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IN THE HIGH COURT OF DELHI AT NEW DELHI**Judgment reserved on: 12.08.2026****Judgment pronounced on: 02.09.2026**

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CNR No. DLHC011798302016

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O.M.P. (COMM) 419/2016**D. S. PARTNERSHIP****.....Petitioner****Through: Mr. Vinayak Suthar, Adv.****versus****NATRIP****.....Respondent****Through: Mr. Ravi Varma and Mr. Ayush
Srivastava, Advs.****CORAM:****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGMENT****%****02.09.2026**

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996¹ by D. S. Partnership², challenging the arbitral award dated 02.04.2016³ passed by a three-member learned Arbitral Tribunal comprising Mr. Amarjit Singh Kataria, Presiding Arbitrator, Mr. Arvind Kumar Gupta and Mr. Praveen Mahajan. The arbitral proceedings arose out of an International Commercial Arbitration within the meaning of Section 2(1)(f) of the Act.

2. The Petitioner seeks interference with the impugned Award principally on the ground that the learned Arbitral Tribunal, having found that the additional work was actually performed by the Petitioner, erred in denying compensation for the said work on

¹ "the Act" hereinafter

² "Petitioner", hereinafter

³ "impugned award" hereinafter

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account of non-compliance with Clause 8.2(iv) of Contract-I.

3. Briefly stated, the NATRIP Implementation Society⁴ was constituted for the implementation of the National Automotive Testing and R&D Infrastructure Project at various locations in India, including Chennai, Pune and Manesar.

4. The project involved the establishment of specialised automotive testing facilities, including a Power Train⁵ building containing Engine Test Cells⁶ and Vehicle Test Cells⁷. The work also involved the development of utilities and associated facilities, both within and outside the Test Cell areas.

5. For this purpose, the parties entered into two contracts. The first was Contract-I dated 7th August, 2009, under which the Petitioner was engaged to provide consultancy services relating to the evaluation, examination and validation of designs of utilities forming part of the civil works contracts of the Respondent. The contract value was capped at GBP 71,200, which included 520 man-hours in the United Kingdom at the rate of GBP 85 per hour, for a period of one year.

6. Mr. Y.V. Narsimha Rao, Assistant Director (Technical), was designated as the Respondent's authorised representative under Contract-I.

⁴ "Respondent" hereinafter

⁵ "PWT" hereinafter

⁶ "ETCs" hereinafter



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7. Thereafter, the parties entered into Contract-II dated 13.04.2010. Contract-II was a lump-sum contract under which the Petitioner was entrusted with providing detailed designs for the mechanical and electrical utilities for a consideration of GBP 119,500.

8. Mr. Saurabh Dalela, Additional Director, was designated as the Respondent's authorised representative under Contract-II.

9. Apparently, it seems that during the execution of Contract-II, the Petitioner took the view that the existing utilities outside the Test Cell areas, which had been designed by a third-party contractor on the basis of the initial requirements, were inadequate to support the specialised utilities proposed inside the Test Cells. Therefore, the Petitioner considered it necessary to modify the existing designs and harmonise the utilities and General Arrangement drawings of the buildings with the requirements of the Test Cell facilities.

10. Accordingly, the Petitioner undertook the additional work. It is the Petitioner's case that the work was carried out pursuant to discussions, correspondence and meetings with the Respondent's officials, including Mr. Saurabh Dalela and Mr. V.P. Singh, Director (Infrastructure). The Petitioner, thereafter, sought payment for the additional man-hours at the rate of GBP 85 per hour, treating the work as additional work under Contract-I.

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11. The Respondent disputed its liability. To understand the crux of the dispute, it is relevant to note Clause 8.2(iv) of Contract-I, which required the Consultant to obtain prior written approval before undertaking any work likely to result in the stipulated allocation of 520 man-hours being exceeded.

12. The Petitioner relied upon various communications, discussions and meetings with the Respondent's officials to establish that the additional work had been undertaken with the Respondent's knowledge and approval.

13. The Respondent, on the other hand, contended that the work claimed as additional was either covered by the lump-sum scope of Contract-II or, in any event, had been undertaken without the prior written approval required under Clause 8.2(iv) of Contract-I.

14. Thereafter, the dispute in regard to the payment for additional work was referred to arbitration in accordance with Clause 11 of Contract-I.

15. Upon entering the reference and completion of the pleadings, the learned Arbitral Tribunal framed 13 issues for determination. The learned Arbitral Tribunal rejected the Respondent's preliminary objection to its jurisdiction and held that the dispute substantially arose under Contract-I and fell within its jurisdiction.

16. On the merits of the dispute, the learned Arbitral Tribunal

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acknowledged that the Petitioner had carried out certain additional work, including changes to the General Arrangement drawings and harmonisation of utilities. It, however, distinguished between the fact that the additional work was carried out and the Petitioner's contractual entitlement to payment for such work under the agreed terms of the Contract.

17. While deciding the claims relating to the additional work, the learned Arbitral Tribunal categorically rejected the Respondent's defence that the entire additional work was within the fixed-price scope of Contract-II.

18. The learned Arbitral Tribunal, thereafter, examined whether the Petitioner was entitled to payment for the additional work under Contract-I. Referring to Clause 8.2(iv) of Contract-I, it held that prior written approval from the Respondent's authorised representative was a mandatory prerequisite for undertaking any work which was likely to result in the stipulated allocation of 520 man-hours being exceeded.

19. The Tribunal then examined whether the approvals relied upon by the Petitioner satisfied this requirement. It held that the communications with, or approvals allegedly granted by, Mr. Saurabh Dalela, who was the authorised representative under Contract-II, could not satisfy the requirement of approval under Contract-I. It similarly found that the discussions with Mr. V.P. Singh did not amount to compliance with Clause 8.2(iv).



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20. Further, the learned Arbitral Tribunal also rejected the Petitioner's alternative claim based on *quantum meruit*. It held, *inter alia*, that a subsisting Contract governed the relationship between the parties and expressly provided for additional work, but the Petitioner had not complied with the said provision. It further found that there was no evidence that the Respondent had accepted the additional work and that the necessary pleadings for a claim under Section 70 of the Indian Contract Act, 1872⁸ were also absent.

21. Mr. Vinayak Suthar, learned Counsel for the Petitioner, assailed the impugned Award by submitting that the Award is self-contradictory and suffers from an inconsistency which goes to the root of the matter. According to the learned Counsel, the Tribunal committed a fundamental error in finding that the additional work was in fact executed by the Petitioner and did not form part of Contract-II, while at the same time refusing to award any compensation for the same either under Contract-I or on the principle of *quantum meruit*, thereby permitting the Respondent to retain the benefit of the work without making any payment for it.

22. Learned Counsel for the Petitioner further submitted that the refusal to award compensation was contrary to the Tribunal's own findings and also violated Section 18 of the Act. According to him, once the execution of the additional work had been established, there was no legal impediment to awarding compensation for the same. In refusing such compensation, the Tribunal, according to the learned

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Counsel, failed to treat the parties equally as required under Section 18 of the Act.

23. The second limb of the challenge relates to the significance given by the Tribunal to the requirement of prior written approval under Clause 8.2(iv). According to learned Counsel for the Petitioner, the requirement was not mandatory and, in any event, stood waived or was otherwise satisfied by the conduct of the Respondent. In this regard, reliance was placed on the correspondence and meetings involving senior officials of the Respondent, particularly Mr. Saurabh Dalela and Mr. V.P. Singh.

24. It was submitted that the Respondent was fully aware of the additional work and, having permitted its execution and obtained the benefit thereof, could not subsequently rely upon the absence of formal approval to deny payment. It was also pointed out that Mr. Y.V. Narasimha Rao had raised no contemporaneous objection to the additional work at the time of its execution. Learned Counsel specifically relied upon the emails at pages 332 to 337 and the minutes of meeting at pages 338 to 343 to contend that Mr. Y.V. Narasimha Rao was aware of the additional work and its proposed billing under Contract-I.

25. The third ground relates to the findings of the Tribunal regarding the proforma invoices. It was submitted that the Tribunal, in Paragraphs 54 and 55 of the Award, had incorrectly recorded that the required proforma invoices had not been raised. In this regard,

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reliance was placed upon the invoices at pages 379, 396 and 448. It was further submitted that the finding was also contrary to the Tribunal's own observations in Paragraphs 38 to 40 and 48 to 49 of the impugned Award regarding the manner in which the invoices had been raised and considered by the Respondent.

26. Learned Counsel also challenged the rejection of the claim on the basis of *quantum meruit*, contending that even if payment was not recoverable strictly under Contract-I, the Tribunal ought to have granted compensation for the additional work and which was neither illegal nor gratuitous.

27. *Per contra*, learned Counsel appearing for the Respondent submitted that none of the objections raised by the Petitioner falls within the limited scope of interference under Section 34 of the Act. It was submitted that this Court does not sit as a Court of appeal over the learned Arbitral Tribunal and cannot re-appreciate the evidence or substitute its own view with the view of the Tribunal, particularly where the view taken is a possible view on the material before it.

28. According to the learned Counsel, Clause 8.2(iv) of Contract-I was clear and unambiguous and required prior written approval before undertaking work likely to exceed the overall allocation of 520 man-hours. It was submitted that no such approval had been obtained from Mr. Y.V. Narsimha Rao, the designated authorised representative under Contract-I. Reliance was also placed upon the cross-examination of CW-1, Mr. Wadiyaralalage Piyatissa Somarathne,



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particularly Questions Nos. 62, 63, 66 and 85.

29. As regards the claim on the basis of *quantum meruit*, learned Counsel for the Respondent disputed its applicability and submitted that the said principle could not be invoked to circumvent the agreed contractual conditions governing entitlement to additional remuneration. According to him, the impugned Award is well reasoned, consistent with public policy and does not suffer from any error which would warrant interference under Section 34 of the Act.

30. This Court has heard the learned Counsel for the parties and carefully perused the material on record.

31. Before this Court dwells upon analysing the rival contentions, at the outset, it is relevant to note that the impugned Award was rendered in an International Commercial Arbitration.

32. By the Arbitration and Conciliation (Amendment) Act, 2015⁹, the legislature introduced “*patent illegality appearing on the face of the award*” as an additional ground for interference under Section 34 by adding Section 34(2A), but consciously and deliberately ousted its applicability to International Commercial Arbitration from its ambit.

33. Therefore, the ground of patent illegality under Section 34(2A) is not available to the Petitioner. Accordingly, the challenge in the present case has to be examined on the ground of conflict with the

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public policy of India under Section 34(2)(b)(ii) of the Act.

34. The scope of interference under the head of “public policy” after the 2015 Amendment Act was succinctly examined and explained by the Hon’ble Supreme Court in **OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd.**¹⁰. The relevant observations are reproduced hereinbelow:

42. *The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression “in contravention with the fundamental policy of Indian law” was not used by the legislature in either Section 34(2)(b)(ii) or Section 48(2)(b). The pre-amended Section 34(2)(b)(ii) and its Explanation read:*

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

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

(b) the court finds that—

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

Explanation.—Without prejudice to the generality of sub-clause (i), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.”

43. *Whereas pre-amended Section 48(2)(b) and its Explanation read:*

“48. Conditions for enforcement of foreign awards.—(1)

(2) Enforcement of an arbitral award may also be refused if the court finds that—(a)

(b) the enforcement of the award would be contrary to the public policy of India.

Explanation.—Without prejudice to the generality of sub-clause (b) of this section, it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.”



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44. By the 2015 Amendment, in place of the old Explanation to Section 34(2)(b)(i), Explanations 1 and 2 were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted / added Explanations would apply.

46. **The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(b)(i) and Section 48(2)(b), in place of the earlier Explanation. The significance of the newly inserted Explanation 1 in both the sections is two-fold. First, it does away with the use of words: (a) "without prejudice to the generality of sub-clause (ii)" in the opening part of the pre-amended Explanation to Section 34(2)(b)(i); and (b) "without prejudice to the generality of clause (b) of this section" in the opening part of the pre-amended Explanation to Section 48(2)(b); secondly, it limits the expanse of public policy of India to the three specified categories by using the words "only if". Whereas, Explanation 2 lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(b)(ii) or Section 48(2)(b) of the 1996 Act.**

47. **The 2015 Amendment by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.**

48. Explanation 1 to Section 34(2)(b)(i), specifies that an arbitral 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.



49. In the instant case, there is no allegation that the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81. Therefore, we shall confine our exercise in assessing as to whether the arbitral award is in contravention with the fundamental policy of Indian law, and/or whether it conflicts with the most basic notions of morality or justice. Additionally, in the light of the provisions of sub-section (2-A) of Section 34, we shall examine whether there is any patent illegality on the face of the award.

50. Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions:

- (a) "in contravention with the fundamental policy of Indian law";**
- (b) "in conflict with the most basic notions of morality or justice"; and**
- (c) "patent illegality" has been construed.**

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in Renusagar21, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

- (a) the fundamental policy of Indian law; and/or**
- (b) the interest of India; and/or**
- (c) justice or morality.**

52. In the judicial pronouncements that followed Renusagar21, already discussed above, the domain of what could be considered contrary to the "public policy of India"/"fundamental policy of Indian law" expanded, resulting in much greater interference with arbitral awards than what the lawmakers intended. This led to the 2015 Amendment in the 1996 Act.

53. In SangyongEngg., this Court dealt with the effect of the 2015 Amendment. While doing so, it took note of a supplementary report of February 2015 of the Law Commission of India made in the context of the proposed 2015 Amendments. The said supplementary report has been extracted in para 30 of that judgment. The key features of it are summarised below:

- (a) Mere violation of law of India would not be a violation of public policy in cases of international commercial arbitrations held in India.**



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(b) The proposed 2015 Amendments in the 1996 Act [i.e. in Sections 34(2)(b)(ii) and 48(2)(b) including insertion of sub-section (2-A) in Section 34] were on the assumption that the terms, such as, "fundamental policy of Indian law" or conflict with "most basic notions of morality or justice" would not be widely construed.

(c) The power to review an award on merits is contrary to the object of the Act and international practice.

(d) The judgment in Western Geco²⁸ would expand the court's power, contrary to international practice. Hence, a clarification needs to be incorporated to ensure that the term "fundamental policy of Indian law" is narrowly construed. The applicability of Wednesbury principles to public policy will open the floodgates. Hence, Explanation 2 to Section 34(2)(b)(ii) has been proposed.

54. After taking note of the supplementary report, the Statement of Objects and Reasons of the 2015 Amendment Act, and the amended provisions of Sections 28, 34 and 48, this Court held : (Ssangyong Engg. case [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , SCC pp. 169-71 & 194, paras 34, 37-41 & 69)

“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* [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] understanding of this expression. This would necessarily mean that *Western Geco* [ONGC Ltd. 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 Ltd. 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 the grounds of 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] .

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35.-36.***

37. *Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015 to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter, but which does not amount to mere erroneous application of the law. In short, what is not subsumed within “the fundamental policy of Indian law”, namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.*

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

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

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with the 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

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

69. We therefore hold, following the aforesaid authorities, that in the guise of misinterpretation of the contract, and consequent “errors of jurisdiction”, it is not possible to state that the arbitral award would be beyond the scope of submission to arbitration if otherwise the aforesaid misinterpretation (which would include going beyond the terms of the contract), could be said to have been fairly comprehended as “disputes” within the arbitration agreement or which were referred to the decision of the arbitrators as understood by the authorities above. If an arbitrator is alleged to have wandered outside the contract and dealt with matters not allotted to him, this would be a jurisdictional error which could be corrected on the ground of “patent illegality”, which, as we have seen, would not apply to international commercial arbitrations that are decided under Part II of the 1996 Act. To bring in by the backdoor grounds relatable to Section 28(3) of the 1996 Act to be matters beyond the scope of submission to arbitration under Section 34(2)(a)(iv) would not be permissible as this ground must be construed narrowly and so construed, must refer only to matters which are beyond the arbitration agreement or beyond the reference to the Arbitral Tribunal.”

55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

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56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:
(a) violation of the principles of natural justice;
(b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and
(c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.
However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2) b)(ii).

Most basic notions of morality and justice

57. In *Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644]* this Court held that an arbitral award is in conflict with the public policy of India if it is, inter alia, contrary to “justice and morality”. Explanation 1, inserted by the 2015 Amendment, makes it clear that an award is in conflict with the public policy of India, inter alia, if it conflicts with the “most basic notions of morality or justice”.

Justice

58. Justice is the virtue by which the society/court/Tribunal gives a man his due, opposed to injury or wrong. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering justice with mercy, the court must be very conscious, that it has to do justice in exact conformity with some obligatory law, for the reason that human actions are found to be just or unjust on the basis of whether the same are in conformity with, or in opposition to, the law. Therefore, in "judicial sense", justice is nothing more nor less than exact conformity to some obligatory law; and all human actions are either just or unjust as they are in conformity with, or in opposition to, the law.

59. But, importantly, the term "legal justice" is not used in Explanation 1, therefore simple conformity or non-conformity with the law is not the test to determine whether an award is in conflict with the public policy of India in terms of Explanation 1. The test is that it must conflict with the most basic notions of justice. For lack of any objective criteria, it is difficult to enumerate the "most basic notions of justice". More so, justice to one may be injustice to another. This difficulty has been acknowledged by many renowned jurists, as is reflected in the



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observations of this Court in State (NCT of Delhi) v. Gurdip those arrayed on opposite sides. "One man's justice is another's injustice" [Ralph Waldo Emerson: Essays (1803-82), First Series, 1841, "Circles"]. Justice Cardozo said: The web is entangled and obscure, shot through with a multitude of shades and colors, the skeins irregular and broken. Many hues that seem to be simple, are found, when analysed, to be a complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards or even to describe them have never wholly succeeded! (Selected Writings of Cardozo, pp. 223-224, Falcon Publications, 1947)."
(emphasis in original)

60. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while this Court was dealing with the concept "public policy of India", in the context of a Section 34 challenge prior to the 2015 Amendment, it was held that an award can be said to be against justice only when it shocks the conscience of the court [See Associate Builders case, (2015) 3 SCC 49, para 36 : (2015) 2 SCC (Civ) 204] . The Court illustrated by stating that where an arbitral award, without recording reasons, awards an amount much more than what the claim is restricted to, it would certainly shock the conscience of the court and render the award vulnerable and liable to be set aside on the ground that it is contrary to justice.

61. In Ssangyong, which dealt with post the 2015 Amendment scenario, it was observed that an argument to set aside an award on the ground of being in conflict with "most basic notions of justice", can be raised only in very exceptional circumstances, that is, when the conscience of the court is shocked by infraction of some fundamental principle of justice. Notably, in that case the majority award created a new contract for the parties by applying a unilateral circular, and by substituting a workable formula under the agreement by another, dehors the agreement. This, in the view of the Court, breached the fundamental principles of justice, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered with the other party. However, a note of caution was expressed in the judgment by observing that this ground is available only in very exceptional circumstances and under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the court because that would be an entry into the merits of the dispute.



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62. In the light of the discussion above, in our view, when we talk about justice being done, it is about rendering, in accord with law, what is right and equitable to one who has suffered a wrong. Justice is the virtue by which the society/court/Tribunal gives a man his due, opposed to injury or wrong. Dispensation of justice in its quality may vary, dependent on person who dispenses it. A trained judicial mind may dispense justice in a manner different from what a person of ordinary prudence would do. This is so, because a trained judicial mind is likely to figure out even minor infractions of law/norms which may escape the attention of a person with ordinary prudence. Therefore, the placement of words "most basic notions" before "of justice" in Explanation 1 has its significance. Notably, at the time when the 2015 Amendment was brought, the existing law with regard to grounds for setting aside an arbitral award, as interpreted by this Court, was that an arbitral award would be in conflict with public policy of India, if it is contrary to:

(a) the fundamental policy of Indian law;
(b) the interest of India;
(c) justice or morality; and/or is
(d) patently illegal.

63. As we have already noticed, the object of inserting Explanations 1 and 2 in place of earlier explanation to Section 34(2)(b)(ii) was to limit the scope of interference with an arbitral award, therefore the amendment consciously qualified the term "justice" with "most basic notions" of it. In such circumstances, giving a broad dimension to this category! would be deviating from the legislative intent. In our view, therefore, considering that the concept of justice is open-textured, and notions of justice could evolve with changing needs of the society, it would not be prudent to cull out "the most basic notions of justice". Suffice it to observe, they ought to be such elementary principles of justice that their violation could be figured out by a prudent member of the public who may, or may not, be judicially trained, which means, that their violation would shock the conscience of a legally trained mind. In other words, this ground would be available to set aside an arbitral award, if the award conflicts with such elementary/fundamental principles of justice that it shocks the conscience of the Court.

Morality

64. The other ground is of morality. On the question of morality, in Associate Builders, this Court, after referring to the provisions of Section 23 of the Contract Act, 1872; earlier decision of this Court in Gherulal; and Indian Contract Act by

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Pollock and Mulla, held that judicial precedents have confined morality to sexual morality. And if "morality" were to go beyond sexual morality, it would cover such agreements as are not illegal but would not be enforced given the prevailing mores of the day. The Court also clarified that interference on this ground would be only if something shocks the Court's conscience.

35. It is clear from the above that, after the 2015 Amendment Act, the expression “public policy of India” is to be given a restricted meaning and the Court’s enquiry is confined to the limited grounds recognised under Explanation 1 to Section 34(2)(b)(ii), including contravention of the fundamental policy of Indian law and conflict with the most basic notions of morality or justice. Explanation 2 further clarifies that, while examining whether the fundamental policy of Indian law has been contravened, the Court cannot sit in appeal over the view taken by the Tribunal or reassess the merits of the dispute.

36. Keeping the aforesaid principles in mind, this Court will examine the challenge raised by the Petitioner against the impugned Award.

37. The fulcrum of the Petitioner’s argument is that, once the Tribunal found that the additional work had in fact been executed and was of the nature of work falling within Contract-I, the Petitioner was entitled to be paid for the same.

38. In view of this Court, there is an apparent fallacy in this submission, as it proceeds on the assumption that execution of the additional work, in itself, creates an entitlement to payment. The fact



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that the work was actually carried out and the question whether the Petitioner had a right to remuneration for such work are two distinct questions. The latter has to be determined in accordance with the terms agreed between the parties and incorporated in the Contract.

39. In the present case, Clause 8.2 of Contract-I is relevant as it specifically envisages a situation where the work is likely to exceed the overall allocation of 520 man-hours and prescribes the procedure to be followed in such circumstances. The relevant part of Clause 8.2 reads as under:

“8.2. Submission of ‘Work log-in sheet’ and Issuance of ‘Notice to Proceed’.

- (i) The client shall issue ‘Notice to Proceed’ against each assignments given to the consultant, upon the receipt of probable man hours required to be mobilized by the consultant to complete the task as assigned by the client.*
- (ii) The consultant shall submit the work log-in sheet, indicating the No. of Engineers on job and hours of working by each Friday of the week through an electronic mail to the NATIS’s authorized representative.*
- (iii) The consolidated work log-in sheet shall have to be submitted separately against each assignment.*
- (iv) A cumulative work log-in sheet shall be submitted on the last day of the each month (or next immediate working day in case of holiday) to monitor the total hours spent under para 8(b) this agreement.*
- (v) **Prior to proceed with the works, that likely to cross the overall time allocation of 520 hours, under para-8(b), the consultant shall necessarily take prior written approval from the client.**”*

40. A reading of the aforesaid clause gives a clear and unambiguous meaning that where any work is likely to exceed the overall allocation of 520 man-hours, the Consultant is required to obtain the Client’s



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prior written approval before proceeding with such work. There is no other meaning that can reasonably be attributed to the clause. The use of the expression “*shall necessarily take prior written approval*” reinforces the mandatory nature of this requirement.

41. In the present case, the learned Arbitral Tribunal meticulously analysed the meaning and purport of Clause 8.2 of Contract-I and found that Clause 8.2(iv) mandatorily required prior written approval before undertaking work likely to exceed the stipulated 520 man-hour allocation.

42. Thus, the dispute is essentially with the finding of fact recorded by the learned Arbitral Tribunal that no such prior approval was obtained. In this regard, the Petitioner relies upon the emails at pages 332 to 337, the minutes of meeting at pages 338 to 343, and the subsequent email at page 362, to contend that Mr. Y.V. Narsimha Rao was aware of the additional work and of its proposed billing under Contract-I.

43. Contract-I had specifically designated Mr. Y.V. Narsimha Rao as the authorised representative for Contract-I. The learned Arbitral Tribunal has returned a finding of fact that the Petitioner failed to produce any prior written approval from Mr. Rao authorising the additional hours beyond the 520 man-hour cap under Contract-I. It also considered the communications with Mr. Saurabh Dalela and Mr. V.P. Singh but did not accept them as constituting the approval required under Clause 8.2(iv), as Mr. Dalela being the authorised



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representative under Contract-II.

44. Thus, the learned Arbitral Tribunal considered both the contractual language and the Petitioner's reliance on the communications and discussions with the Respondent's officials, but found the same insufficient to establish the prior written approval required under Contract-I. This is a pure finding of fact based on the evidence and reconsidering the effect of those communications would necessarily require this Court to reassess the evidence, which is beyond the limited scope of jurisdiction under Section 34.

45. Similarly, with regard to the requirement to raise proforma invoices, the Petitioner relies upon the invoices at pages 379, 396 and 448 and contended that the requirement under Clause 8.3 was complied with. The learned Arbitral Tribunal, however, upon considering the record, held in paragraphs 54 and 55 that no proforma invoice had been raised in advance as required under Clause 8.3(iii). This is again a finding based on appreciation of the evidence.

46. In the view of this Court, the Petitioner is essentially seeking a re-appreciation of the communications relied upon by it and the invoices placed on record, so as to arrive at a conclusion different from that of the Tribunal. The sufficiency of the material relied upon by the Petitioner to establish approval, waiver or acquiescence, or compliance with the contractual procedure relating to the invoices, was a matter for the learned Arbitral Tribunal to determine upon appreciation of the evidence. This Court, in proceedings under Section



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34, cannot undertake such a fresh assessment of the evidence.

47. In support of its challenge, the Petitioner has placed no material before this Court to show that the learned Arbitral Tribunal's assessment in this regard is contrary to the fundamental policy of Indian law or conflicts with the most basic notions of morality or justice. Therefore, the finding of the learned Arbitral Tribunal that the requirements under Clauses 8.2(iv) and 8.3(iii) were not satisfied and that the Petitioner was consequently not entitled to any additional payment does not warrant any interference by this Court under Section 34 of the Act.

48. Further, as regards the Petitioner's contention that the principle of *quantum meruit* under Section 70 of the ICA ought to have been applied, this Court finds that the learned Arbitral Tribunal considered the said contention as well as the authorities relied upon by both parties and identified the following five conditions which, according to the learned Arbitral Tribunal, were required to be satisfied for invocation of Section 70 of the ICA:

"72. The law laid down in the above said authorities envisage the following situations for the applicability of the above extracted section 70 of Act, 1872,

- 1. Work should have been lawfully executed by one party for another;*
- 2. It should not be gratuitous;*
- 3. There should be no subsisting contract between the parties for doing that work or the agreement between the parties had been held invalid for any reason, whatsoever;*
- 4. Work should have been accepted by the parties; and*
- 5. There should be pleadings in the plaint for claiming compensation for executing such an additional work."*

49. The grievance of the Petitioner is not majorly with the conditions identified by the learned Arbitral Tribunal, but with the

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Tribunal's finding as to whether those conditions stood satisfied. The learned Arbitral Tribunal found that the first two conditions were satisfied but held that the remaining three were not fulfilled. The Petitioner disputes this finding and, in particular, relies upon the email at page 415 to contend that the additional work was ultimately accepted and utilised by the Respondent.

50. According to this Court, whether the email at page 415 or the other material relied upon by the Petitioner was sufficient to establish acceptance of the additional work was a matter which fell for consideration by the learned Arbitral Tribunal, which considered the same and returned a finding that there was no evidence of acceptance of the additional work by the Respondent. Reconsideration of that conclusion would again entail re-appreciation of the evidentiary material, which is beyond the limited scope of interference under Section 34.

51. As regards the contention that the additional work was never in dispute, the same does not aid or assist the Petitioner. Since acceptance of the additional work was identified by the Tribunal as one of the conditions for the applicability of Section 70 of the ICA, the Tribunal was required to examine whether the said condition was satisfied or not.

52. Further, the learned Arbitral Tribunal's view that the principle of *quantum meruit* cannot be invoked to disregard or override the express terms of a subsisting Contract finds support from the judgments of the Hon'ble Supreme Court in ***Alopi Parshad & Sons***



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Ltd. v. Union of India ¹¹, and **Mahanagar Telephone Nigam Ltd. v. Tata Communications Ltd**¹². It may apply where the Contract does not govern the work in question or is silent as to the manner in which additional work is to be undertaken. However, it cannot be invoked to override the express terms of a subsisting Contract governing the subject matter of the claim.

53. Even assuming that the Tribunal's view involves an error of law, such error would not, by itself, bring the impugned Award within the scope of "public policy of India" under Section 34(2)(b)(ii). The error must be of such a nature as to amount to a contravention of the fundamental policy of Indian law. No such contravention is shown in the present case. Accordingly, the learned Arbitral Tribunal's view on the conditions required for invoking the principle of *quantum meruit* does not warrant interference under Section 34.

54. Adverting to the application of law in the facts by the learned Arbitral Tribunal, it is beyond doubt that Contract-I itself contemplated the possibility of additional work and expressly prescribed the conditions subject to which such work could be undertaken. The learned Arbitral Tribunal, having found that the requirement of prior written approval from the authorised representative had not been fulfilled, cannot, therefore, be faulted for declining to invoke the principle of *quantum meruit* to bypass the said contractual requirement.

55. The Petitioner may legitimately disagree with the conclusions

¹¹ AIR 1960 SC 588
¹² (2019) 5 SCC 341



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reached by the learned Arbitral Tribunal on the evidence and its construction of the contractual provisions. Such disagreement with a plausible view taken by the learned Arbitral Tribunal, however, does not, in itself, constitute a ground for setting aside an impugned Award under Section 34 of the Act.

56. Section 28(3) of the Act also requires the learned Arbitral Tribunal, while deciding and making an Award, to take into account the terms of the Contract and the trade usages applicable to the transaction. In the present case, the learned Arbitral Tribunal considered the terms of the Contracts, the material placed before it and the submissions of both parties before arriving at its findings. Therefore, no fault can be attributed to the reasoning of the learned Arbitral Tribunal.

57. The principle of minimal judicial intervention in arbitral Awards has repeatedly been emphasized by the Supreme Court. Recently, the Hon'ble Supreme Court, in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd.**¹³, reiterated this principle in the context of Section 34 of the Act and held that a Court exercising jurisdiction under Section 34 cannot interfere with an arbitral Award merely because another interpretation of the Contract is possible or a different view of the evidence could have been taken by the learned Arbitral Tribunal.

¹³ (2025) 7 SCC1



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58. Therefore, when viewed within the limited parameters applicable to an International Commercial Arbitration under Section 34 of the Act, the findings of the learned Arbitral Tribunal do not disclose even a case of patent illegality, much less any contravention of the fundamental policy of Indian law or conflict with the most basic notions of morality or justice. Nor has any other circumstance been established which would bring the impugned Award within the limited scope of Section 34(2)(b)(ii) of the Act.

59. For the aforesaid reasons, the petition under Section 34 of the Act is dismissed.

60. All pending applications, if any, are disposed of.

OM PRAKASH SHUKLA, J.

SEPTEMBER 02, 2026/ss/gunn