict with the public policy of India, only if,-- (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or (ii) it is in contravention with the fundamental

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

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

(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 re-appreciation of evidence.”

15. The general principles are that Arbitrator is a Judge of the choice of the parties and his decision, unless there is an error apparent on the face of the award which makes it unsustainable, is not to be set aside even by the Court, even if the Court of law could come to a different conclusion on the same facts. The Court cannot reappraise the evidence and it is not open to the Court to sit in appeal over the conclusion of the Arbitrator. It is not open to the Court to set aside a finding of fact arrived at by the Arbitrator and only grounds on which the award can be set aside are mentioned in the Arbitration Act. Where the Arbitrator assigns cogent grounds and sufficient reasons and no error of law or misconduct is cited, the award will not call for interference by the Court in exercise of the power vested in it. Where the Arbitrator is a qualified technical person and expert, who is competent to make assessment by taking into consideration the technical aspects of the matter, the Court would generally not interfere with the award passed by the Arbitrator.
16. Hon'ble Supreme Court in the case of ***Associate Builders vs.***

Delhi Development Authority, (2015) 3 SCC 49 held that the interference with an arbitral award is permissible only when the findings of the arbitrator are arbitrary, capricious or perverse or when conscience of the Court is shocked or when illegality is not trivial but goes to the root of the matter. It was held that once it is found that the arbitrator's approach is neither arbitrary nor capricious, no interference is called for on facts. The arbitrator is ultimately a master of the quantity and quality of evidence while drawing the arbitral award. Patent illegality must go to the root of the matter and cannot be of trivial nature.

17. Hon'ble Supreme Court in case of ***Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India, 2019 SCC OnLine SC 677*** held that under Section 34 (2A) of the Act, a decision which is perverse while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. A finding based on the documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties and therefore, would also have to be characterized as perverse. It was held that 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.
18. At the outset, it is noted that the respondent had filed six claim petitions before Id. Arbitrator. Since the facts, reliefs sought and issues involved in all six claims were identical, Id. Arbitrator,

with the consent of the parties, recorded common evidence in Arbitration Petition No. 545/2016 and applied the same findings to the remaining five matters. Three common issues were framed for adjudication.

19. The principal controversy in the present petition is whether Id. Arbitrator acted in violation of Clauses 5, 6(b) and 7(c) of the contract, and that whether findings given by Id. Arbitrator are perverse?
20. Before examining the rival submissions, it is necessary to refer to the Clause 5, 6(b)& 7(c) of the terms and conditions of the tender for work contract, which read as under: -

“5- Guarantee/warranty:

The equipment/stores/items offered should be guaranteed for a period of 27 months from the date of supply or 24 months from the date of installation whichever is later for UPS/batteries and associated equipment from date of installation whichever is later. During the guarantee/warranty period, the tenderer shall have to replace the defective equipment/stores/parts free cost. The tenderer shall have ensure timely repair/replacement of such defective items to keep the outage period limited to the barest minimum. In case the outage period for repair/replacement exceeds 15 days, the guarantee/warranty period shall stand automatically extended for the period of delay beyond 15 days unless the said delay is condones by the competent authority.

6- Security Deposit:

- (a) *The tenderer shall submit performance security for an amount of 10% of the value of the contract in the form of an account payee demand draft payable to the.....*
- (b) *Performance security should remain valid for a period of 60 days beyond the date of completion of all contractual*

obligation of the supplier/contractor including warranty obligations.

7- Earnest Money:

(a)

(b)

(c) *The successful tenderer shall complete the work as per the works contract within the delivery completion period failing which he loose his claim for the refund of earnest money/security deposit. Chief Engineer (NZ) shall without prejudice to any other rights or remedy, be at liberty to forfeit the said earnest money/security deposit”*

21. From a conjoint reading of the aforesaid clauses, it is evident that the contractual warranty period was 24 months from the date of installation. Petitioner has not disputed the finding recorded by Id. Arbitrator that as per the completion certificate, installations were completed latest by 29.06.2009. Consequently, Id. Arbitrator held that the warranty period expired on 29.06.2011. This position is also not disputed by petitioner.
22. Petitioner sought to justify withholding of the security deposit on the ground of alleged malfunctioning of the UPS systems and consequential losses. However, it is evident from the record, as also noted by Ld. Arbitrator, that no complaint or documentary material was produced by petitioner to demonstrate any defect or malfunction during the warranty period i.e. between 29.06.2009 to 29.06.2011. The letters relied upon by petitioner pertained to the years 2014-2015, which are admittedly much beyond the warranty period.
23. It is further undisputed that during the subsistence of the contractual period, petitioner issued completion certificates in

favour of the respondent from time to time and petitioner did not raise any contemporaneous written grievance regarding performance of the contract. Although reliance was placed by petitioner on Clause 7(c) to justify forfeiture of the security deposit, petitioner failed to establish any breach on the part of the respondent during the contractual or warranty period. In the absence of proof of default, invocation of Clause 7(c) was rightly held by Ld. Arbitrator to be unjustified. Petitioner has taken a plea that officers of petitioner had been in oral contact with officials of respondent, which was not considered by Ld. Arbitrator. However, such contention cannot be entertained u/s 34 of the Act, as it shall amount to re-appreciate the evidence to return a contrary factual finding.

24. The respondent also relied upon the minutes of meeting dated 15.07.2014, wherein it was recorded that the competent authority had decided to release the performance bank guarantee subject to feedback from concerned stations. This document clearly reflects petitioner's admission regarding decision taken for release of the security deposit, without any reference to complaints made during period of warranty.
25. While deciding the first two issues relating to entitlement of the respondent to refund of the security deposit, the learned Arbitrator observed as under: -

"I therefore, hold that the claimant has successfully supplied, installed, tested and commissioned the 20 KVA UPS system and batters. I further hold that there was no complaint made by the respondent during the guarantee/warranty period i.e. from the date period 29.06.2009 to 29.06.2011. I again hold that if the respondent is granted leverage of another 60 days in terms

of clause-6(b) of the tender document, the period of guarantee/warranty could be extended upto 29.08.2011, however the respondent have not made complaint for malfunctioning of UPS System even in this extended period, neither the clause is related to malfunctioning of UPS System. I hold that decision of the respondent to withhold and forfeit the performance security and earnest money in garb of clauses-5, 6(b) or 7(c) of terms and conditions of Ex.CW-1/2 (colly) was wrong and bad in law and cannot be allowed to stand”

26. Ld. Arbitrator, after appreciation of evidence, categorically held that the respondent had successfully supplied, installed, tested and commissioned the UPS systems, and that no complaint was made during the warranty period or even within the extended period contemplated under Clause 6(b). Ld. Arbitrator further concluded that withholding and forfeiture of the performance security under Clauses 5, 6(b) and 7(c) was illegal and unsustainable.
27. I find no perversity or patent illegality in the aforesaid findings. The conclusions drawn by Ld. Arbitrator are based on appreciation of contractual terms and evidence on record and cannot be termed arbitrary or unreasonable.
28. As regards interest, the respondent had claimed interest at the rate of 18% per annum from 29.06.2011 till the date of award. However, ld. Arbitrator, while exercising powers under Section 31(7)(a) and (b) of the Act, awarded simple interest at the rate of 12% per annum from 29.06.2011 till the date of award and future interest at the rate of 15% per annum till realization. The grant of interest lies within the discretionary domain of the Arbitrator and the interest awarded cannot be said to be excessive or arbitrary.

No ground has been made out to warrant interference with the said determination under Section 34 of the Act. In **Sri Lakshmi Hotel Pvt. Ltd. v. Sriram City Union Finance Ltd., 2025 INSC 1327**, reiterated the legal principle that in normal circumstances interest cannot be interfered u/s 34 of the Act.

29. Thus, I find that present petition merely seeks re-appreciation of evidence, which is not permissible under Section 34. The impugned award does not suffer from any perversity, patent illegality, or violation of public policy.

DECISION

30. In view of the foregoing discussion, I do not find any of the grounds under Section 34 of the Arbitration and Conciliation Act, 1996 being made out to set aside the impugned arbitral award dated 15.07.2019. Accordingly, present petition is dismissed.

Pronounced in the (PULASTYA PRAMACHALA)
Open Court on this District Judge (Commercial Court)-01,
09th day of February, 2026 Patiala House Court, New Delhi