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

Judgment reserved on: 06.04.2026
Judgment pronounced on: 01.07.2026

\+ FAO(OS) (COMM) 139/2018 & CM APPL. 49092/2025

D V ANAND .....Appellant
Through: Mr. Raman Kapur, Sr. Adv. with Mr. Varun Kapur, Adv.

versus

HINDUSTAN PETROLEUM CORPORATION LTD .....Respondent
Through: Mr. Ankit Jain, Sr. Adv. with Mr. Naveen Kumar Raheja, Mr. Parth Gautam, Ms. Apoorva Chandra and Mr. Anant Vijay Singh, Advs., Ms. Sagarika Semwal, Law Officer and Ms. Neelam Bala, Sr. Manager (Marketing)

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 01.07.2026

OM PRAKASH SHUKLA, J.

Introduction

1. The present intra-court appeal has been filed by the Appellant under Section 37 of the Arbitration and Conciliation Act, 1996,[1] read with Section 13 of the Commercial Courts Act, 2015, and Section 151

[1] "Act" hereinafter

of the Code of Civil Procedure, 1908[2], assailing the judgment dated 30.05.2018 passed by the learned Single Judge in O.M.P. (COMM) No. 584/2016. By the said judgment, the learned Single Judge dismissed the petition filed by the Appellant under Section 34 of the Act, wherein the arbitral award dated 14.12.2016[3], passed by the learned Sole Arbitrator, upheld the penalty imposed by the Respondent upon the Appellant as per the Marketing Disciplinary Guidelines, 2014[4], in connection with alleged fake Liquefied Petroleum Gas connections[5].

2. In brief, the dispute arises from the "Hindustan Petroleum Gas (LPG) Dealership (Domestic & Commercial) Agreement" dated 31.10.2013[6], executed between the Appellant, an LPG distributor, and the Respondent for the sale and distribution of LPG through the Appellant's outlets at Karawal Nagar and Netaji Nagar, New Delhi. During the subsistence of the dealership agreement, the Respondent received a complaint dated 17.01.2014, alleging the existence of 826 fake LPG connections in the Appellant's database, along with the particulars of such connections. Pursuant to the complaint, the Respondent conducted verification and, on a random basis, dispatched letters to 387 addresses mentioned in the complaint. All the letters were returned undelivered with remarks such as "address not found" and "no such person".

3. In the aforesaid backdrop, the Respondent issued a Show Cause Notice[7] dated 11.03.2014 to the Appellant, setting out the details of the

[2] "CPC" hereinafter
[3] "impugned award"
[4] "MDG" hereinafter
[5] "LPG" hereinafter
[6] "Dealership Agreement" hereinafter
[7] "SCN" hereinafter

complaint and the investigation conducted by it, pursuant to which the allegations were found to be true. In response, the Appellant, by way of a reply dated 14.04.2014, contended that discrepancies in certain addresses were due to manipulation of data by former employees and assured for a stricter scrutiny in future. The explanation, however, was found to be unsatisfactory, and the Respondent imposed a penalty of Rs. 2,24,89,020/- in terms of the relevant clauses of the MDG.

4. Aggrieved thereby, the Appellant initially preferred a representation-cum-appeal before the competent authority. The Appellant, however, was informed that the appeal would be entertained only upon deposit of the penalty amount. Therefore, the Appellant invoked Clause 39 of the Dealership Agreement, seeking reference of the dispute to arbitration *vide* letter dated 20.08.2014. Thereafter, the Respondent appointed Shri Sanjay Kumar as the learned Sole Arbitrator *vide* letter dated 16.09.2014.

5. Before the learned Arbitral Tribunal, the Appellant challenged the penalty imposed in respect of the alleged 826 fake connections, and also raised claims for loss of business, loss of customers, loss of reputation and costs of arbitration. The Respondent filed its Statement of Defence along with a Counter-Claim seeking the penalty amount imposed upon the Appellant. By the impugned award, the Appellant's claims were rejected, while the Counter-Claim was upheld to the extent of Rs. 2,03,12,102/-, after adjustment of an amount of Rs. 6,15,035/- already recovered from the Appellant's account. The learned Arbitrator also granted pre-award as well as future interest.

6. Aggrieved by the impugned award, the Appellant preferred a petition under Section 34 of the Act before this Court. The learned Single Judge, by the impugned judgment, dismissed the said petition, holding that the conclusions arrived at by the learned Arbitrator were plausible and based on the material available on record, and therefore did not warrant interference within the limited scope of judicial review under Section 34 of the Act.

Factual Matrix

7. The Appellant, herein, is stated to be carrying the business of LPG distributorship under the name and style of M/s Anand Stores. The Respondent, on the other hand, is stated to be a Government company engaged in the refining and marketing of petroleum products.

8. The Appellant has been associated with the Respondent as an LPG distributor since 1981. The distributorship arrangement between the parties has continued over the years and was lastly renewed *vide* the Dealership Agreement dated 31.10.2013 for a further period of five years.

9. According to the Appellant, the distributorship was regularly subjected to inspections and audits by officers of the Respondent, and no major complaints were recorded until 2009. However, between 2010 and 2013, certain disputes arose between the parties regarding the functioning of the distributorship. During this period, the Respondent imposed penalties upon the Appellant on allegations of diversion of LPG cylinders and shortage of regulators. Thus, disputes regarding the

operation of the distributorship had arisen even prior to the controversy which forms the subject matter of the present proceedings.

10. The present dispute arose in January 2014, when the Respondent received a complaint dated 17.01.2014 from Gurmeet Singh alleging that a significant number of fake LPG connections existed in the distributorship records maintained by the Appellant. The complaint purportedly identified 826 such connections. Subsequently, another complaint dated 11.02.2014 was received alleging that several consumer addresses maintained in the distributorship records were untraceable.

11. Acting upon the aforesaid complaints, the Respondent initiated an investigation. As part of the verification process, letters were sent on a random basis to 387 consumers out of the 826 purportedly connections alleged to be fake. According to the Respondent, all such letters were returned undelivered with remarks indicating incomplete, incorrect, or non-existent addresses. This exercise was followed by physical verification which was conducted by a joint team of officers of the Respondent in areas such as Moonga Nagar, Roshan Vihar, Kamal Vihar, Shiv Vihar and New Sabhapur. According to the Respondent, neither the consumers nor the addresses reflected in the distributorship records could be located at the concerned sites.

12. In view of the above, the Respondent issued a SCN dated 11.03.2014, alleging irregularities in the maintenance of consumer records, including the existence of 826 fake LPG connections in violation of Clauses 12 and 24(a) of the Dealership Agreement, read

with the MDG. The SCN provided detailed information regarding the field investigation and physical verification carried out in some areas. It further stated that, for the purpose of investigation, verification letters were dispatched to 387 consumers, with details of such consumers enclosed as Annexure-I to the SCN.

13. The Appellant submitted its reply to the SCN by letter dated 14.04.2014. In the reply, the Appellant acknowledged that certain discrepancies in the database of LPG connections had arisen due to manipulation of records by former employees. It was further stated that an internal scrutiny had been conducted following receipt of the complaints, and the Appellant assured the Respondent that stricter corrective measures would be implemented in future. On the basis of these assurances, the Appellant requested withdrawal of the SCN.

14. The explanation tendered by the Appellant, however, was not accepted as satisfactory by the Respondent. Therefore, the Respondent, *vide* penalty order dated 29.05.2014, imposed a penalty of Rs. 2,24,89,020/- upon the Appellant in accordance with Clauses 2.1.4, 2.1.6, and 3.1 of the MDG.

15. For reference, Clause 2.1.4 relates to the release of LPG connections to ineligible consumers, while Clause 2.1.6 relates to unaccounted sale of LPG cylinders, including supplies made to fake, blocked or otherwise ineligible customers. Clause 3.1 of the MDG prescribes nature and extent of penalties recoverable in cases of critical irregularities. This includes recoveries based on distributor

commission, unaccounted sales of LPG cylinders, and penalties corresponding to the number of ineligible connections identified.

16. Applying the aforesaid provisions, the Respondent computed the penalty under the following heads-

Amount	Particulars
Rs. 18,77,355	Recovery on account of 1st instance of critical irregularities
Rs. 41,30,000	Recovery @ Rs. 5000/- per alleged ineligible consumers (Total-826)
Rs. 1,64,81,665	Recovery towards alleged unaccounted refills of LPG cylinders (Total – 25,181 Nos. of Refills)
Rs. 2,24,89,020	Total Penalty Imposed

17. Aggrieved by the penalty order, the Appellant filed a representation-cum-appeal, contending, *inter alia,* that: (i) discrepancies in consumer addresses did not establish the existence of fake connections; (ii) verification had been conducted only in respect of a subset of the alleged connections and, therefore the penalty could not be imposed for all 826 connections; and (iii) no proper opportunity of hearing had been granted to refute the allegations raised by the Respondent.

18. Since the Appellant did not deposit the penalty amount, the representation-cum-appeal was not entertained by the Respondent. Meanwhile, an amount of Rs. 6,15,035/- was debited from the Appellant's account, and LPG supplies were suspended. The

consumers attached to the Appellant's distributorship were also diverted on an *ad hoc* basis to other distributors.

19. Thereafter, the Appellant invoked Clause 39 of the Dealership Agreement seeking reference of the disputes to arbitration *vide* letter dated 20.08.2014. Pursuant thereto, the Respondent appointed Shri Sanjay Kumar as the learned Sole Arbitrator *vide* letter dated 16.09.2014.

Proceedings before the Arbitral Tribunal and Impugned Award

20. Before the learned Arbitral Tribunal, the Appellant raised claims seeking- i) withdrawal of the penalty already imposed, ii) compensation for alleged loss of business, iii) loss of customers, iv) loss of reputation, and v) costs of arbitration. The Respondent, in turn, filed a Counter-Claim of Rs. 2,09,27,137/- seeking revised penalty amount imposed *vide* penalty order dated 29.05.2014. Evidence by way of affidavit was also filed by both parties. Upon consideration of the pleadings, evidence, and submissions, the learned Tribunal framed the following issues for consideration-

i. Whether the Claimant created 826 numbers of fake connections? (OPR)

ii. Whether the Claimant has committed violation of the Dealership Agreement and Marketing Discipline Guidelines? (OPR)

iii. Whether the imposition of a penalty on the Claimant and suspension of the Dealership Agreement is valid as per the

Dealership Agreement and Marketing Discipline Guidelines? (OPR)

iv. Whether the claim of the Claimant is valid as per the Dealership Agreement and Marketing Discipline Guidelines? (OPC)

v. Whether the Claimant is entitled to an interest claim, if yes, at what rate? (OPC)

vi. Whether Sh. Rakesh Gupta was taking an interest in the business of the Claimant or not? (OPC)

vii. Whether the counterclaim of the Respondent is valid as per the Dealership Agreement and Marketing Discipline Guidelines? (OPR)

viii. Whether Respondent is entitled to interest on counterclaim, if yes, at what rate? (OPR)

ix. Whether the Show Cause Notice issued by the Respondent is valid and proper? (OPR)

x. Whether parties are entitled to any further relief?

21. Regarding issue No. (i), which formed the basis of all other issues, the Appellant contended that verification had been conducted only for 387 consumers and, therefore, there was no justification for imposing penalty for all 826 alleged connections. The Respondent, however, submitted that sample verification was sufficient to establish large-scale irregularities in the distributorship records.

22. The learned Arbitrator accepted the Respondent's contentions, noting that the verification letters sent to 387 consumers were returned undelivered with remarks such as "address not found" or "untraceable".

Reliance was also placed on the obligations of the distributor under the Dealership Agreement to maintain accurate consumer records and supply LPG only to genuine customers. While further examining the Appellant's reply dated 14.04.2014 to the SCN, the learned Arbitrator noticed that the Appellant had itself acknowledged manipulation of customer data by ex-employees and that certain addresses had been altered.

23. On this basis, the learned Arbitrator held that the burden had shifted upon the Appellant to establish the genuineness of all 826 connections. Instead of furnishing such proof, the Appellant was found to have confined its defence to challenging the manner of investigation undertaken by the Respondent. Insofar as the identity of all 826 connections was concerned, the learned Arbitrator, upon perusal of the reply to the SCN and the Representation-cum-Appeal, observed that the Appellant had never disputed the identity of the alleged connections at the relevant stage. In view of the above, Issue No. (i) came to be decided in favour of the Respondent by affirming the existence of 826 fake connections.

24. For Issue No. (ii), the learned Arbitrator held that the existence of fake LPG connections and the continued supply of refills thereto constituted a breach of the Dealership Agreement and the MDG. It was further observed that maintenance of accurate consumer records and the acts of employees were the distributor's responsibility, and therefore, manipulation by ex-employees could not absolve the Appellant of liability. Accordingly, Issue No. (ii) was also decided in favour of the Respondent.

25. In regard to Issue Nos. (iii) and (ix), the learned Arbitrator examined Clauses 2.1.6, 3.1, and 3.5 of the MDG and rejected the Appellant's contention that penalties could not be computed beyond a two-year period. The learned Arbitrator held that the two-year period stipulated under Clause 3.5 pertained only to the classification of irregularities as first, second, or subsequent instances, and did not put any time restriction on the recovery of unaccounted sales. It was further held that refills supplied to fake or ineligible consumers were liable to be treated as "unaccounted sales" and recoverable in accordance with the methodology prescribed under Clause 3.1. On the aforesaid reasoning, the SCN, penalty order, and suspension of the distributorship were upheld as valid and in accordance with the MDG.

26. While deciding Issue Nos. (iv) and (v), the learned Arbitrator held that once the penalty and suspension of supplies were found valid under the Dealership Agreement and the MDG, the Appellant was not entitled to withdrawal of the penalty or damages for alleged loss of business, customers or reputation. Therefore, all claims of the Appellant, including the claim for interest, were rejected.

27. For Issue No. (vi), allegations were levelled against Shri Rakesh Gupta, Senior Regional Manager of the Respondent. The learned Arbitrator found that no evidence had been produced to support the allegations of bias, harassment, or ulterior motive, and further observed that such allegations had not even been raised in the reply to the SCN. Therefore, Issue No. (vi) was also decided in favour of the Respondent.

28. While considering Issue Nos. (vii) and (viii), the learned Arbitrator considered the revised penalty calculation furnished by the Respondent in its Counter-Claim, whereby the amount stood reduced to Rs. 2,09,27,137/-, and further noticed that Rs. 6,15,035/- had already been adjusted from the Appellant's account. In light of the earlier findings, the learned Arbitrator upheld the Counter-Claim and held the Respondent entitled to recover Rs. 2,03,12,102/- from the Appellant, along with interest at the rate of 8% per annum from the date of the demand letter dated 29.05.2014 till the date of the award, and future interest at the same rate until realisation. The parties were directed to bear their own costs.

Impugned Judgment

29. Aggrieved by the Arbitral Award, the Appellant filed a petition under Section 34 of the Act, contending, *inter alia*, that the learned Arbitral Tribunal had erred in upholding the penalty imposed by the Respondent on account of alleged fake LPG connections. The Appellant submitted that the Respondent had failed to lead any cogent evidence to establish the existence of the alleged 826 fake connections and that the findings returned by the learned Arbitrator were therefore perverse and based on "no evidence".

30. Before the learned Single Judge, the main issue was whether the impugned award was contrary to the public policy of India within the meaning of Section 34(2)(b)(ii) of the Act on the ground that the award was allegedly based on no evidence.

31. The learned Single Judge observed that the Respondent had not relied solely upon the complaint received from one Gurmeet Singh, but had also undertaken a verification process, which included the dispatch of letters to 387 consumers on a sample basis, all of which were returned undelivered. It was further noticed that officers of the Respondent had carried out physical verification in areas such as Moonga Nagar, Roshan Vihar, and Shiv Vihar, where local inquiries also failed to confirm the existence of the consumers reflected in the distributorship records.

32. The learned Single Judge further noted that, in its reply to the SCN, the Appellant itself had admitted manipulation of the consumer database by former employees, resulting in alteration of customer addresses. Insofar as the dispute regarding the supply of particulars of all 826 alleged fake connections was concerned, it was observed that details of 387 consumers, along with the gist of the investigation report identifying certain addresses as untraceable, had admittedly been furnished to the Appellant. According to the learned Single Judge, the Appellant had failed to produce any material rebutting the allegations and, on the contrary, the Appellant in its reply to the SCN accepted the allegations regarding fake connections.

33. In view of the above, the learned Single Judge concluded that the impugned award was founded upon a careful appreciation of the material on record and did not suffer from any perversity warranting interference under Section 34 of the Act. It was further observed that re-appreciation of evidence is impermissible within the limited scope of Section 34, particularly since the strict rules of evidence under the

Indian Evidence Act, 1872[8], do not apply to arbitral proceedings. Accordingly, the petition under Section 34 came to be dismissed.

Rival Contentions Before This Court

34. At the outset, Mr. Raman Kapur, learned Senior Counsel appearing for the Appellant, assailed the award on the ground that the mandate of the learned Arbitrator itself stood vitiated upon insertion of Section 12(5) of the Act by the Arbitration and Conciliation (Amendment) Act, 2015[9]. It was submitted that the learned Arbitrator, being an employee of the Respondent Corporation, became automatically ineligible to continue once the amendment came into force and, therefore, the impugned award rendered thereafter was without jurisdiction. Reliance in this regard was placed upon ***Ellora Paper Mills Ltd. v. State of Madhya Pradesh***[10], to contend that even an arbitrator appointed prior to the amendment would lose his mandate by operation of law once Section 12(5) became applicable.

35. On merits, Mr. Kapur contended that the finding regarding the existence of 826 fake LPG connections was based on "no evidence" whatsoever. It was submitted that although the penalty had been imposed in respect of all 826 alleged fake connections, the Respondent had physically verified only a limited number of connections on a random basis. According to Mr. Kapur, this itself demonstrated that no investigation had been conducted in respect of the remaining

[8] "IEA" hereinafter
[9] "2015 Amendment Act" hereinafter
[10] **(2022) 3 SCC 1**

connections and yet the penalty was imposed upon the Appellant without even establishing that those connections were fake.

36. It was further submitted that neither the alleged investigation report nor the postal receipts or copies of the verification letters allegedly sent to 387 consumers were ever produced before the learned Arbitrator or supplied to the Appellant. According to Mr. Kapur, the entire action was founded solely on a complaint allegedly made by an ex-employee of the Appellant, without any substantive evidence being led by the Respondent despite the burden squarely lying upon it to establish the allegation of fake connections.

37. Mr. Kapur further contended that particulars of all 826 alleged fake connections were never supplied, even along with the SCN. Consequently, according to him, the Appellant had no opportunity to verify the alleged irregularities or establish the genuineness of those consumers. It was argued that the learned Arbitrator merely proceeded on assumptions, improperly shifted the burden of proof upon the Appellant, and ignored the fact that the identities of all 826 connections had never been disclosed despite repeated requests.

38. It was also contended that the penalty imposed was wholly disproportionate and contrary to Clauses 3.5 and 3.6 of the MDG, as well as the general principles contained in Chapter V thereof governing the imposition of penalties. It was pointed out that under the MDG, where the precise duration of the irregularity cannot be established, recovery could, at best, be confined to a period of two years preceding detection. However, in the present case, although the SCN was issued

in March 2014, the Respondent computed unaccounted sales and refills over a five-year period from September 2009 to April 2014 without any material establishing the commencement of the alleged irregularity.

39. *Per contra*, Mr. Ankit Jain, learned Senior Counsel appearing for the Respondent, contended that the learned Arbitrator had been appointed on 16.09.2014, much prior to the coming into force of Section 12(5), and that the arbitral proceedings had already commenced in terms of Section 21 of the Act. Therefore, according to him, Section 12(5) was wholly inapplicable to the present case. It was further submitted that no objection regarding the appointment or eligibility of the learned Arbitrator had ever been raised by the Appellant, either during the arbitral proceedings or in the petition filed under Section 34 of the Act.

40. Reliance was placed upon ***Rajasthan Small Industries Corpn. Ltd. v. Ganesh Containers Movers Syndicate***[11], to contend that arbitral proceedings commenced before the amendment would continue to be governed by the unamended Act.

41. On merits, Mr. Jain contended that the Appellant was fully aware of the allegations and the particulars relating to the fake LPG connections. Attention was drawn to the reply dated 14.04.2014 to the SCN, as well as the Representation-cum-Appeal, wherein the Appellant itself admitted manipulation of data by former employees and attempted to explain that the concerned consumers were genuine residents of the Netaji Nagar area. It was pointed out that the Appellant never disputed

[11] **(2019) 3 SCC 282**

that the identities of such consumers had not been disclosed. According to Mr. Jain, these documents clearly established that the Appellant was conscious of the identities of all consumers whose connections were alleged to be fake and that the plea regarding non-disclosure of particulars was merely an afterthought.

42. It was further submitted that the Respondent had not acted merely on the basis of the complaint but had also undertaken verification through physical inspections of the concerned localities and dispatch of letters to 387 consumers on a sample basis, all of which were returned undelivered with remarks such as "non-existent" or "untraceable addresses". It was additionally submitted that the Respondent had also taken into consideration the feedback of the Area Sales Manager, which indicated the existence of discrepancies in the Appellant's database records.

43. It was also submitted that despite particulars of such consumers having been disclosed during the proceedings, the Appellant failed to establish the genuineness of even those consumers or dislodge the findings emerging from the verification conducted by the Respondent. In these circumstances, it was contended that the learned Arbitrator rightly shifted the burden to the Appellant to establish the genuineness of the remaining connections, which the Appellant failed to discharge.

44. Mr. Jain further argued that both the learned Arbitrator and the learned Single Judge had concurrently appreciated the material on record and returned findings of fact against the Appellant and, therefore, no interference was warranted under Section 37 of the Act.

Reliance in this regard was placed upon ***Steel Authority of India Ltd. v. Gupta Brother Steel Tubes Ltd.***[12]***, Sumitomo Heavy Industries Ltd. v. ONGC Ltd.***[13] ***and Kwality Manufacturing Corporation v. Central Warehousing Corporation***[14]**,** to contend that this Court cannot re-appreciate evidence as if exercising appellate jurisdiction over the arbitral award.

45. In the alternative, Mr. Jain submitted that even if this Court were not inclined to sustain the findings in respect of all 826 connections, the impugned award could still be upheld in part insofar as it related to those connections whose verification stood established on record and whose particulars had been disclosed to the Appellant and placed before the learned Arbitrator.

46. Reliance was placed upon ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***[15] ***and Saisudhir Energy Ltd. v. NTPC Vidyut Vyapar Nigam Ltd.***[16] to contend that the power to partially sustain, sever or modify an arbitral award is now recognised under the limited jurisdiction exercised under Sections 34 and 37 of the Act.

Analysis

47. We have heard learned Senior Counsels for both parties and have undertaken a thorough and comprehensive examination of the entire record placed before us.

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[12] **(2009) 10 SCC 63**
[13] **(2010) 11 SCC 296**
[14] **(2009) 5 SCC 142**
[15] **(2025) 7 SCC 1**
[16] **2026 INSC 103**

ELIGIBILITY OF THE ARBITRATOR – Section 12(5)

48. At the outset, before dealing with the merits of the case, we consider it necessary to first examine the issue of the ineligibility of the learned Arbitrator, as the same would decide whether the appeal has to be dismissed in *limine* or requires consideration on merits.

49. Mr. Raman Kapur, learned Senior Counsel for the Appellant, submitted that, since the learned Arbitrator was an employee of the Respondent Corporation, he became ineligible to continue as an arbitrator in view of the 2015 Amendment Act. He asserted that the impugned award, having been rendered after the amendment came into force, was without jurisdiction.

50. Thus, the limited issue which falls for our consideration is whether the learned sole Arbitrator, being an employee of the Respondent, became automatically ineligible, to continue as an arbitrator in view of Section 12(5) introduced by the 2015 Amendment Act.

51. In order to effectively adjudicate the aforesaid issue, we deem it appropriate to refer Section 26 of the 2015 Amendment Act. The same is reproduced for ready reference: -

> "26. Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act, unless the parties otherwise agree, but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act."

52. It is clear from the above reading that Section 26 expressly provides that the 2015 Amendment Act was intended to apply prospectively and would govern only those arbitral proceedings which commenced on or after 23.10.2015, i.e., the date on which the 2015 Amendment Act came into force. Therefore, arbitral proceedings which had already commenced in terms of Section 21 of the Act prior thereto would continue to be governed by the unamended Act, unless the parties agreed otherwise.

53. This position has also been recognised by the Hon'ble Supreme Court in ***Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.***[17], wherein it was held that the 2015 Amendment Act is prospective in nature.

54. However, Mr. Kapur, during the course of arguments, has challenged the above position of law by placing considerable reliance upon paragraph 20 of ***Ellora (supra)***, to contend that once Section 12(5) came into force, the learned Arbitrator automatically lost mandate, and any award rendered thereafter was without jurisdiction. Para 20 of ***Ellora(supra)*** reads as thus-

> "20. In view of the above and for the reasons stated hereinabove, the impugned judgment and order passed by the High Court are contrary to the law laid down by this Court in the cases of TRF (supra), Bharat Broadband Network Limited (supra) and the recent decision of this Court in the case of Jaipur Zila Dugdh Utpadak Sahkari Sangh Limited (supra). **It is held that the earlier Arbitral Tribunal - Stationery Purchase Committee comprising of Additional Secretary, Department of Revenue as President and**

[17] **(2018) 6 SCC 287**

(i) Deputy Secretary, Department of Revenue, (ii) Deputy Secretary, General Administration Department, (iii) Deputy Secretary, Department of Finance, (iv) Deputy Secretary/Under Secretary, General Administration Department and (v) Senior Deputy Controller of Head Office, Printing as Members, *has lost its mandate by operation of law in view of Section 12(5) read with Seventh Schedule and a fresh arbitrator has to be appointed under the provisions of the Arbitration Act, 1996*. The impugned judgment and order passed by the High Court are therefore unsustainable and deserve to be quashed and set aside.

(emphasis supplied)"

55. On the other hand, Mr. Ankit Jain, learned Senior Counsel for the Respondent submitted that the issue in contention is directly covered by the decision of Hon'ble Supreme Court in ***Rajasthan Small Industries Corporation Ltd.(supra)***, wherein it was held that Section 12(5) does not apply to arbitral proceedings which had commenced prior to the coming into force of the 2015 Amendment Act, and such proceedings would continue to be governed by the unamended Act. The relevant observations read thus: -

"23. After the amendment to the Arbitration and Conciliation Act, 1996, in 2015, Section 12(5) prohibits the employee of one of the parties from being an arbitrator. In the present case, the agreement between the parties was entered into on 28-1-2000, and the arbitration proceedings commenced way back in 2009; thus, the respondent cannot invoke Section 12(5) of the Arbitration and Conciliation (Amendment) Act, 2015. As per Section 26 of the Amendment Act, the provisions of the Amendment Act, 2015, shall not apply to the arbitral proceedings commenced in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act, unless the parties otherwise agree.

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26. The facts of the said case are entirely different from the case in hand. In the said case, when notice invoking arbitration was issued on 28.12.2015, after the Amendment Act, 2015 came into force with effect from 23.10.2015, by virtue of which the person named in the agreement became ineligible to act as the arbitrator. In the case in hand, the arbitration proceedings started way back in 2009, long before the 2015 Amendment Act came into force and therefore, the

2015 Amendment Act does not apply to the case in hand. The statutory provisions that would govern the matter are those which were then in force before the Amendment Act.

(emphasis supplied)"

56. In our view, at first blush, the observations in ***Ellora (supra)*** may appear to suggest a divergence from the line of decisions in ***Board of Control for Cricket in India (supra)*** and ***Rajasthan Small Industries Corporation Ltd. (supra)*** regarding the applicability of Section 12(5) to arbitral proceedings commenced prior to the amendment.

57. However, a careful reading of ***Ellora (supra)*** reveals that, in the said case, the challenge to the arbitrator's mandate was raised only in 2019, long after the 2015 Amendment Act had come into force. In ***Ellora (supra)***, although the arbitral tribunal had originally been constituted in 2001, the challenge seeking termination of the mandate on the ground of ineligibility under Section 12(5) came to be instituted nearly 18 years thereafter.

58. The High Court rejected the case of the Ellora Paper Mills, and the matter eventually reached the Hon'ble Supreme Court. While considering the issue, at the outset, the Hon'ble Supreme Court itself noticed that after the constitution of the arbitral tribunal in 2001, no arbitral proceedings had effectively taken place for several years. Meaning thereby, no commencement has taken place. The relevant observations read as follows:

"15. It has also come on record that, in between, the officers who were members of the Stationery Purchase Committee—Arbitral Tribunal had retired. At this stage, we are not considering whether

those persons could have been continued as members of the Stationery Purchase Committee—Arbitral or not. **However, the fact remains that after the constitution of the Arbitral Tribunal in the year 2001, no further steps whatsoever have been taken in the arbitration proceedings, and therefore, technically, it cannot be said that the arbitration proceedings by the Arbitral Tribunal—Stationery Purchase Committee have commenced."**

(emphasis supplied)

59. Thereafter, after referring to the decision in ***Jaipur Zila Dugdh Utpadak Sahkari Sangh Ltd. v. Ajay Sales & Suppliers***[18], the Hon'ble Supreme Court held that the members of the Stationery Purchase Committee, being officers of the State, had become ineligible to continue as arbitrators by operation of law in view of Section 12(5) read with the Seventh Schedule.

60. Upon careful analysis of the above decision, we do not find any divergence in judicial opinion. In ***Ellora (supra)***, although the tribunal had been constituted prior to the 2015 Amendment Act, the Hon'ble Supreme Court noticed that no effective arbitral proceedings had taken place for several years and, therefore, in substance, the proceedings had not meaningfully commenced before the 2015 Amendment Act.

61. Thus, the decision relied upon by Mr. Kapur did not deal with a situation where arbitral proceedings had effectively commenced in terms of Section 21 of the Act prior to the coming into force of the 2015 Amendment Act. There was, therefore, no occasion in that case to examine the issue in the context of Section 26 of the 2015 Amendment Act, which expressly preserves the applicability of the unamended Act

[18] **2021 SCC OnLine SC 730**

to arbitral proceedings that had already commenced prior to the amendment.

62. On the other hand**,** the Hon'ble Supreme Court in ***Board of Control for Cricket in India (supra)*** and ***Rajasthan Small Industries Corporation Ltd. (supra),*** clearly proceeded on the principle that where arbitral proceedings had already commenced before insertion of Section 12(5), the amended provisions would not apply by virtue of Section 26 of the 2015 Amendment Act.

63. We may also note that a Division Bench of this Court in ***Kamal Kumar v. Municipal Corporation of Delhi***[19] dealt with a similar situation where arbitral proceedings had commenced prior to the amendment, though the award itself was rendered subsequently. Relying upon ***Rajasthan Small Industries Corporation Ltd. (supra)***, the challenge to the competence of the arbitrator was rejected, holding that the 2015 Amendment Act would not invalidate proceedings which had validly commenced before the amendment came into force.

64. Thus, the legal position with respect to the jurisdiction of the arbitrator being clear, we now proceed to examine the facts of the present case.

65. In the present case, undisputedly, the arbitration clause came to be invoked in August, 2014, and the learned Arbitrator was appointed in September, 2014.

[19] **2023 SCC OnLine Del 6515**

66. Thus, the arbitral proceedings had undoubtedly commenced much prior to the date on which the 2015 Amendment Act came into effect. The *sequitur*, therefore, is that Section 12(5) had no application to the present proceedings, and therefore, the objection to the impugned award on the ground of alleged ineligibility of the learned Arbitrator deserves to be rejected.

67. The issue regarding the eligibility of the learned Arbitrator having thus been settled, we now proceed to examine the matter on its merits.

Scope of interference

68. Before proceeding on merits, we find it apposite, at the outset, to briefly recapitulate the settled principles governing interference by a Court exercising jurisdiction under Section 37 of the Act, as the same shall guide us in the proper adjudication on merits.

69. Insofar as the scope of interference under Section 37 is concerned, it is now too well settled to require any elaborate discussion that a Court exercising jurisdiction under Section 37 does not sit as a regular appellate court over an arbitral award. Meaning thereby, this Court is not entitled to re-appreciate the evidence or re-assess the merits of the dispute, as would ordinarily be permissible in a civil appeal under the CPC.

70. To avoid unnecessary repetition of principles which now stand consistently settled through a catena of decisions, we find it suffice to

refer to the observations of the Hon'ble Supreme Court in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills Project***[20], wherein, while reiterating the scheme of the Act, the Hon'ble Supreme Court, in line with the principle of minimal judicial interference with the arbitral awards, observed as follows:

> "14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.
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> ******
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> 20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred, and the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority under law to consider the matter in dispute before the arbitral tribunal on merits so as to find out whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that of superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered with unless a case for interference as set out in the earlier part of the decision is made out. It cannot be disturbed only for the reason that, instead of the view taken by the arbitral tribunal, the other view, which is also a possible view, is a better view according to the appellate court.
>
> 21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the

[20] **2024 SCC OnLine SC 2632**

substantive provision of law, any provision of the Act or the terms of the agreement."

(emphasis supplied)

71. It is clear from a reading of the above that the scope of interference under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 and is confined to the same grounds on which an arbitral award may be challenged under Section 34. This proposition also stands affirmed by the Hon'ble Supreme Court in ***Jan De Nul Dredging India (P) Ltd. v. Tuticorin Port Trust.***[21]

72. From the foregoing discussion, it is also evident that interference under Section 37 is warranted only in exceptional circumstances where the Court exercising jurisdiction under Section 34 has either failed to exercise the jurisdiction vested in it by law or has transgressed the limitations governing such jurisdiction, thereby necessitating correction of the jurisdictional error to preserve the sanctity and integrity of the arbitral process.

73. Since the present appeal essentially calls upon this Court to examine whether jurisdiction under Section 34 was exercised within its permissible contours, reference may, in this context, be made to the observations of the Hon'ble Supreme Court in ***Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani***[22], wherein the scope of interference under Section 34 of the Act was succinctly explained as follows:-

[21] **(2026) 3 SCC 186**
[22] **2024 SCC OnLine SC 1656**

"23. We need not dwell on the limited scope of interference in the petition under Section 34 of the Arbitration Act. That position is very well settled. However, as far as the appeal under Section 37(1)(*c*) of the Arbitration Act is concerned, in *MMTC Ltd.* v. *Vedanta Ltd.* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , in para 14, this Court held thus : (SCC p. 167)

> "*14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision*. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

24. In another decision of this Court in *UHL Power Co. Ltd.* v. *State of H.P.* [*UHL Power Co. Ltd.* v. *State of H.P.*, (2022) 4 SCC 116 : (2022) 2 SCC (Civ) 401] , in para 16, it was held thus : (SCC pp. 124-25)

> "*16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed*. In *MMTC Ltd.* v. *Vedanta Ltd.* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)
>
> '*11*. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(*b*)(*ii*) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural

justice, and *Wednesbury* [*Associated Provincial Picture Houses* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.'

25. In the decision of this Court in *Konkan Railway Corpn. Ltd.* v. *Chenab Bridge Project* [*Konkan Railway Corpn. Ltd.* v. *Chenab Bridge Project*, (2023) 9 SCC 85 : (2023) 4 SCC (Civ) 458] , in para 18, it was held thus : (SCC p. 93)

> "*18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court inMMTC Ltd.* v. *Vedanta Ltd.* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , *is akin to the jurisdiction of the court under Section 34 of the Act*. ['*14*. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision.'] *Id*, SCC p. 167, para 14. *Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act*."

26. The jurisdiction of the appellate court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of the Court dealing with a petition under Section 34. It is the duty of the appellate court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the appellate court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the appellate court can exercise the same power and jurisdiction that Section 34 Court possesses with the same constraints."

74. The aforesaid text makes it abundantly clear that the jurisdiction conferred upon this Court under the Act remains confined to examining whether the award suffers from violation of Indian public policy,

conflict with justice or morality, or patent illegality going to the root of the matter. Equally well settled is that to assess whether the limited grounds are made out or not, this Court cannot disturb an award merely because another plausible view exists.

75. Therefore, keeping the aforesaid principles in mind, we now proceed to deal with the controversy in the present appeal.

76. Before addressing the rival submissions, we find it pertinent to mention certain undisputed foundational facts emerging from the record, as the same go to the root of the controversy and would aid in culling out the principal issue to be adjudicated.

77. From the record, particularly the SCN dated 11.03.2014, it is evident that particulars of 387 consumers, to whom verification letters were dispatched on a random basis, were furnished through an annexure to the notice. The SCN also referred to physical verification carried out in respect of 95 connections, though 36 amongst them overlapped with the set of 387 connections. Thus, particulars relating to 446 connections out of total 826 alleged fake connections had, in some form, formed part of the record and stood disclosed to the Appellant through the SCN.

78. Insofar as the remaining 380 alleged fake connections are concerned, learned Senior Counsel for the Respondent fairly conceded that neither their particulars had been supplied to the Appellant nor was any such material placed before the learned Arbitrator. It was also not disputed that, unlike the other set, no independent investigation by

letters or physical visit had been undertaken for those consumers to establish that the said connections were also fake.

79. Thus, broadly speaking, the 826 alleged fake connections fall into two distinct categories of connections (i) First, being 446 connections in respect of whom an alleged investigation was conducted, certain verification material was available, and the same was disclosed to the Appellant by SCN and Annexure to SCN and even placed on record, and (ii) Second ,being the 380 connections in respect of whom neither any investigation had been conducted nor their particulars supplied to the Appellant or placed on record.

80. Since the penalty imposed is intrinsically linked to the number of such connections, we deem it appropriate to separately examine whether the impugned award and the impugned judgment can be sustained for both sets of connections.

81. Bearing the above position in mind, we now move to deal with the issue on merits with respect to both sets of connections.

Set I- Penalty for 446 fake connections

82. To assail the penalty for Set-I connections, the Appellant's case is that although the SCN stated that particulars of 387 connections were annexed thereto, the said material was never actually supplied to the Appellant. It was further contended that neither the delivery receipts evidencing such investigation nor the testimonies of the officials who had allegedly conducted the physical verification were ever furnished.

83. Next contention raised was that the Appellant was not afforded an effective opportunity to establish the genuineness of the concerned connections. Despite the same, the connections came to be treated as fake on the premise that the Appellant had failed to discharge the burden of proving their genuineness, thereby rendering the impugned award as being violative of the principles of natural justice.

84. The Respondent, on the other hand, submitted that due investigation had been conducted in respect of Set-I connections, all of which were found to be fake, and their particulars had also been supplied to the Appellant along with the SCN. It was further contended that the Appellant itself had acknowledged discrepancies in its consumer database attributable to former employees, yet failed to establish the genuineness of the concerned connections. Therefore, according to the Respondent, the prescribed procedure had been duly followed and no lapse could be attributed to it.

85. Having perusal of the record, we are unable to accept the contention that particulars of the Set-I connections were never furnished to the Appellant.

86. The SCN itself specifically records that annexures containing details of the connections to whom verification letters had been dispatched were enclosed therewith and formed part of the record. Significantly, at no stage contemporaneous to the SCN did the Appellant dispute receipt of the said particulars. Now, a belated

challenge at this stage is, therefore, unsustainable, particularly when the material admittedly formed part of the record.

87. Insofar as the contention regarding absence of opportunity to establish the genuineness of the connections is concerned, we deem it appropriate to first refer to the relevant reasoning recorded by the learned Arbitrator. The same reads as thus-

> "5.3 The main issue in controversy in the matter is whether or not fake customers existed at the Claimant's distributorship, as the entire case of the Claimant is that no fake customers exist, and the penalty imposed by the Corporation, considering 826 fake customers, is bad. In order to adjudicate this issue, it is necessary to refer to the complaint dated 17.01.2014 received from Sh. Gurmeet Singh, which was a trigger point for investigation by the Respondent Corporation. The claimant has challenged the findings of the investigation on the ground that the answering respondent sent letters to only 387 customers and not to all 826 fake customers, and, thus, the investigation remains inconclusive, which does not establish the presence of 826 fake customers. The said point was replied by the Respondent with an argument that letters were issued to 387 customers only on a sample basis to ascertain the genuineness of the complaints, and **it is for the claimant dealer to prove that all said connections are genuine, as the claimant is responsible for the issuance of LPG connections as well as maintaining customer data, refill data, etc.**
>
> **The perusal of LPG distributorship agreement clearly show that it is for the claimant distributor to ensure that customer data is maintained properly in accordance with the guidelines and, admittedly**, there is no doubt that refills are to be issued to only genuine customers which can be ensured by the distributor as it is the distributor who conduct preliminary enquiry about the genuineness of customers and their addresses and is responsible for supplying refills to genuine customers.
>
> ***I find merit in the contention of the respondent that issuance of letters of 387 customers out of 826 customers was only an effort made by the Corporation to ascertain the genuineness in the allegations made by the complainant in his complaint that 826 fake customers exist at the Claimant's distributorship and once all the 387 letters returned "UNDELIEVERED" with remarks that***

addressee did not exist the burden is on the Claimant distributor to show that all said 826 customers exist as it is the Claimant who has created those customers and supplying LPG cylinders to them on regular basis. **However, the Claimant restrict himself to finding fault in the investigation rather than producing documents to suggest that all said 826 customers are genuine customers who are his customers and, thus, he could have easily produced documents to prove that all said customers are genuine.**

The contention of the claimant that the names of residents were not mentioned in SCN or testimony of witnesses not provided etc., does not have any merit as the purpose of said investigation was to ascertain whether or not said customers exist at addresses entered in the system by the Claimant. **The said investigation does not stop the claimant from producing documents to suggest that those customers exist at those addresses, and the addresses are correct**. On the other hand, the Claimant in his reply dated 14.04.2014 to SCN dated 11.03.2014 admitted that customer data was manipulated by his ex-employees. The claimant also admitted in his reply that he had no information pertaining to the data manipulations done by the ex-employee until the date of receiving the notice by the Corporation.

The claimant in his said reply dated 14.04.2014, though stated that said consumer numbers are genuine in nature, having addresses pertaining to Netaji Nagar, but failed to explain how the refills were being delivered to said customers when their addresses were changed in the system. **In other words, the claimant is not disputing the release of refills (i.e. 25181 from Sept, 2009 till April, 2014 w.r.t 826 customers) issued to said customers, which are also considered by the answering Corporation for imposing a penalty and the only question is whether those refills were issued to genuine customers or not?**

The Claimant failed to explain that if, according to him, these customers are genuine and only addresses were manipulated and changed to Moonga Nagar, Roshan Nagar, Karawal Nagar, Shiv Vihar, etc., then where the refills were delivered in the past, as admittedly refills cannot be delivered to those customers because addresses mentioned in the system were incorrect.

Even otherwise, the Claimant has not produced any documents to suggest that said 826 customers are genuine, though it is the case of the Claimant that refills were supplied to them. The failure on the part of the claimant to address this issue proves the case of the respondent corporation of diversion of refills on the part of the claimant.

(emphasis supplied)"

88. From a reading of the above, it emerges to us that, insofar as this set of connections is concerned, the learned Arbitrator found that an investigation had been conducted by the Respondent and that verification letters dispatched to the concerned consumers were subsequently returned undelivered. The learned Arbitrator also took note of the fact that, in its reply to the SCN, the Appellant itself had admitted manipulation of customer data. It was only thereafter that the learned Arbitrator held that the burden had shifted upon the Appellant to establish the genuineness of the concerned connections, and the Appellant failed to discharge the burden at the relevant stage. The learned Arbitrator further emphasised that, under the Dealership Agreement, the Appellant, being the distributor maintaining customer records and supplying refills, was under an obligation to ensure that customer data is maintained properly in accordance with the guidelines.

89. As far as the issue of providing an opportunity to prove genuineness is concerned, we note that the reply to the SCN was the appropriate stage where the Appellant ought to have disputed the allegations levied by the Respondent that such connections were fake. However, instead of substantiating the genuineness of the concerned connections, the Appellant took the defence of data manipulation by ex-employees.

90. In such circumstances, when there was material before the learned Arbitrator indicating that the said connections were fake and the Appellant failed to raise any plausible defence in its reply to the SCN,

no fault can be found with the reasoning of the learned Arbitrator that, the Appellant largely confined its defence to questioning the methodology of investigation rather than establishing the genuineness of the concerned connections, and thereby failed to discharge its burden of proof.

91. Therefore, insofar as Set-I is concerned, investigation had in fact been carried out to establish that the said connections were fake, and their particulars were available before the learned Arbitrator as well as known to the Appellant, who failed to establish their genuineness at the relevant stage. Once such material formed part of the arbitral record, it cannot be said that the findings of the learned Arbitrator were unsupported by evidence.

92. It is well settled that the learned Arbitrator is the master of the quantity and quality of evidence, and this Court, in exercise of its jurisdiction, does not sit in appeal over factual findings rendered by the Arbitral Tribunal when such findings are supported by material available on record.[23]

93. In light of the aforesaid discussion, we find no infirmity in the approach adopted by the learned Arbitrator. The finding that the said connections were fake, in our view, constitutes a plausible and reasoned conclusion emerging from the material available on record and supported by evidence. We further find that the consequential penalty

[23] **Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236; Associate Builders v. DDA, (2015) 3 SCC 49; Supermint Exports (P) Ltd. v. New India Assurance Co. Ltd., 2026 SCC OnLine Del 1138**

imposed *qua* this set of connections is in consonance with the relevant clauses of the MDG, particularly Clauses 2.1.6, 3.1, and 3.5 thereof. The learned Arbitrator has also dealt with the challenge regarding the period considered for computation of unaccounted sales/refills and, in our view, adopted a plausible interpretation of the relevant clauses of the MDG.

94. Hence, the penalty imposed on the Appellant in respect of Set-I connections does not attract any of the limited grounds of interference available under Sections 34 or 37 of the Act.

Set II- Penalty for remaining 380 fake connections

95. Insofar as this set of connections is concerned, the principal challenge raised by the Appellant is that there existed absolutely "no evidence" on record to substantiate the finding that the remaining 380 connections were also fake.

96. According to the Appellant, neither were the particulars of the said 380 connections ever disclosed nor was any investigation conducted in relation thereto. Nevertheless, the connections were treated as fake solely on the premise that the Appellant had failed to establish their genuineness, despite the fact that Appellant was never informed as to which specific connections were alleged to be fake.

97. It was contended that the reasoning of the learned Arbitrator is wholly inadequate and perverse, and that the findings in respect of these

connections suffer from patent illegality, being founded on "no evidence".

98. Since the challenge is made on the ground of patent illegality, we deem it appropriate, before adverting to the said contention, to briefly note the settled principles governing the contours of patent illegality and perversity as grounds for setting aside an arbitral award.

99. As far as interference on the ground of patent illegality is concerned, the Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[24]***,*** after considering the earlier decisions in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[25]***, Associate Builders v. DDA***[26]***, DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd.***[27]***, Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd.***[28]***, ONGC v. Western Geco International Ltd.***[29]***,*** had elaborately delineated the contours of patent illegality and perversity as a ground of challenge. The relevant observation read as thus:

> ***"Patent illegality***
>
> ***
>
> **67.** In *Associate Builders*, this Court held that an award would be patently illegal if it were contrary to:
> (a) substantive provisions of the law of India;
> (b) provisions of the 1996 Act; and
> (c) terms of the contract30.
> The Court clarified that if an award is contrary to the substantive provisions of the law of India, in effect, it is in contravention of Section 28(1)(a)31 of the 1996 Act. Similarly, violating terms of the

[24] **(2025) 2 SCC 417**
[25] **(2019) 15 SCC 131**
[26] **(2015) 3 SCC 49**
[27] **(2024) 6 SCC 357**
[28] **(2020) 7 SCC 167**
[29] **(2014) 9 SCC 263**

contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

68. In *Ssangyong,* this Court specifically dealt with the 2015 Amendment, which inserted Sub-section (2- A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of the matter, but which does not amount to mere erroneous application of law. It was also clarified that 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 back door when it comes to setting aside an award on the ground of patent illegality. Further, it was observed that reappreciation of evidence is not permissible under this category of challenge to an arbitral award.

Perversity as a ground of challenge

69. Perversity as a ground for setting aside an arbitral award was recognised in *Western Geco*. Therein, it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

70. In *Associate Builders,* certain tests were laid down to determine whether a decision of an arbitral tribunal could be considered perverse. In this context, it was observed that:

> (i) a finding is based on no evidence; or
> (ii) an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or
> (iii) ignores vital evidence in arriving at its decision; such a decision would necessarily be perverse.
> However, by way of a note of caution, it was observed that when a court applies these tests, it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though a possible view by the arbitrator on facts has necessarily to pass muster, as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

71. In Ssangyong (supra), which dealt with the legal position post 2015 amendment in Section 34 of the 1996 Act, it was observed that a perverse decision, 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. It was pointed

out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that 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 a decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.

72. The tests laid down in *Associate Builders* to determine perversity were followed in *Ssyanyong* and later approved by a three-Judge Bench of this Court in *Patel Engineering Limited v. North Eastern Electric Power Corporation Limited*.

73. In a recent three-Judge Bench decision of this Court in *DMRC Ltd. v. Delhi Airport Metro Express Pvt. Ltd*., the ground of patent illegality /perversity was delineated in the following terms: (SCC p. 376, para 39)

> "*39*. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; Or, that the view of the arbitrator is not even a possible view. 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 under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."
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> *(emphasis supplied)"*

100. As far as the ground of "no evidence" is concerned, we also deem it fit to note the relevant observations rendered in ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited*** [30]:

> "35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or **he must have failed to take into account vital**

[30] **2025 SCC OnLine SC 2857**

> **matters, leading to an unjust result**; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts. A classic example of the same is when an award is based on "no evidence", i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at their findings. **If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground that warrants interference.** However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence.
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> *(emphasis supplied)"*

101. The aforesaid decisions clearly delineate the contours of "patent illegality" and the limited scope of judicial interference with arbitral awards. It emerges that the findings could be rendered patently illegal or perverse only in exceptional circumstances, such as where the findings are based on no evidence at all, where irrelevant material has been taken into consideration, or where vital evidence having a direct bearing on the controversy has been completely ignored. The above decisions make it clear that mere insufficiency of evidence, or the existence of an alternate possible interpretation of the material on record would not render an award perverse. Further, the expression "no evidence" has to be construed in its true sense, meaning thereby the complete absence of any evidence. Equally, the ground of ignoring vital evidence would arise only when material evidence going to the root of the matter has been wholly disregarded by the Arbitral Tribunal.

102. It is on the aforesaid principles that the findings returned by the learned Arbitrator, as affirmed by the learned Single Judge, are required to be examined.

103. Now adverting to the facts of the present case, we find it apt to highlight that the very first issue, based on which findings were rendered on the other issues framed by the learned Arbitrator was "*whether the Claimant created 826 numbers of fake connections?*". Meaning thereby, the issue before the learned Arbitrator was not merely whether some fake connections existed warranting imposition of a penalty, but whether there specifically existed "826" fake connections.

104. The number also assumes significance in the present facts as the quantum of penalty imposed, which ultimately came to be upheld in the Counter-Claim, was intrinsically linked to the number of fake connections alleged against the Appellant.

105. In deciding the aforesaid issue, the reasoning given in para 5.3 of the impugned award, which was reproduced above and as is upheld by the learned Single Judge, shows that, insofar as Set-II connections are concerned, the learned Arbitrator proceeded on the premise that the Respondent had verified certain sample connections and, once those sample connections were found to be fake, the burden shifted upon the Appellant to establish the genuineness of the remaining connections as well.

106. From paragraph 5.3 and the material placed before us, it is evident that, unlike the earlier set of connections, neither was any

investigation conducted in respect of the remaining 380 connections nor were their particulars ever disclosed to the Appellant by the Respondent. Therefore, it is beyond doubt to conclude that there was not a single piece of evidence before the learned Arbitrator, unlike Set-I, which could have been relied upon to hold that the remaining 380 connections were also fake.

107. We must also say that, on being asked about the particulars of the remaining connections, the learned Senior Counsel for the Respondent was also unable to point out any material from the record identifying the said connections, as was available in the case of Set-I connections.

108. However, there is yet another aspect which requires consideration. Although "no evidence" was placed on record in relation to the said 380 connections, the impugned award is not entirely bereft of reasoning for treating those connections as fake. In these circumstances, the question which arises for our consideration is whether the reasoning supplied by the learned Arbitrator is, by itself, sufficient to sustain the finding that the remaining 380 connections were fake.

109. In that context, it becomes necessary to understand the principles governing the adequacy and propriety of reasons in an arbitral award.

110. In this regard, it would be apposite to refer to the judgment of the Hon'ble Supreme Court in ***OPG Power Generation Private Limited (supra),*** rendered after considering ***Dyna Technology Private Limited***

v. Crompton Greaves Limited[31], wherein the Court explained the distinction between absence of improper reasons and inadequate reasons in an arbitral award. The Hon'ble Supreme Court observed as follows:-

> **"79.** On the requirement of recording reasons in an arbitral award and consequences of lack of, or inadequate, reasons in an arbitral award, this Court in *Dyna Technologies* [*Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*, (2019) 20 SCC 1, paras 27-43] held : (SCC p. 14, paras 34-35)
>
> "*34*. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.
>
> *35*. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are : proper, intelligible and adequate. If the reasoning in the order is improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided in section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent to providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the court, while exercising jurisdiction under section 34, has to adjudicate the validity of such an award based on the degree of particularity of reasoning required, having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue even if the court concludes that there were gaps in the reasoning for the conclusions reached by the tribunal, the court needs to have regard to the document submitted by the parties and the contentions raised before the tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful

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while distinguishing between inadequacy of reasons in an award and unintelligible awards."

80. We find ourselves in agreement with the view taken in *Dyna Technologies* [*Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*, (2019) 20 SCC 1, paras 27-43] , as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:

(1) where no reasons are recorded, or the reasons recorded are unintelligible;

(2) where reasons are improper, that is, they reveal a flaw in the decision-making process; and

(3) where reasons appear inadequate.

81. Awards falling in Category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the 1996 Act. Therefore, such awards are liable to be set aside under Section 34, unless:

(*a*) the parties have agreed that no reasons are to be given, or

(*b*) the award is an arbitral award on agreed terms under Section 30.

82. Awards falling in Category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act.

83. Awards falling in Category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award.

(emphasis supplied)"

111. A reading of the aforesaid decisions shows that the Hon'ble Supreme Court broadly classified arbitral awards into the following three categories : (i) Awards where no reasons are recorded, or the reasons are wholly unintelligible; (ii) Awards where the reasons are improper and disclose a flaw in the decision-making process; and (iii) Awards where the reasons may appear inadequate. It was specifically observed that awards falling in the second category, i.e., where the reasoning itself reveals a perversity or a flaw in the decision-making process, would be amenable to challenge in accordance with grounds set out in Section 34 of the Act.

112. For the third category, adequacy of reasons in an arbitral award, the Hon'ble Supreme Court observed that the degree of particularity expected in the reasoning cannot be prescribed rigidly or uniformly and would depend upon the nature of the issues arising in the arbitral proceedings. It was also clarified that while examining a challenge founded on inadequacy of reasons, the Court must carefully consider i) the issues for determination before the tribunal, ii) the degree of reasoning required to address those issues, iii) the documents referred therein, and iv) the rival contentions advanced by the parties. Thereafter, it was further observed that if, on a fair reading of the award and the material referred to therein, the reasoning remains intelligible and adequate, interference would not be warranted merely because the reasoning is not elaborate. However, where the gaps in reasoning are of such a nature that the conclusion itself becomes unintelligible, the award would become vulnerable to challenge.

113. Keeping the aforesaid principles in mind, we may now examine the reasoning supplied by the learned Arbitrator in the facts of the present case.

114. In our understanding, the findings rendered by the learned Arbitrator in paragraph 5.3 of the impugned award, whereby the remaining 380 connections were also held to be fake, and the same came to be upheld by the learned Single Judge, was on the basis that the Respondent had sufficiently discharged its burden by conducting an investigation in respect of the remaining 446 connections and, therefore, the onus, thereafter, shifted upon the Appellant to establish the genuineness of the said connections.

115. At this stage, we are conscious of the settled position that the provisions of the IEA are not strictly applicable to arbitral proceedings and, therefore, mere shifting of the burden of proof upon the Appellant cannot by itself constitute a ground for interference. At the highest, it may amount to an erroneous application of law to the facts, which is immune from judicial interference in view of the proviso to Section 34(2-A) of the Act.

116. However, insofar Set-II connections are concerned, a fundamental distinction exists that inasmuch as neither their identity nor any particulars relating thereto were ever disclosed to the Appellant, whether in the SCN, the penalty order, or even before the learned Arbitrator.

117. In such circumstances, in our considered opinion, expecting the Appellant to establish the genuineness of those connections, without even disclosing which specific connections were alleged to be fake, renders the reasoning of the learned Arbitrator perverse, and such a conclusion is one which no reasonable person could have arrived at.

118. The only defence, raised by the Respondent, was that the identity of those connections was never really in dispute since the Appellant itself was aware of the remaining consumers whose connections were alleged to be fake and the Appellant had also admitted manipulation in relation thereto in its reply to the SCN.

119. The above defence found favour with both the learned Arbitrator and the learned Single Judge. The relevant paragraph of the impugned judgment in this regard is reproduced below:-

> "19. There is some controversy as to whether the details of the eight hundred and twenty-six alleged fake connections had been provided to the petitioner. Whereas the respondent claims that the said details were provided, the petitioner disputes the same. However, it cannot be disputed that the petitioner was provided the names of three hundred and eighty-seven persons out of the eight hundred and twenty-six customers that were alleged to be fake connections. Further, the petitioner was also provided with the gist of the report furnished by the joint team of officers, which included the names and details of the persons whose addresses were found to be untraceable. The petitioner has not produced any material to refute the said allegations. On the contrary, in his reply to the show-cause notice, the petitioner accepted the allegations regarding the fake connections.
>
> *(emphasis supplied)"*

120. The reasoning adopted by the learned arbitrator on this aspect is also set out below-

> "5.4 The claimant has also challenged the findings of the investigation on the ground that the answering respondent has not provided a list of all 826 customers to the Claimant despite various requests made by him to the Respondent. In this regard, I find merit in the contention of the Respondent that the identity of 826 customers was never in dispute till the passing of the impugned order dated 29.05.2014 and, in fact, the Claimant throughout maintained that all said 826 customers were genuine customers and only addresses got changed by his ex-employees. The SCN dated 11.03.2014 refers to all 826 customers, and the mere perusal of the reply dated 14.04.2014 suggests that the Claimant has admitted the existence of all said customers and did not dispute the existence of said customers. Not only that, even in representation-cum-appeal dated 19.06.2014, the claimant did not raise the issue of not supplying details of 826 customers. On the other hand, the Claimant has stated in said appeal that ".... **It is obvious that when the database of customers is tampered fraudulently by errant employees, there would be a mismatch of customer ID and his real address leading to doctored findings** ....."
> **Thus, the above-referred documents suggest that 826 customers were never disputed by the Claimant except to claim that addresses of said customers were changed by his officials**."
>
> *(emphasis supplied)"*

121. From the above, it can be discerned by us that despite the admitted position that particulars of the remaining 380 connections were never disclosed, the learned Arbitrator, while relying upon the reply dated 14.04.2014 to the SCN and the subsequent Representation-cum-Appeal, returned the finding that the identity of all 826 connections was never seriously disputed by the Appellant in the above mentioned documents and, therefore, it was assumed based on mere absence that the Appellant knew the identity of all the connections. On that basis alone, the burden came to be shifted upon the Appellant to establish the genuineness of all the alleged connections.

122. It was also concluded that the Appellant had accepted the allegations regarding the fake connections.

123. In our considered view, a cumulative reading of paragraphs 5.3 and 5.4 of the impugned award, along with the impugned judgment of the learned Single Judge, clearly demonstrates that while treating the remaining 380 connections as fake, decisive weight was placed on the premise that the Appellant was allegedly aware of the particulars of all such consumers, yet failed to produce material establishing their genuineness, and further, that such allegations stood accepted by the Appellant in its replies.

124. We find the above line of reasoning to be totally absurd and unsustainable. In our opinion, the same is wholly irrational and falls beyond the realm of a plausible view which any reasonable person, acting judicially, could have adopted.

125. It goes without saying that, since the particulars of the remaining 380 connections admittedly neither formed part of the record nor were ever positively supplied or disclosed by the Respondent to the Appellant, no reasonable person, in such circumstances, and in their right mind, could have shifted the burden upon the Appellant and expected it to establish their genuineness.

126. Clearly, asking the Appellant to prove the genuineness of the said connections without even disclosing their particulars, in all fairness, is unintelligible, and cannot constitute a rational basis for arriving at such a finding.

127. It is inherently impossible for the Appellant to establish the genuineness of something whose identity itself remains undisclosed. Any conclusion that the said connections were fake would, therefore, rest not on evidence, but on presumption. Presumption, however strongly expressed, can never replace evidence.

128. When particulars of the remaining 380 connections were never disclosed, we are unable to understand how any legitimate presumption could arise that such particulars were within the knowledge of the Appellant or that the allegations stood admitted by it.

129. If such a presumption exists and can validly be inferred from the record, no further enquiry would be required. However, if it does not, the very foundation of the finding that the said connections were fake would suffer from perversity, since the Appellant was expected to establish the genuineness of connections whose identities had never been disclosed to it and, upon failure to do so, the penalty imposed came to be upheld. In this regard, we find it apposite to reproduce the relevant extracts from the reply to the SCN, upon which considerable reliance has been placed by the learned Arbitrator as well as the learned Single Judge:-

> "**The undersigned, after going through the contents of the said notice, was Shocked & Surprised and immediately tried to investigate the contents of the said notice. The undersigned, upon investigation, discovered that the said data manipulation in the computer systems was performed by his ex-employees**.
> It is important to state that the computers present at the distributorship that were used for all daily activities, including printing cash memos, punching cash in memos and updating consumer information, were operated by his ex-employees, namely Mr. Pankaj Bandolia, Mr. Ranul Sharma, and Mr. Jitendra Kumar,

and the employees had full access to the system for the entire working hours of the office. Additionally, it is necessary to state that all the said employees had been working for M/S Anand Store for a significant period of time.

It is important to state that all three employees, without assigning any reason whatsoever or providing any prior notice, left the agency on 13/02/2014 and were unavailable for any contact subsequently.

The undersigned further learned that the said consumer numbers are genuine in nature, having addresses pertaining to Netaji Nagar Area and have been issued to consumers for a very long time.

The ex-employees, namely Mr. Pankaj, Mr. Rahul and Mr Jitendra manipulated the data and changed the addresses of the said consumers to Moonga Nagar, Roshan Nagar, Karawal Nagar, Shiv Vihar, New Sabhapur, etc.

Having said that, the undersigned post the incident, has taken pre-emptive measures so that such events are not repeated in the future and has strictly instructed all the employees to only make modifications after seeking proper approval from him.

The undersigned humbly states that he had no information pertaining to the data manipulations done by the ex-employees until the date of receiving the notice by the corporation. The undersigned has been operating the distribution-ship for a period of over 51 years, and never in this span of 51 years has the undersigned performed any manipulation of data whatsoever, nor has the undersigned been a defaulter in any manner.

The undersigned also states that the manipulation done was neither intentional nor deliberate and that he stands innocent, having no role in manipulating any data whatsoever. Rather, the undersigned, after the said incident, underwent a great deal of shock arid mental distress.

It is therefore requested, considering the past records of the operation of the distributorship wherein no such incident has ever taken place in its 51 years of operation and in view of the above-mentioned facts and circumstances, that the show cause notice dated 11/03/2014 be withdrawn.

(emphasis supplied)"

130. Upon perusal of the reply dated 14.04.2014 to the SCN, relied upon by the learned Arbitrator and the learned Single Judge, it can be understood that insofar as the alleged admission is concerned, the reply undoubtedly acknowledges certain manipulation in consumer data by its former employees and further stated that addresses had been altered

to areas such as Moonga Nagar, Roshan Nagar, Karawal Nagar, and Shiv Vihar, which are the very areas referred to in the SCN. However, beyond that, the reply neither sets out nor acknowledges the complete list of 826 alleged connections. In fact, no such figure finds mention anywhere in the reply.

131. Even while asserting the genuineness of the consumer addresses, the reply confines itself only to the "said consumer numbers", thereby showing that the Appellant, from the very beginning, was referring only to those consumers whose particulars had been disclosed.

132. Despite this, the learned Arbitrator concluded that "*mere perusal of reply dated 14.04.2014 suggests that the Claimant has admitted the existence of all said customers and did not dispute the existence of said customers.*"

133. In our considered view, such an inference is impossible to cull out from the material on record. Admittedly, the SCN itself did not annex particulars of the remaining 380 connections, nor were such particulars ever supplied along with the penalty order. In these circumstances, we fail to comprehend how the reply to the SCN or the subsequent Representation-cum-Appeal could automatically be construed either as an admission regarding all the alleged fake connections or as proof that the Appellant was aware of the identity of all 826 consumers whose connections were alleged to be fake.

134. At the highest, the statements made by the Appellant justifying the genuineness of the addresses could only relate to those consumers

whose particulars had actually been disclosed through the SCN and its annexures, i.e., for the first set comprising 446 connections.

135. In fact, from the stage of the Representation-cum-Appeal itself, the Appellant consistently took the stand that the penalty had been imposed without affording an effective opportunity to establish genuineness. That grievance squarely applies to the present set of 380 connections, since their identities were never disclosed and, therefore, no occasion ever arose for the Appellant either to establish their genuineness or to admit any alleged manipulation in relation thereto.

136. Be that as it may, had the complete list of all 826 consumers whose connections were alleged to be fake formed part of the record, the absence of a specific denial or dispute regarding their identity may have been capable of being construed as indicative of knowledge on the part of the Appellant. However, when admittedly the SCN itself did not disclose particulars of all the alleged fake connections, mere acknowledgment that certain consumer addresses had been manipulated by former employees or an attempt to prove their genuineness could not, by any reasonable standard, can be linked to the conclusion that the Appellant was aware of the identity of each of the alleged 826 fake connections or had admitted manipulation in respect of all of them.

137. In our view, the inferences drawn by the learned Arbitrator as well as the learned Single Judge stretches the contents of the reply and the Representation-cum-Appeal far beyond what they can reasonably bear. While such inferences may hold good for Set-I connections whose

particulars had been disclosed, the same could not, by any logical standard, be extended to Set-II connections whose identities were never brought on record.

138. What further assumes significance is that, while drawing the aforesaid inference, the learned Arbitrator completely failed to consider the letters dated 28.07.2014, 31.07.2014, and 20.08.2014 forming part of the record, whereby the Appellant had specifically called upon the Respondent to furnish particulars of the 826 connections alleged to be fake. Admittedly, no such particulars were ever supplied.

139. Therefore, in circumstances where there was not even a single piece of evidence to establish that the remaining 380 connections were fake, their identities were never positively disclosed, and yet the Appellant was called upon to establish their genuineness, the aforesaid letters, in our considered opinion, assume vital importance in adjudicating the dispute. Their non-consideration has materially affected the conclusion ultimately reached by both the learned Arbitrator and the learned Single Judge.

140. For a proper appreciation of the controversy, the relevant part of the said letter sent by the Appellant to the Respondent, seeking specific information, are also reproduced for a better understanding that of what was specifically sought from the Respondent by the Appellant. The same read as follows:

"1. Copy of Alleged complaint as mentioned in the show cause notice dated 11/03/2014 described as "a formal Complaint"

2. List of 826 no. of consumers alleged to be fake consumers

3. Details of the alleged enquiry along with statements of the alleged witnesses as mentioned in the show cause notice dated 11/03/2014

4. Complete Investigation report of the team of officers that carried out the investigation…

(emphasis supplied)"

141. A mere glance at these communications clearly militates against the inference that the Appellant was aware of the identity of all 826 alleged fake consumers, since the Appellant had itself actively sought disclosure of the identities of all such consumers. This itself contradicts the assumption that the Appellant was already aware of the particulars of the remaining 380 connections. It is not even a case where the material on record admits of two plausible views. It unequivocally establishes that the identities of the remaining 380 alleged fake connections were never known to the Appellant at any stage.

142. We are conscious of the settled principle that the learned Arbitrator is the final arbiter of facts and that this Court, while exercising jurisdiction under Sections 34 and 37 of the Act, cannot undertake a fresh appreciation of evidence. However, where a finding is rendered after completely ignoring vital evidence having a direct bearing on the core issue, the matter travels beyond mere appreciation of evidence and enters the realm of patent illegality.

143. Even the decisions in ***Ramesh Kumar Jain (supra) and DMRC (supra)***, noticed hereinabove, leave no manner of doubt that this Court

is not denuded of jurisdiction to examine whether the learned Arbitrator, while arriving at a crucial finding, ignored vital material available on record. Such an exercise does not amount to re-appreciation of evidence but falls squarely within the limited scope of judicial scrutiny permissible under the ground of patent illegality. If this Court, while exercising jurisdiction under Sections 34 or 37 of the Act, cannot even examine the surrounding material on record to ascertain whether vital evidence has been ignored, the very ground of challenge based on non-consideration of vital evidence, recognised in a catena of decisions of the Hon'ble Supreme Court, would become *otiose*.

144. Tested on the aforesaid principles, we find that the present case clearly crosses the "thin line" referred to by the Hon'ble Supreme Court in ***Ramesh Kumar Jain (supra)***. The penalty imposed by the Respondent was intrinsically linked to the specific allegation that 826 fake connections existed. However, admittedly, particulars of all those connections never formed part of the arbitral record, nor was any investigation conducted in respect of the remaining 380 connections.

145. The burden came to be shifted upon the Appellant to establish the genuineness of all the alleged connections on the premise that the Appellant had the particulars of the connections alleged to be fake. However, even in reaching such a conclusion, the letters dated 28.07.2014, 31.07.2014, and 20.08.2014, in which the Appellant specifically sought the complete list of identities of the 826 consumers, were entirely ignored by the learned Arbitrator.

146. In the absence of any material on the record establishing the identity of all 826 connections, the issue of whether the Appellant even knew the identity of those remaining 380 connections was of major importance. However, even findings on this crucial issue that identity was never disputed were rendered in ignorance of vital evidence, which constitutes patent illegality.

147. Therefore, in our considered view, the reasoning adopted by the learned Arbitrator, insofar as the remaining 380 connections are concerned, fails to satisfy the test of proper reasoning as contemplated under category (ii) in ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited***. The conclusion that the said connections were fake solely because the Appellant failed to establish their genuineness is, in our opinion, manifestly perverse and discloses a clear flaw in the decision-making process, since no reasonable person could have expected the Appellant to prove the genuineness of connections whose particulars had never been disclosed to it in the first place. What further compounds the perversity is that vital material on record, which clearly demonstrated that particulars of all 826 connections alleged to be fake were never within the knowledge of the Appellant, was completely ignored while arriving at the aforesaid conclusion, thereby materially affecting the ultimate finding rendered by the learned Arbitrator.

148. Even on the aspect of adequacy of reasons, the issue before the learned Arbitrator was whether all "826" fake connections in fact existed, on the basis of which a substantial monetary penalty came to be imposed. Admittedly, particulars of the remaining 380 connections

neither formed part of the arbitral record nor were ever supplied to the Appellant.

149. In such circumstances, the degree of reasoning required for those connections was necessarily of some basic standard. Yet, the sole basis furnished for holding those connections to be fake was that the Appellant allegedly knew their identity as the same were never disputed and, thereafter, as well, had failed to establish their genuineness which is wholly inadequate reasoning for the issue framed.

150. On the aspect of adequacy of reasons, the Hon'ble Supreme Court in ***OPG Power Generation Limited (supra)*** observed that merely because the reasons may not be elaborate or adequate, the award does not become liable to be set aside, so long as the ultimate conclusions arrived at by the learned Arbitral Tribunal are otherwise found to be correct.

151. In light of the above, having held that the reasons were inadequate, we have ourselves examined the impugned award in detail to ascertain whether the conclusion reached by the learned Arbitrator that all 826 connections were fake can nevertheless be sustained. However, unlike cases where brief reasoning still finds support from the record, we are unable to find any such sustaining material insofar as the remaining 380 connections are concerned. A cumulative reading of the impugned award and the documents relied upon clearly shows that any alleged admission regarding manipulation of data, absence of dispute as to identity, or attempt to establish genuineness, was only in the context of Set-I connections (446 connections) whose particulars

had been disclosed. However, the inferences arising therefrom were thereafter impermissibly stretched to Set-II connections as well (380 connections), whose cases stood on an entirely different factual and evidentiary footing.

152. Similarly, the alleged violation of the Dealership Agreement, insofar as it casts an obligation upon the Appellant to maintain proper customer records, also cannot by itself sustain the finding for Set-II connections in the absence of any material first establishing that those connections were fake.

153. Even the feedback of the Sales Manager, pointed out by Mr. Jain and referred to in the SCN, merely indicates that certain discrepancies in addresses were noticed. At best, the same may suggest the existence of some irregularities within the distributorship of the Appellant. However, by no reasonable stretch can it establish that the Set-II connections were fake or disclose the actual identity of those consumers. In fact, upon our perusal of the impugned award, the learned Arbitrator himself has not placed any reliance upon the said feedback while recording findings in respect of the identity of the remaining 380 connections.

154. Thus, even upon a holistic reading of the impugned award together with the material referred therein, we are unable to sustain the reasoning adopted by the learned Arbitrator insofar as the remaining connections are concerned.

155. Once the aforesaid reasoning fails, nothing further survives to sustain the finding regarding the remaining 380 alleged fake connections. Admittedly, (i) the particulars of those connections never formed part of the arbitral record; (ii) no investigation or verification was conducted qua them; and (iii) no independent material whatsoever was placed before the learned Arbitrator to establish that such connections were fake. Therefore, insofar as the remaining 380 alleged fake connections are concerned, the finding returned by the learned Arbitrator is perverse and has clearly been rendered on "no evidence", resting merely on assumption and conjecture without any evidentiary foundation or adequate reasoning, thereby attracting the vice of patent illegality.

156. The learned Single Judge, while exercising jurisdiction under Section 34 of the Act, failed to appreciate the fundamental distinction between Set-I and Set-II connections and consequently failed to examine whether the findings for Set-II connections were unsupported by any evidence and suffered from patent illegality going to the root of the matter.

157. Hence, the penalty to that extent upheld by the learned Arbitrator in the Counter- Claim of the Respondent, cannot be sustained and is hereby set aside.

SEVERABILITY AND MODIFICATION OF THE AWARD

158. Now, once we have concurred with the findings of the learned Arbitrator with respect to the Set- I category of 446 connections

subjected to postal verification and physically verified, the question which immediately arises is whether the entire impugned award, which upheld a penalty of Rs. 2,09,27,137/-, should be set aside, or whether the impugned award can be sustained to a limited extent.

159. The aforesaid issue now stands substantially settled by the Constitution Bench decision of the Hon'ble Supreme Court in ***Gayatri Balasamy (supra).*** The Court held that the power to set aside an arbitral award vested to us inherently includes the power to partially set aside a severable portion of it. Applying the doctrine of severability, it was observed that where the valid and invalid portions of the award are capable of being clearly segregated and are not intertwined, the Court need not annul the award in its entirety. It was particularly emphasised that severance may be resorted to where the issues relating to liability and quantum are separable and do not overlap with the invalid portion of the award. The relevant observations are reproduced herein below:-

> *"33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.*
> *34. To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that the power to set aside would only mean the power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.*
>
> *35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may*

not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be interdependent or intrinsically intertwined. If they are, the award cannot be set aside in part.

*36. [...] Thus, the power of partial setting aside should be exercised only when the valid and invalid parts of the award can be clearly segregated—**particularly in relation to liability and quantum and without any correlation between valid and invalid parts**. "*

(emphasis supplied)

160. Moving forward, in parts IV and V of the majority opinion, the Hon'ble Supreme Court also recognised a limited power of modification under Section 34, provided such exercise does not involve a merits-based reappreciation of the dispute. It was clarified that such power may, *inter alia*, be exercised by severing the invalid portion of an award from the valid portion and by correcting clerical, computational, or manifest errors apparent on the face of the record. The relevant observation read as follows:

"42. Given this background, if we were to decide that courts can only set aside and not modify awards, then the parties would be compelled to undergo an extra round of arbitration, adding to the previous four stages: the initial arbitration, Section 34 (setting aside proceedings), Section 37 (appeal proceedings), and Article 136 (SLP proceedings). In effect, this interpretation would force the parties into a new arbitration process merely to affirm a decision that could easily be arrived at by the court. This would render the arbitration process more cumbersome than even traditional litigation.

43. Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided Under Section 34. In other words, the power cannot contradict the essence or language of Section 34. The court would not exercise appellate power, as envisaged by Order XLI of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code").

> **44.** We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided in toto. Read in this manner, the limited and restricted power of severing an award implies a power of the court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.
>
> **45.** We are thus of the opinion that the Section 34 court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in Part II of our Analysis.
>
> **46.** Mustill and Boyd have observed that an order varying an award is not equivalent to an appellate process. The authors suggest that a modification order would only be appropriate where the modification, including any adjustment of costs, follows inevitably from the tribunal's determination of a question of law. This approach would be beneficial, as it would reduce costs and delays. The courts need not engage in any fact-finding exercise. By acknowledging the Court's power to modify awards, the judiciary is not rewriting the statute. We hold that the power of judicial review Under Section 34, and the setting aside of an award, should be read as inherently including a limited power to modify the award within the confines of Section 34.
>
> *(emphasis supplied)"*

161. Upon analysing the aforesaid decision, the following broad principles emerge: (i) the power to set aside an arbitral award under Section 34 includes the power to partially set aside a severable portion thereof; (ii) such power can be exercised only where the valid and invalid portions are legally and practically separable and are not intrinsically intertwined; (iii) partial severance is particularly permissible where the issues relating to liability and quantum are capable of independent segregation; and (iv) the Court may also exercise a limited power of modification where such exercise does not require a fresh merits-based evaluation or re-appreciation of evidence.

162. More recently, the contours of the limited power of modification recognised in ***Gayatri Balasamy (supra)*** were examined by the Hon'ble Supreme Court in ***Saisudhir Energy Ltd. (supra)*** and by the Division Bench of this Court in ***Prasar Bharati v. Stracon India Ltd.***[32]. In ***Saisudhir Energy Ltd. (supra)***, the learned Single Judge modified the award by applying the contractual clause in relation to liquidated damages, which approach was upheld by the Hon'ble Supreme Court. Similarly, in ***Prasar Bharti (supra)***, though the learned Arbitrator had proceeded on the basis of a shortfall of 17 days, it was subsequently found that the actual shortfall was only 7 days. Accordingly, the award was sustained to that limited extent for the remaining 7 days since the recoverable amount could be calculated from the formula already adopted in the award itself, without requiring any fresh fact-finding.

163. The aforesaid decisions clearly demonstrate that the doctrine of severability recognised in ***Gayatri Balasamy (supra)*** is not confined merely to cases involving separate or independent claims. Even within a single claim or counter-claim, the valid and sustainable portions of an award may be preserved, while invalid or perverse portions may be set aside or modified, provided such segregation does not require any re-evaluation of the merits.

164. The legal position regarding severability and limited modification having thus been clarified, we now proceed to apply these principles to the facts of the present case.

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165. In the present case, the learned Arbitrator upheld a Counter-Claim of Rs. 2,09,27,137/- towards the penalty imposed under the Dealership Agreement and the MDG on account of 826 alleged fake connections. However, a closer examination of the impugned award shows that the said amount comprises distinct and severable components, each having a separate basis of liability.

166. The first component was quantified at Rs. 3,15,472/-, being 50% of the average monthly dealership commission for the six months preceding detection of the irregularity. This component does not depend upon the exact number of fake connections established but flows from the existence of a critical irregularity under the MDG itself. Since, we have upheld the findings of the learned Arbitrator with respect to the 446 connections, the liability under this head survives. Accordingly, both the liability and the quantum under this component remain independently sustainable and severable from the invalid portion of the impugned award.

167. The second component pertains to recovery at the rate of Rs. 5,000 per ineligible connections under Clause 3.1 of the MDG, originally quantified at Rs. 41,30,000/- by taking all 826 connections into account. Here again, the liability and quantum are clearly severable since the amount recoverable is directly proportionate to the number of connections ultimately found to be fake. Since we have upheld the findings only in respect of 446 connections, the amount under this head can, without any fresh fact-finding exercise, be proportionately confined to those connections alone. Applying the contractual rate of

Rs. 5,000/- per connection, the recoverable amount under this component would stand reduced to Rs. 22,30,000/-.

168. The third component pertains to alleged unaccounted sales/refills quantified at Rs. 1,64,81,665/- on the basis of 25,181 refills allegedly supplied to all 826 connections during the period from September 2009 to 2014. For this component, the doctrine of severability cannot be applied, as the quantification is founded upon the cumulative figure of 25,181 refills relatable to all 826 connections collectively, without any segregation between the 446 connections in respect of which the findings have been sustained and the remaining connections for whom the findings have not been sustained.

169. In such circumstances, since the liability and quantum in this component are inseparably linked and, therefore, even the principle of pro-rata reduction as applied in ***Prasar Bharti (supra)*** cannot be invoked, since the penalty here is not dependent merely upon the number of connections but upon the composite figure of alleged refills, which cannot be modified without fresh fact-finding. Accordingly, the impugned award, insofar as it upholds the Counter-Claim of Rs. 1,64,81,665/- towards alleged unaccounted sales/refills, cannot be sustained and is liable to be set aside in *toto*.

170. Therefore, in view of the above, out of the total Counter-Claim of Rs. 2,09,27,137/- upheld by the learned Arbitrator, the component of Rs. 3,15,472/- towards the first instance of critical irregularity and the modified amount of Rs. 22,30,000/- calculated at the rate of Rs. 5,000/- per connection for 446 connections alone are sustained. The remaining

component of Rs. 1,64,81,665/- towards alleged unaccounted sales/refills is set aside. Thus, the Counter-Claim survives only to the extent of Rs. 25,45,472/-, and the impugned award shall stand modified to the aforesaid extent, while all other portions remain unaffected.

CONCLUSION

171. Upon an overall consideration of the arbitral record and keeping in mind the limited scope of interference available to us under Section 37, we are of the view that the findings of the learned Arbitrator, in respect of the 446 connections, which were subjected to investigation and alleged to be fake, are plausible, reasoned, and based on evidence, and therefore do not warrant our interference.

172. However, insofar as the remaining 380 alleged fake connections are concerned, the findings of the learned Arbitrator cannot be sustained, as the same are founded on "no evidence" with no proper or adequate reasoning in support, thereby rendering the conclusions perverse and patently illegal.

173. Applying the principles of severability and modification, we uphold the penalty comprising the first component of Rs. 3,15,472/- towards the first instance of critical irregularity and the second component of Rs. 22,30,000/-, calculated at the rate of Rs. 5,000 per verified ineligible connections in respect of the 446 established fake connections.

174. However, the impugned award, insofar as it upholds recovery towards alleged unaccounted sales/refills amounting to Rs. 1,64,81,665/-, cannot be sustained, since the said component is inseparably linked to all 826 connections and no separate quantification or evidence exists in respect of the remaining 380 connections. Accordingly, this portion of the impugned award is set aside.

175. In view of the above, the impugned award and the impugned judgment are modified to the extent indicated above.

176. The appeal is partly allowed, and the Counter-Claim survives only to the extent of Rs.25,45,472/-.

177. Pending applications, if any, stand disposed of in the above terms.

178. There shall be no order as to costs.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

JULY 01, 2026*/gunn/at*