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

Reserved on:16th October, 2023

% ***Pronounced on: 8th November, 2023***

\+ **FAO (OS) (COMM) 220/2017 & CM APPL. 45963/2017**

RAGHUNATH BUILDERS PVT. LTD. ..... Appellant

Through: Mr. Sanjiv Sen, Sr. Advocate with Mr. Ujjal Banerjee, Mr. Akash Khurana, Ms. Anjali Singh & Ms. Radha Gupta, Advocates.

versus

ANANT RAJ LIMITED ..... Respondent

Through: Mr. Ritin Rai, Sr. Advocate with Mr. Soham Ksumar, Ms. Prathana Singhania & Mr. Abel Thomas, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. **The Appeal under Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015** has been filed against the Order dated 16.10.2017 of the learned Single Judge allowing the Objections under Section 34 of the Arbitration and Conciliation Act, 1996 *(hereinafter referred to as "Act, 1996")* and thereby setting aside the Arbitrator's Award dated 09.09.2017.

2. **Facts in brief** are that the appellant/Raghunath Builders Pvt. Ltd. (*Respondent in the Arbitral proceedings hereinafter referred to as the 'appellant'*) is the sole and exclusive owner of land admeasuring 27740

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sq.yards along with the old construction thereon, commonly known as 'Jaipuria Mill' at 6926, Clock Tower, Subzi Mandi, Delhi *(hereinafter referred to as "Suit Property")*. The appellant and the respondent/Anant Raj Ltd.(*Claimant in the Arbitral proceedings hereinafter referred to as the 'Respondent')*entered into an Agreement dated 12.06.2007 for development of a Residential-cum-Commercial Complex on the said land in collaboration *(hereinafter referred to as the* "Project"*)*. The large portions of the lands were in possession of the tenants both commercial and residential, as was mentioned in the Agreement itself. Out of approximately 200 tenancies, more than a majority were commercial.

3. The appellant in terms of the Agreement executed Special Power of Attorney and a General Power of Attorney on 13.06.2007 in favour of the representative of the respondent/Anant Raj Ltd. in terms of Clause (1) of the Agreement. The land cost was agreed between the parties at Rs.25 Crores as mentioned in Clause 2.The appellant was required to extend full support to the respondent/Anant Raj Ltd. for reaching the settlements with the tenants for getting the tenanted area vacated so that parties could take joint possession as stipulated in Clause 4. The most significant clauses were Clauses 6 and 9 which read as under:-

> *"6. That the FIRST PARTY in association with the SECOND PARTY shall get the sanction of the project using its resources to have the same granted at the earliest. The sanction and permission for the project are expected to be granted within sixty months from the date of getting the tenanted area vacated or in case part is vacated and as per law part plan can be sanctioned then it will be got sanctioned accordingly. The time of sanction and permission may be extended considering the then prevailing circumstances.*
>
> *XXX XXX XXX*

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> *9. That the FIRST PARTY shall indemnify the SECOND PARTY in all respects of all claims, damages or expenses, payable in consequence to any injury to any employee, workmen, nominee, invitee while in or upon the said premises during the period of construction and claims of the prospective purchasers up to handing over the possession of the space/flats etc. and execution of final sale deed in their favour. The FIRST PARTY shall be solely responsible for compliance of all applicable laws, rules, regulations, bylaw etc. applicable in connection with the development and construction of above project including labour laws"*

4. The responsibility for development of the entire project was solely with the respondent/Anant Raj Ltd. in terms of *Clause 7*. The appellant was entitled to carry out regular inspection of the developmental and construction work in terms of *Clause 10***.** As per *Clause 12*, both the parties were required to open a Joint Bank account within 30 days of the signing of the Agreement in the name of the project, to be operated jointly by nominees of the parties. The entire revenue received from the sale or letting out or transfer of units/flats/land or any interest in part or full in the aforesaid Project, was to be deposited in this Escrow Account and was to be apportioned as stipulated in the said Clause. Clauses 13, 14, 15 and 16 of the Agreement further noted that on the date of Agreement, the respondent/Anant Raj Ltd. advanced Rs.1.50 Crores which amount was to be refunded to the respondent/Anant Raj Ltd. out of the revenue receipts of share of the appellant. *Clause 21* of the Agreement provided for resolution of the disputes through Arbitration.

5. The case of the respondent/Anant Raj Ltd. was that in terms of the Agreement, all the requisite steps were to be taken by it to seek eviction of

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the tenants and it was expected that necessary sanctions would be obtained within a period of 60 months which shall commence from the day of getting the tenants vacated. It was claimed by the respondent/Anant Raj Ltd. that the appellant chose to act capriciously and deliberately failed to perform its reciprocal promises under the Agreement thereby paralysing the development of the Project despite the respondent/Anant Raj Ltd. having invested huge amounts of money amounting to Rs.5 Crores.

6. *The appellant/Raghunath Builders Pvt. Ltd.* denied the entire claim *in toto* and asserted that it was the respondent who had failed to perform its obligations under the Agreement. The respondent in the period of 3 years from the date of execution of the Agreement i.e., upto 2010 evicted only 32 persons pertaining to 14 tenancies. Further, the Agreement provided for a period of 60 months from the date of Agreement to obtain necessary sanctions, but even after the lapse of 8 years since the Agreement dated 12.06.2007, the respondent/Anant Raj Ltd. had failed to obtain the necessary sanctions or to commence the proposed Project. Since the respondent/Anant Raj Ltd. failed to perform its part of the contract, it was compelled to revoke the Special Power of Attorney and General Power of Attorney vide letter dated 03.03.2014.

7. Aggrieved by the said revocation of the Special Power of Attorney and a General Power of Attorney, the respondent/Anant Raj Ltd. initiated Arbitration proceedings in terms of Clause 21 of the Agreement. In response to the invocation of the Arbitral clause, the appellant terminated the Agreement dated 12.06.2007 *vide* Notice dated 17.11.2014.

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8. The learned Arbitrator was appointed *under Section 11 of the Act, 1996* by this Court *vide* Order dated 19.02.2015. The respondent/Anant Raj Ltd. submitted its claims as follows: -

> *"(a) That the learned Arbitral Tribunal directs specific performance of agreement dated 12.06.2007; In the alternative, implement Clause 19(b) of the Agreement dated 12.06.2007 directing the parties to do the following:*
> *(i) Sale of the project land to a third party;*
> *(ii)The amount received from the sale of the project land to be shared in the ratio 50:50 between the Claimant and the Respondent after excluding the costs incurred by the Claimant in evacuating the tenants and such other costs and expenses;*
> *(b) Hold that the Power of Attorneys executed in favour of the Claimant are in full force and the Respondent be directed to unconditionally withdraw the letter dated 03.03.2014, 05.09.2014 and 17.11.2014;*
> *(c) Refund of Rs.5,63,800/- spent by the Claimant in pursuing litigation on behalf of the Respondent in the matters of "Raghunath Builders Pvt. Ltd. vs. Union of India & Ors." pending before the Supreme Court alongwith 18% interest from 09.05.2011 till the date of payment.*
> *(d) If the alternative relief is granted the Claimant be refunded the sum of Rs.5,11,09,797/- (Rupees Five Crores Eleven Lacs Nine Thousand Seven Hundred and Ninety Seven Only) along with interest at 18% per annum;*
> *(e) Award for sum of Rs.2,00,00,000/- (Rupees Two Crore Only) towards damages and loss of business;*
> *(f) Award the litigation cost in favour of the Claimant."*

9. The appellant while denying all the assertions of the respondent/Anant Raj Ltd. made Counter-Claims which reads as under:-

> *"Counter Claim 1: Uphold the invocation of Clause 19(a) of the said Agreement dated 12.06.2007 by the Respondent/Counter Claimant, and declare the said Agreement as*

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cancelled and terminated directing the parties to perform the consequences for termination thereof in terms of Clause 19(a) therein.

Counter Claim 2: *Direct the claimant to remove its employees, security personnel, representatives and others who are forcibly occupying the portions got vacated from the tenants specifically considering the fact that the same can only be treated as the joint possession of both the parties.*

Counter Claim 3: *Costs of Arbitration incurred by the Respondent. The Respondent craves leave to provide the details of the expenditure upon completion of the Arbitration proceedings."*

10. **The learned Arbitrator** considered the submissions and read the various clauses in the Agreement dated 12.06.2007, to conclude that the Agreement between the parties was not a Collaboration Agreement as was claimed by the respondent/Anant Raj Ltd. but was a Developmental Project. After the tenants were evicted, the joint possession was to be taken by both the parties in the lands. It was also observed that Power of Attorneys were not supported by any consideration but were only to enable the nominees/representatives of the respondent/Anant Raj Ltd. to perform the obligations under the Agreement which essentially involved the eviction of the tenants. Thus, it was concluded that no interest has been created in favour of respondent/Anant Raj Ltd. in the land which continued to be in the sole ownership of the appellant. Only limited rights were given for

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development and construction of the complex Project and hence, the SPA and GPA were revocable in nature.

11. It was noted that the respondent/Anant Raj Ltd. had failed to perform its obligations as only occupants of 14 tenancies were evicted over a period of 8 years. Further, the respondent/Anant Raj Ltd. had taken possession of some of the vacated tenancies without informing the appellant. On the other hand, the appellant/Raghunath Builders Pvt. Ltd. had filed more than 80 cases before different forums and had obtained favourable Orders in 40 matters. In the circumstances, it was held that the appellant/Raghunath Builders Pvt. Ltd. had cooperated with the respondent/Anand Raj Ltd. and had not caused unnecessary hurdles in the eviction of the tenants from the Project land. Since the respondent/Anant Raj Ltd. had failed to discharge its obligations, the revocation of Power of Attorneys by the appellant was held to be justified.

12. It was further observed by the learned Arbitrator that Clause 19(a) of the Agreement provided for termination of the Agreement by either party after 60 months which were to be calculated from the date of commencement of Agreement and not from the date of getting the tenanted area vacated as was projected by the respondent/Anant Raj Ltd. It was thus, concluded that the Agreement had been validly terminated by the appellant/Raghunath Builders Pvt. Ltd. Consequently, the Claims of respondent/Anant Raj Ltd. were all rejected except that the appellant/Raghunath Builders Pvt. Ltd. was directed to refund Rs.1.50 Crores without interest which had been given to it at the time of commencement of the Agreement.

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13. The two Counter-claim of the appellant/Raghunath Builders Pvt. Ltd. were allowed and it was held that Agreement dated 12.06.2007 was validly terminated under Clause 19(a) the Agreement. Further,the respondent/Anant Raj Ltd. was directed to remove its employees, security personnel, representatives and others from the Project land within four weeks from the date of the Award. The Counter-Claim 3 for cost of arbitration proceedings however was declined.

14. **Aggrieved by the Award** dated 09.09.2017, respondent/Anant Raj Ltd. preferred the Objections under Section 34 of the Act, 1996 vide OMP (COMM) 368/2017 before this Court.

15. **The learned Single Judge** observed that Clause 6 contemplated two situations *viz.(i) within 60 months from the date of getting the tenanted area vacated and (ii) in case part is vacated and as per law, part plan could be sanctioned, then it will be got sanctioned accordingly.* It was observed that the learned Arbitrator had failed to appreciate second limb of the Clause 6 and had given a finding only on the basis of part (i) of the Clause 6.

16. On conjoint reading of Clause 6 with Clause 19 of the Agreement, it was evident that the right to terminate the Contract would accrue 60 months after the vacation of the land by the tenants. Thus, the counter conclusions by the learned Arbitrator were not supported by express provisions of the Agreement.

17. **It was concluded by the learned Single Judge** that the learned Arbitrator fell in error in concluding that the Agreement dated 12.06.2007 and Power of Attorneys dated 13.06.2007 had been validly terminated. Hence, the Objections under Section 34 of the Act, 1996 were allowed and the Arbitral Award dated 09.09.2017 was set aside.

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18. **Aggrieved by setting aside of the impugned Award, the appellant/Raghunath Builders Pvt. Ltd. has preferred the present Appeal.**

19. **Learned counsel on behalf of the appellant/Raghunath Builders Pvt.Ltd.** has argued that the learned Single Judge has gone beyond the scope of Section 34 of the Act, 1996 and has re-appreciated the merits of the case while setting aside the well reasoned Order of the learned Arbitrator. The scope of interference under Section 34 of the Act, 1996 is very narrow, restrictive and limited. The Act, 1996 provides for a limited supervisory role of the Courts and envisages minimal judicial involvement only in exceptional circumstances like fraud, violation of principles of natural justice, bias etc. and excludes correcting mistakes of the Arbitrator.

20. Reliance has been placed in *P.R.Shah, Shares & Stock Brokers (P) Ltd. Vs. B.H.H. Securities (P) Ltd.* (2012) 1 SCC 594 wherein it was observed that while dealing with an objection to an Award, the Court does not sit in appeal over the Award by re-assessing or re-appreciating the evidence and an Award can be challenged only under the grounds mentioned in Section 34(2) of the Act, 1996.

21. Similar observations have been made in *Navodaya Mass Entertainment Ltd. Vs. J.M. Combines* (2015) 5 SCC 698 and *Associate Builders Vs. Delhi Development Authority*(2015) 3 SCC 49. Reliance is further placed on *Union of India Vs. Pam Development Pvt. Ltd.* (2003) SCC OnLine Cal 491 which has been reaffirmed by the Apex Court in (2014) 11 SCC 366 wherein it was observed that the Award of the learned Arbitrator is ordinarily final and conclusive. Wrong or right, the decision of the learned Arbitrator is final and binding if it is reached fairly after giving adequate

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opportunity to the parties to place their grievances during the arbitral proceedings.

22. It has been further argued on behalf of appellant that the interpretation of the Clauses of the relevant Contract was within the exclusive domain of the Arbitrator and the factual findings are not liable to be disturbed in a petition under Section 34 of the Act, 1996 as has been observed by this Court in *Union of India Vs. Nidhi Builders* (2015) SCC OnLine Del 14148. Reliance was further placed on *Punjab State Civil Supplies Corporation Ltd. and Another Vs. Ramesh Kumar and Company and Others* (2021) SCC OnLine SC 1056 and *Welspun Speciality Solutions Ltd. Vs. ONGC* (2022) 2 SCC 382.

23. It was prayed that the impugned Order of the learned Single Judge dated 16.10.2017 be set aside and the Award dated 09.09.2017 of the learned Arbitrator, be restored.

24. **Learned counsel on behalf of the respondent/Anant Raj Ltd**. has submitted that the Special Power of Attorney and General Power of Attorney executed in its favour, were illegally revoked by the appellant since they were irrevocable in nature being for valuable consideration. The Agreement dated 12.06.2007 was also allegedly terminated by claiming that since the respondent had failed to obtain requisite sanctions/permissions etc. within 60 months from the date of Agreement in clause of Clause 19(a), the Agreement stood automatically cancelled. However, Clause 6 clearly stated that the sanctions were to be obtained within 60 months from the date of getting the tenanted area vacated. The occasion to obtain the sanctions did not arise and the period of 60 months did not commence as the tenanted area

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was not got vacated from the tenants. The learned Single Judge has rightly interpreted Clause 6 and Clause 19 and has set aside the impugned Award.

25. It was submitted that the Supreme Court in *Delhi Development Authority Vs. R.S.Sharma & Co.*(2008) 13 SCC 80 has held that it was open to Courts to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy. It is, therefore, submitted that the Award has been rightly set aside by the learned Single Judge and does not merit any interference.

26. **Submissions heard of both the counsels for the parties and written submissions also perused.**

27. **Admittedly, the parties entered into an Agreement dated 12.06.2007** which was essentially a Development Agreement. The appellant was the owner of the land which was agreed to be developed into flats/units by the respondent/Anant Raj Ltd. by evicting the tenants who were occupying some part of the land and thereafter, obtain the sanction plans for construction. The Power of Attorneys were also accordingly, executed by the appellant in favour of the nominees of the respondent/Anant Raj Ltd.. It was also contemplated in the Agreement that the appellant shall extend complete cooperation in facilitating the eviction of tenants from the properties but at the same time, it was envisaged in Clause 3 of the Agreement that all the costs, expenses, charges, fee etc. with regard to the vacation of the tenanted premises by the tenants, and other adjoining land, shall be borne by the respondent/Anant Raj Ltd. and all such costs and expenses and the agreed cost of land was to form the part of the cost of the Project.

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28. The learned Arbitrator in detail considered the various terms of Agreement to observe that the Power of Attorneys were only to facilitate the nominees of the respondent/Anant Raj Ltd. to fulfil the obligations of getting the tenants evicted and for obtaining the requisite sanctions. The possession of the premises so vacated by the tenants was to be taken jointly by both the parties. There was no consideration extended for execution of Power of Attorneys as has been alleged by the respondent/Anant Raj Ltd. The learned Arbitrator decided that the Agreement which was essentially a Development Agreement, did not transfer the land to the respondent/Anant Raj Ltd. as the appellant continued to be the owner on which the flats were to be constructed by the respondent/Anant Raj Ltd. The learned Arbitrator therefore rightly concluded that the appellant was well within its right to revoke the Power of Attorneys.

29. **Now, coming to the second main aspect or the revocation of the Agreement** vide letter dated 17.11.2014. The learned Arbitrator again considered the various terms of the Agreement and observed that the obligation was of the respondent/Anant Raj Ltd. to get the premises vacated but over a period of 8 years, only 14 tenancies were vacated while the appellant had extended full support for filing 80 litigations in which favourable Orders were given in 40 cases. Further, there was a mention in the Award that some premises from which the tenants had been evicted had been re-let by the respondent but there was no evidence to show as to how many premises have been re-let. It was thus, observed by the learned Arbitrator that there was no act of the appellant which could inferred as a hurdle in the execution of the Agreement.

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30. A detailed interpretation of Clause 6 and Clause 19 was made to determine whether the Agreement was validly terminated. A bare reading of Clause 6 of the Agreement would show that it merely defined the time frame of 60 months within which the sanction of the Project was expected to be obtained and also stipulated that if a part of the plot of land became available, then the sanction plans may be obtained for said part if permissible under law. Clause 6 did not deal with the termination of the Agreement. It was Clause 19 (a) which specifically dealt with the Termination of the Agreement. It provided that if permission, CLU, clearances, plans etc. are not obtained within a period of 60 months or such period as may be mutually agreed between the parties, then either party may terminate this Agreement.

31. The learned Arbitrator referred to the General Practice and interpreted the terms of Commercial Contract to make commercial sense. It was observed by the learned Arbitrator that contract must not be construed by adopting a narrow, pedantic or legalistic approach. The documents be read in such a way as to make commercial sense to a person having the necessary background knowledge which would be available to a party placed in a situation when the contract was executed. It was further observed that no reasonable person involved in the building trade would expect the owner of the land to grant a builder an indefinite period to complete the Project as it would make no commercial sense. It was concluded that the interpretation sought to be given by the respondent/Anant Raj Ltd. that the 60 months would commence after the entire property was vacated by the tenants, would in essence give indefinite period of time to the respondent for obtaining the

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necessary sanctions which can never be the interpretation given to any Contract/Agreement of development.

32. The learned Arbitrator referred to Clause 19(b) of the Agreement wherein it was stipulated that in case the construction of the Project does not commence within 60 months, either party may opt to sell the Project on *"as it is"* and the agreed value of the land contributed by the appellant shall be taken at Rs.50 Crores instead of Rs.25 Crores. This Clause further makes it apparent that after a period of 60 months, the value of the land was to be taken at Rs.50 Crores. It was observed that clause 19(b) was to be invoked only a last resort and clause 19(a) having been invoked, clause 19(b) would not be attracted.

33. Thus, the learned Arbitrator in his well-reasoned order has held that the termination of the Agreement was valid and was in accordance with the terms of the Agreement dated 12.06.2007.

34. In the impugned order the learned Single Judge has interpreted Clause 6 and 19 differently to conclude that the 60 months period would commence from the date the tenants were evicted. First and foremost, we find that the learned Arbitrator in his well reasoned order had interpreted the terms of the Agreement in the perspective of the Agreement being a Commercial Contract which was required to make commercial sense. The learned Single Judge has given another interpretation to aforesaid Clauses which may or may not be possible but essentially, it amounts to re-appreciation of facts to come to a different conclusion.

35. The scope of grounds on which an Arbitral Award can be challenged under Section 34 of the Act is limited and are circumscribed by Section itself and the judicial precedents interpreting the said provision.

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36. The scope of a challenge under Section 34 and Section 37 of the Act, 1996 is limited to the grounds stipulated in Section 34 as held in *MMTC Limited v. Vedanta Ltd*, (2019) 4 SCC 163. The comprehensive judicial literature on the scope of interference on the ground of Public Policy under Section 34 was postulated in *Associate Builders v. DDA* (2015) 3 SCC 49. The Apex Court placed reliance on the judgment of *ONGC v. Saw Pipes*, (2003) 5 SCC 705 to determine the contours of Public Policy wherein an award can be set aside if it is violative of '*The fundamental policy of Indian law'*, '*The interest of India'*, '*Justice or morality'* or leads to a '*Patent Illegality'*. For an award to be in line with the '*The fundamental policy of Indian law'*, the Tribunal should adopt a judicial approach which implies that the award must be fair, reasonable and objective. These grounds require an Arbitral Tribunal to deliver a reasoned award which is substantiated by evidence.

37. It was further held in *Associate Builders* (supra) that, when a decision is made to set aside an award on the basis of "*public policy*", the term "*justice*" simply refers to an award that shocks the conscience of the court. A court cannot possibly include what it determines to be unfair, given the circumstances of a case, by replacing the Arbitrator's decision with what it sees as *"just"*.

38. Applying this Test to the present case, it is evident that a plausible interpretation has been given to the terms of contract which is not against the *"Public Policy"* and does not shock the conscience of the Court.

39. The other ground of "*patent illegality*" is applied when there is a contravention of the substantive law of India, the Arbitration Act or the rules applicable to the substance of the dispute. In *Hindustan Zinc*

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Limited v. Friends Coal Carbonisation, (2006) 4 SCC 445, The Apex Court referred to the principles laid down in *Saw Pipes* (supra) and clarified that it is open to the court to consider whether an Award is against the specific terms of contract, and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

40. The scope of challenge of an arbitral award under 'patent illegality' as added in sub-Section 2A of Section 34 vide the Amendment in 2015 has been explained *in Ssangyong Engineering and Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131. It was observed that for the sub-Section 2(A) of Section 34 of the Act, 1996 to be attracted there must be **'patent illegality'** appearing on the face of 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. It was 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. **A change that has been brought in by the Amendment Act, 2015 is 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

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commits an error of jurisdiction and would fall within the new ground of patent illegality added under Section 34(2A).

41. It was further explained 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. Section 34 (2)(a) does not entail a challenge to an arbitral award on merits.

42. In *Rashtriya Ispat Nigam Ltd. vs. Dewan Chand Ram Saran,* (2012) 5 SCC 306, the Court held as under: -

> *"43. In any case, assuming that Clause 9.3 was capable of two interpretations, the view taken by the arbitrator was clearly a possible if not a plausible one. It is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract. That being the position, the High Court had no reason to interfere with the award and substitute its view in place of the interpretation accepted by the arbitrator."*

43. Similarly, the legal position in this behalf has been summarised in the judgment of Apex Court in *Sail vs. Gupta Brother Steels Tubes Ltd.* (2009) 10 SCC 63.

44. In *Sumitomo Heavy Industries Ltd. vs. ONGC Ltd.* (2010) 11SCC 296, the observations made in Paragraph-43 thereof are instructive in this behalf which read as follows: -

> *"43. … The umpire has considered the fact situation and placed a construction on the clauses of the agreement which according to him was the correct one. One may at the highest say that one would have preferred another construction of Clause 17.3 but that cannot make the award in any way perverse.* ***Nor can one substitute one's own view in such a situation, in place of the one taken by the umpire, which would amount to sitting in appeal****."*

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45. As held by this Court in *Kwality Mfg. Corpn. vs. Central Warehousing Corpn.* (2009) 5 SCC 142, the Court while considering challenge to arbitral award does not sit in appeal over the findings and decision of the arbitrator, which is what the High Court has practically done in this matter. **The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the agreement. If he does so, the decision of the umpire has to be accepted as final and binding.**

46. In *MSK Projects (I) (JV) Ltd. vs. State of Rajasthan*, (2011) 10 SCC 573, the Apex Court held that if the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The ambiguity of the Award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the Award. Such a jurisdictional error needs to be proved by evidence extrinsic to the award.

47. In *McDermott International Inc. vs. Burn Standard Co. Ltd*. (2006) 11 SCC 181,, it was further noted that the construction of the contract Agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into

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consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. **Interpretation** of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. Once, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award. A reference may also be made to *Pure Helium India (P) Ltd. vs. Oil and Natural Gas Commission* (2003) 8 SCC 593 and *D.D. Sharma vs. Union of India* (2004) 5 SCC 325.

48. Thus, it is observed that the scope of grounds of challenge of an Award under Section 34 of the Act is limited and not equivalent to an appeal. From the legal principles enumerated above it is apparent that it is not within the scope of Section 34 for the learned Single Judge to have re-interpreted the contract and substituted its finding for that of the Arbitrator's when the finding of the Arbitrator is plausible and well-reasoned.

49. In view of the above discussion, the Order of the learned Single Judge dated 19.02.2015 cannot be sustained and we hereby set aside the same, thereby restoring the Award dated 09.09.2017 of the learned Arbitrator.

50. The Appeal is accordingly, allowed and disposed of along with pending applications, if any.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 08, 2023/akb/nk

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